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New York (State) Constitutional convention, 1894.
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REVISED RECORD

OF THE

CONSTITUTIONAL CONVENTION

OF THE

STATE OF NEW YORK

May 8, 1894, to September 29, 1894

REVISED BY

HON. WILLIAM H. STEELE,

VICE-PRESIDENT OF THE CONSTITUTIONAL CONVENTION OF 1894,

Pursuant to Chap. 21, Laws of 1898.

PUBLISHED UNDER DIRECTION OF

HON. CHARLES E. FITCH, L. H. D.,

SECRETARY OF THE CONSTITUTIONAL CONVENTION OF 1894,

Pursuant to Chap. 419, Laws of 1900.

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REVISED RECORD

OF THE

CONSTITUTIONAL CONVENTION

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STATE OF NEW YORK.

MAY 8, 1894, TO SEPTEMBER 29, 1894.

EVENING SESSION.

Wednesday Evening, August 1, 1894.

The Constitutional Convention of the State of New York met, pursuant to recess, in the Assembly Chamber, in the Capitol, at Albany, N. Y., Wednesday evening, August 1, 1894, at eight o'clock.

President Choate called the Convention to order.

Mr. Crosby moved that the privileges of the floor be extended to the Hon. Timothy Sanderson.

The President put the question on the motion of Mr. Crosby, and it was determined in the affirmative.

Mr. Forbes asked unanimous consent to introduce

O. 373.— Proposed amendment to article 3 of the Constitution, by adding a new section relating to charities and corrections.

Referred to the Select Committee.

The President — General orders are in order.

Mr. Marshall moved that the Convention go into Committee of the Whole on general order No. 12.

The President put the question on the motion of Mr. Marshall, and it was determined in the affirmative, whereupon the Convention resolved itself into Committee of the Whole, and Mr. Peck took the chair.

The Chairman — The Convention is in Committee of the Whole on proposed constitutional amendment, general order No. 12, introductory No. 368, which the Secretary will please read by sections.

The Secretary read the proposed amendment as follows:

STATE OF NEW YORK.

G. O. No. 12. No. 375. Int. 368.

IN CONVENTION.

Introduced by Committee on Future Amendments as a substitute to amendments, introductory numbers fifty-nine, ninety-four, one hundred and forty-two, one hundred and forty-four, one hundred and eighty-nine, two hundred and four, two hundred and thirty-seven, two hundred and fifty-six, two hundred and eighty-five and two hundred and eighty-nine — read twice and referred to the Committee of the Whole.

PROPOSED CONSTITUTIONAL AMENDMENT

To amend article thirteen of the Constitution, relating to further amendments.

The Delegates of the People of the State of New York, in Convention assembled, do propose as follows:

Article thirteen of the Constitution is hereby amended so as to read as follows:

ARTICLE XIII.

Amendments.

SECTION 1. Any amendment or amendments to this Constitution may be proposed in the Senate and Assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their Journals, with the yeas and nays taken thereon, and referred to the Legislature to be chosen at the next general election of Senators, and shall be published for three months previous to the time of making such choice; and if in the Legislature so next chosen, as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the Legislature to submit such proposed amendment or amendments to the people for approval in such manner and at such times as the Legislature shall prescribe. Such approval shall be expressed in one of the following methods: First, if such amendment or amendments are submitted at a special election, by the affirmative votes of a majority of the electors qualified to vote for members of the Legislature, voting thereon; second,

if submitted at a general election, by the affirmative votes of a majority of all the qualified electors who shall, at the same election, vote for members of the Assembly; or, third, provided three-fourths of such qualified electors shall vote thereon, by the affirmative votes of a majority of the electors voting thereon; any amendment or amendments so approved shall go into effect on the first day of January next after its approval.

Constitutional Convention.

§ 2. At the general election to be held in the year nineteen hundred and sixteen, and every twentieth year thereafter, and also at such times as the Legislature may by law provide, the question, "Shall there be a Convention to revise the Constitution and amend the same?" shall be decided by the electors qualified to vote for members of the Legislature, and in case a majority of the electors so qualified, voting at such election for members of the Assembly, shall decide in favor of a Convention for such purposes, the electors of every Senate district of the State, as then organized, shall elect four delegates at the next ensuing election at which any members of the Legislature shall be chosen, and the electors of the State voting at the same election shall elect fifteen delegates-at-large. The delegates so elected shall convene at the capitol on the first Tuesday of April next ensuing, after their election, and shall continue their session until the business of such Convention shall have been completed, not to exceed five months.

Every delegate shall receive for his services the same compensation and the same mileage as shall then be annually payable to the members of the Assembly. A majority of the Convention shall constitute a quorum for the transaction of business, and no amendment to the Constitution shall be submitted for approval to the electors as hereinafter provided, unless by the assent of a majority of all the delegates, the yeas and nays being entered on the Journal to be kept. The Convention shall have the power to appoint such officers, employes and assistants, as it may deem necessary, and provide for the printing of its documents, Journal and proceedings. The Convention shall determine the rules of its own proceedings, choose its own officers and be the judge of the election, returns and qualifications of its members. In case of a vacancy by death, resignation or other cause, of any of its members, such vacancy shall be filled by a vote of a majority of all the delegates. Any proposed Constitution or constitutional amendment which shall have been adopted by such Convention, shall be submitted to a vote of the qualified electors of the State at the time and in the manner

provided by such Convention, at an election which shall be held not less than six weeks after the adjournment of such Convention. Upon the approval of such Constitution or constitutional amendments, in the manner provided in the last preceding section, such Constitution or constitutional amendment, shall go into effect on the first day of January next after its approval.

Mr. Alvord — Mr. Chairman, I call attention to the fact that, so far as we have it on the calendar, the latter part of the amendment is not read as it reads here.

The Chairman — The Chair will call attention to the fact that there is a typographical error in the order as printed. In line 19, upon page 2, the words "second, if submitted at a general election by the" are erased, and the words "any amendment or amendments so approved" interlined.

Mr. Alvord — There is no mark to designate what the amendment is, Mr. Chairman.

Mr. Moore — Mr. Chairman, if amendments are in order at this time, I desire to offer an amendment to this amendment.

The Chairman — I suppose that any business in regard to this general order is now in order.

Mr. Moore — I move, Mr. Chairman, to amend the proposed amendment on page 3, by inserting in line 6, instead of the word "four," "five district," making it read "five district delegates."

The Chairman — Will the gentleman put his amendment in writing and send it to the desk?

Mr. Moore — I will, sir.

Mr. Marshall — Mr. Chairman, for the purpose of explaining the proposed constitutional amendment which it now before the Committee of the Whole, I move to strike out all of such proposed amendment except the first line.

Under the present Constitution there are two methods for the amendment or revision of the Constitution. One is by amendment inaugurated in the Legislature; the other is by revision or amendment which is inaugurated in the Constitutional Convention.

The committee has had presented to it some nine or ten different proposed amendments relative to the holding of future Constitutional Conventions, and with respect to the amendment of the Constitution through the medium of the Legislature. After fully considering the various propositions, the article which is now presented was framed by the committee with a view to presenting all the best elements of all the different provisions which have been proposed,

together with some new matter. The committee found, upon examining the Constitutions of various States, that there was great diversity of opinion as to what was the proper course to pursue with respect to the amendment of a Constitution. In some States the only method allowed was by means of a Constitutional Convention; in some, only through the Legislature. In some instances it was required that the people should ratify the action of the Constitutional Convention or Legislature; in others no such requirement was inserted in the fundamental law. Our Constitution, very curiously, merely provides for the approval of the work of the Legislature, where it is sought to amend the Constitution through it. With respect to the Constitutional Convention there is no provision which requires any action on the part of the people in ratification of the will expressed by the Constitutional Convention. It was thought by the committee it would be proper to require approval by the people of the work of the Constitutional Convention. That has been the uniform course of practice in this State in respect to all the Constitutional Conventions that have been held therein, although there was no requirement which called for a submission to the people for approval of the action of the Convention. Another matter which enlisted the attention of the committee was that so far as the Constitutional Convention was concerned it was left entirely with the Legislature to determine whether or not the will of the people, as expressed at the polls, to the effect that a Convention should be held, could or could not be effectuated. In 1886 the people of this State voted by a very large majority that there should be a Constitutional Convention held. The Legislature and the Governor were unable to agree as to the method by which such Convention should be held, as to the selection of delegates, and as to the time when it should be held, and the result is, as is well known by all, that eight years have elapsed since the time when the people declared that they wished a Convention, before their wish was finally carried into effect by the holding of the present Convention. For the purpose of avoiding a repetition of such a state of affairs in the future, it has been deemed prudent to insert in the Constitution provisions which would make the declaration of the people, that they would have a Convention, self-executing. In other words, that when the people should say that the Convention would be held, all that would remain to be done would be to pursue the ordinary political methods obtaining in respect to the election of members of Assembly or State Senators at the next ensuing election, and that then the people should vote for such number of delegates as should be provided for in the Constitution, and the Convention would then proceed with

the transaction of its business. To that end it was also deemed necessary that the action of the Convention should in some manner be regulated by the Constitution, and hence provisions similar to those found in that article of the Constitution relative to the Legislature were inserted. The compensation of the delegates is fixed to be the same as that payable to members of Assembly. A quorum is defined. The vote necessary for the passage of a constitutional amendment is specified. The power of the Convention as to the appointment of officers, as to the printing of its docments, journal and proceedings, as to the adoption of rules, and also a provision that the Convention shall be the judge of the election returns and qualifications of its members; which provision, although deemed unnecessary, in view of the action by this Convention in the Trapper case, was, nevertheless, thought proper to be inserted as a matter of greater precaution, and for the purpose of having in one section of the Constitution all provisions necessary for the definition of the powers of the Convention. Then followed provisions as to the time when the work of the Convention should be submitted to the people, the length of the session of the Convention, and, finally, provisions as to the method of approving the work of the Convention. Those methods are the same as are prescribed by section 1, which relates to amendments which originate in the Legislature, and in that respect there is a new provision inserted in the Constitution. The present Constitution only requires that there shall be ratification or approval by the people of amendments which have been passed by the two several Legislatures, and which are submitted to the people for adoption or rejection. The Constitution now provides that the approval shall be expressed in such manner and at such times as the Legislature may prescribe.

It is, however, thought necessary that there should be some provision inserted in the Constitution which will define to a certain extent the number of votes which should be cast upon the question of the adoption of an amendment to the fundamental law, and for this reason, upon examining the history of constitutional amendments which have been adopted in this State since the Constitution of 1846 was passed upon by the people, we find that some important amendments have been passed by a ridiculously small number of voters. Thus, for instance, in the year 1879, there were cast at the general election, at which the amendment to article 6 of the Constitution was adopted, for State officers, 901,535 votes. At the same election the amendment referred to was voted upon and was adopted by a vote of 95,000 of the voters of the State in favor of the amendment to the Constitution, and 25,000 votes against it. In other

words, 120,909 votes were cast upon the Constitutional amendment, and 901,535 were cast for State officers. Not more than one-eighth of the total vote cast at the election was cast upon the adoption of the amendment, and not more than one-tenth of the vote cast for Governor was cast in favor of the constitutional amendment. So, in 1880, there were cast at the election held in that year, 1,103,945 votes for the officers voted for by the people at that election. At the same election the people voted upon the amendment which gave retired pay to the judges of the Supreme Court and of the Court of Appeals, which has been the subject of so much contention and controversy and discussion in this Convention. For that amendment there were cast, in all, 333,128 votes, 222,000 being in favor of the amendment, and 111,000 against it. So that not more than about one-quarter of the total vote of the State was cast upon the adoption of the amendment, and no more than about one-sixth of the total vote cast at that election was in favor of the proposed amendment.

I have a number of other examples of a similar character to which I could refer, as, for instance, the proposed amendments voted upon in 1892, one of which was calculated to give to the judges of the Supreme Court the power to pass upon contested election cases which would rise in the legislative body. There were not more than 354,000 votes cast upon that proposition, and it was only by a few thousand votes that the proposed amendment was lost, although at that election 1,341,617 votes were cast by the voters of this State. So that a very material change in the Constitution might have been effected by the change of only a few thousand votes, with so small a fraction of the voters of the State casting their ballots upon that important subject.

Now, it has been the idea of the committee which has framed this proposed constitutional amendment, that it was wrong to permit such a state of affairs to longer continue; not only that it was wrong, but that a great danger threatened the State if we permitted the fundamental law to be so easily changed in material respects; that it would be not difficult to imagine cases where our entire system, in most important particulars, could be put aside and set at naught by the action of some secret association operating together as a unit, as against the voters who pay no attention to the adoption of constitutional amendments. All who have paid any practical attention to elections and to politics know that the ordinary voter, when he is asked to vote upon a constitutional amendment, will say: "I don't know much about this subject, but the present Constitution is good enough for me; I don't care for

any change," and he does not vote upon the subject of a proposed change, believing that his silence is equivalent to negation; that it is equivalent to a declaration that the present Constitution should continue without change.

For the purpose of meeting this idea we have provided that the approval of the people might be expressed by one of three methods. If the amendment should be submitted to the people at a special election, which might be done by the Legislature or by the Constitutional Convention under the provisions which we have inserted here, then it would be sufficient if the affirmative vote of a majority of the electors qualified to vote for members of the Legislature voting thereon, should be given for the proposed amendment.

The reason for this provision is that if there is a special election upon the subject of a change in the fundamental law, no other business being before the people at that time, their minds would not be diverted from the subject under consideration by the political excitements which are incident to general elections, and they would intelligently vote upon the question proposed; and in that event a majority of those voting upon the proposed amendment should control.

The next provisions relate to a submission of the proposed amendment at a general election. In respect to such election, it is provided that it shall be necessary to have cast in favor of the proposed amendment, either the affirmative vote of a majority of all the qualified electors who shall at the same election vote for members of Assembly, or, provided three-fourths of such qualified electors shall vote thereon, by the affirmative vote of a majority of the electors voting thereon.

The reason why we have these alternatives is as follows. It is possible that the people may be so practically unanimous in favor of the proposed constitutional amendment that a majority of all voters voting at the election in favor of members of assembly throughout the State would be favorable to the proposed change. Therefore, it would be necessary to obtain a vote, upon the question, of three-fourths of all the voters. On the other hand, a majority of all the voters who vote for members of assembly might not be favorable to the proposed amendment. But there might be cast a vote equal to three-fourths of those voting for members of Assembly, and, in that event, a majority of those voting would control.

To illustrate: if, at a certain election, one million voters vote for members of Assembly throughout the State, and 501,000 voters have voted in favor of a constitutional amendment proposed; they constitute a majority of all voting for members of Assembly; and

although no other votes may be cast upon the constitutional amendment, their votes should control. On the other hand, if 750,000 voters shall vote at the election for the constitutional amendment, that would be three-fourths of all the votes cast for members of Assembly; 376,000 votes would be a majority of the 750,000 voting upon the constitutional amendment, and their votes should be sufficient to effect a change in the Constitution. So that by these various methods we have provided for the adoption of any worthy amendment upon which there shall be cast either the affirmative vote of a majority of the electors of the State voting at the election for members of Assembly, or provided three-quarters of the voters shall vote upon the amendment, a majority of such voters voting thereon.

Now, it is possible that the members of this Convention may deem the proportion of voters, three-quarters, as too large. I am not particularly anxious that it shall be three-fourths. I have no objection to having the number of voters fixed at two-thirds. But I have fixed it at three-fourths, after discussion with the members of the committee, who thought that three-fourths was the proper proportion of voters to be required, and, also, after conversation with various members of the Convention, who agreed with that figure. But whatever is determined upon the subject, I hope that this Convention will not perpetuate the present system, which will permit one hundred thousand out of a million voters to change the fundamental law of the State. It is to be presumed that the voters who do not cast their votes upon the subject are satisfied with the present condition of affairs; and in so important a matter as a change in the fundamental law, there must be some strong demand by the people in favor of the change before it should be permitted to be wrought.

I think I have now stated in a general way what the theories are which have led to the making of the changes that are contained in this provision. For the information of the members who may have been misled by the manner in which this amendment has been printed, I would say that the new matter is that which is contained on page 2, between lines 10 and 21; and on page 3, beginning after the word "that" on page 3, and also the whole of page 4.

I wish also to state, in reference to the provision inserted in section 2, which provides that the electors of every Senate district in the State, as organized at the time when the Constitutional Convention is to be held, shall elect four delegates, and the electors of the State, fifteen delegates-at-large, the committee had considerable discussion as to the proper number to be voted for. The reason

why the committee selected this number is briefly this, it was thought that it would not be prudent to have a Convention which would be very much larger than the present Convention; that it was quite probable that this Convention would make provision for the increase of the Senatorial districts in the State from thirty-two to fifty. If we have fifty Senatorial districts, to have more than four delegates from each district would very largely swell the number of delegates in the Convention. If there were five delegates from each Senatorial district, as has been suggested, and as we now have, there would 250 delegates besides the fifteen delegates-at-large, or a total of 265 delegates in the Convention, which many of us fear would be too many for the proper expedition of the business intrusted to the Convention. If there are thirty-two Senatorial districts, then we would, of course, be in our present situation, and there would be no objection to the continuance of five district delegates. If we retain our thirty-two Senatorial districts then we would have, under the plan proposed by the committee, 143 delegates in the Convention, which is not much less than the number in the present Convention, and all useful purposes might perhaps be subserved by them. We have arrived at this conclusion in reference to four delegates, however, mainly upon the idea that upon a proper system of apportionment it may be necessary to have fifty Senatorial districts. I may hereafter be required to make further explanation of the provisions of this proposed amendment, but for the present I withdraw my motion to strike all that follows the first line, and leave the matter for further discussion.

Mr. Moore — Mr. Chairman, I will now hand up my proposed amendment, which relates to section 2, and request the Secretary to read it to the Convention.

The Secretary read the amendment of Mr. Moore, as follows:

In line 6, page 3, strike out the word "four" and insert the words "five district." In line 23, same page, after the word "necessary," insert "and fix their compensation." In line 2, page 4, after the word "vacancy," insert "if of a delegate-at-large." In line 3 of the same page, after the word "delegates," insert "elected and qualified, and if the vacancy shall be occasioned by death, resignation or other cause, of a district delegate, such vacancy shall be filled by a majority of the district delegates elected and qualifying from such district."

Mr. Moore — Mr. Chairman, in support of these different corrections in section 2 of this proposed amendment, it has seemed to me that if this amendment is to pass it is unwise to change the number

of district delegates until we know, at least, what shall be the apportionment of the Senate districts of the State. As to the other amendment on page 3, after the word "necessary," it would seem to be just as much a part of our duty to give the Convention the power to fix the compensation of its officers, employes and assistants as it is that it shall appoint such officers, employes and assistants.

In reference to the matter on page 4, it has seemed to me that this is an unfair proposition for whatever party may control the Convention twenty years from now. It seems to me that the clause should be so framed that the political machinery should be left as the people declared at the polls. This amendment, as it is now proposed by the mover, fixes it so that any vacancy, whether of a delegate-at-large or a district delegate, shall be filled by a majority of all the delegates elected to the Convention. My amendment proposes that it shall leave the political aspect of the case exactly as the people left it, and if the vacancy is occasioned by the death of a delegate-at-large, then all the delegates may fill such vacancy, but, if it is occasioned by the death of a district delegate, then the majority of the district delegates may fill the vacancy. That leaves the political complexion of such a proposed amendment exactly where the people left it; and for those reasons I move the adoption of these amendments.

Mr. Deyo — Mr. Chairman, I wish to call the attention of the gentleman who has charge of this matter to line 19 on page 2, and ask him if it is not a misprint?

Mr. Marshall — It is, and we have already corrected it.

Mr. Abbott — Mr. Chairman, if the gentleman from Onondaga will permit me, I would like to ask him to explain just what these various subdivisions mean. As I understood his explanation of the second subdivision, it is that if a million votes were cast for members of Assembly, 501,000 cast for the Constitution, in favor of it, that 500,000 of them must be in favor — 501,000 votes cast, 500,000 must be in favor; in other words, one-half of all the votes cast for members of Assembly.

Mr. Marshall — My idea is that, if one million votes are cast for members of Assembly, if 501,000 votes, or 500,001 votes, are cast affirmatively on the proposed amendment, then it is to be adopted, because a majority have voted in favor of it.

Mr. Abbott — If 501,000 are cast affirmatively and 1,000 in the negative ——

Mr. Marshall — I do not care how many there are in the negative,

Mr. Abbott — Then it requires 501,000. Now, if 750,000 votes are cast, it requires how many?

Mr. Marshall — If 750,000 votes are cast upon the subject of whether or not the amendment shall be adopted, the aggregate of votes being 750,000 on the subject, then a majority of the votes cast upon the question of the amendment would have to be affirmative votes.

Mr. Abbott — So that in case 501,000 are cast, there must be 500,000 affirmative votes; while if 750,000 votes are cast there need be but 376,000?

Mr. Marshall — Certainly.

Mr. Abbott — Mr. Chairman, in order to bring the matter before the committee, I move as an amendment that we strike out, on page 2, line 14, and following, "by the affirmative votes of a majority of all the qualified electors who shall at the same election vote for members of the Assembly; or, third," — leaving the last alternative. It seems to me we do not want the second one there. In other words, we do not want to require 500,000 votes, where only 501,000 are cast, on the affirmative of the proposition.

Mr. Marshall — Mr. Chairman, the difficulty of the proposition of the gentleman from St. Lawrence, if his amendment were carried, is this: That if he would require a vote of three-fourths of all the people voting at the election for members of Assembly as a condition of the adoption of an amendment to the Constitution, the amendment could not be carried in the case supposed by me if 501,000 people should vote in favor of the amendment, although they constituted a majority of all the people voting at the election. The provision is intended as a safeguard. Let me make myself clear. Five hundred and one thousand out of a total of one million votes would not be three-quarters of all the people voting for members of Assembly at that election. Now, it might happen, as sometimes happens, that there is practically no opposition to the proposed amendment. Now, the amendment which, on the state of facts supposed, receives 501,000 favorable votes, should be adopted. If you strike out that second alternative, which you have just suggested that it is desirable to strike out, you would require 750,000 votes to be cast upon the proposed amendment, and the 501,000 people who might at that election vote in favor of the amendment would not accomplish that purpose, although they would constitute a majority of all the voters voting at the election. That, of course, would be an injustice, and would render ineffectual the will of the people. So that the purpose of the committee has been to allow a

majority of the people voting at the election to control in any event; but if it is should happen that there should be less than a total vote of the people cast upon a proposed amendment; if only three-fourths of the people vote upon the subject it would be sufficient if a majority of those voting upon that subject, so long as they shall be three-fourths of all the people voting for members of Assembly, should cast their votes in the affirmative.

Mr. Abbott — It seems to me that the inconsistency comes from requiring more votes affirmatively, where there is no opposition, than where there is opposition; that is all.

The Chairman — Do I understand the gentleman from St. Lawrence to have offered an amendment?

Mr. Abbott — I do not care to offer any amendment, Mr. Chairman. I simply suggested the matter to the good sense of the chairman of the committee.

Mr. Spencer — Mr. Chairman, if my recollection serves me right, there is a misprint in line 17 of page 2, in relation to the third alternative. I have not my memorandum with me, but, as I recollect that provision, as finally agreed upon by the committee, it read as follows:

"Third, provided three-fourths of such qualified electors voting at such election shall vote thereon by the affirmative votes of a majority of the electors voting thereon," etc. As I recollect it, those words were there, and possibly were left out by the typewriter. I suggest that they be inserted there, if, in the judgment of the committee, it makes the sense more apparent. I offer that as an amendment.

The Chairman — Does the gentleman offer that as an amendment?

Mr. Spencer — I do, sir.

The Chairman — Will the gentleman please put it in writing and send it to the desk?

Mr. Spencer — I will say, in connection with this proposed amendment, if I may be permitted by the Chair, that it frequently happens when matters of this kind come up before the people, as has been alluded to by the chairman of the committee, that a great many of the people take but little or no interest in the matter; and it very frequently happens that those who desire to vote against the proposition are not able to obtain a ballot to use at the polls. These provisions, requiring a majority vote of the electors voting at the election, were intended to cure or prevent that evil. It might

happen, and it has happened, I think, in the history of this State, that a class of persons interested in carrying through a constitutional amendment would see to it that their friends voted for that proposition. They were organized; they had a material interest back of the constitutional amendment. I think the memory of the gentlemen present in this committee will be sufficient to inform them of events of that character having happened in this State. Those who would naturally be opposed to such an amendment, having no particular interest or matter at stake, and not being united or organized, the question goes by default; a small proportion of the voters take part in voting upon the proposition, and it is carried by the votes of a very few people. In the judgment of the committee such an event as that would be disastrous and should be in some way prevented, and this provision was inserted for that purpose.

Mr. H. A. Clark — I am heartily in accord with the provisions of this amendment, but I wish to make a motion to amend the proposition in one respect — at page 3, in line 7, after the word "ensuing" insert the word "general."

The Chairman — I will call the gentleman's attention to the fact that there are two amendments now pending. No more are in order at present.

Mr. Barhite — I cannot say that I am fully in accord with the conditions which the committee has named under which the amendments may be approved by the people. I am not in accord with it, from the fact, as it seems to me, that two different standards have been named, one which must be met at a special election, and another at a general election. Now, this proposed amendment provides that, first, the approval of the people shall be expressed at a special election by the affirmative votes of a majority of the electors qualified to vote for members of the Legislature voting thereon. If I understand that provision, then, if three men who are qualified to vote for a member of Assembly should vote upon a proposed amendment, and, if two of the three should vote in favor and one against, the amendment would be carried. Now, I think it is the experience of every person who has had anything to do with either a general or a special election, that it is more difficult, under ordinary circumstance, to get the will of the people at a special election than it is at a general election, unless there is some question up in which the people are generally interested. It is the experience, and, I think that the figures read by the gentleman of the committee show this, that the votes upon the amendments to the

Constitution fall far behind the votes for the elective officers of the State. The great mass of the people of the State do not seem to be so thoroughly interested as to what shall become part of the organic law as they do as to who shall represent them in the Senate or Assembly, as to who shall be Governor, or even county judge of their own county. For this reason, sir, I do not believe that the first condition should be allowed to stand in the form in which it has been written. I do not believe that an amendment should go into our Constitution which would permit a small number of the electors of the State to stamp it with approval and make it a part of the organic law of the State. I thoroughly believe that there should be a requirement which should take the votes of at least one-half or two-thirds of the electors who are qualified to vote for members of the Assembly, expressed either for or against the proposed amendment, to constitute a decision. Now, the second condition provides, if I understand it correctly, that at a general election it requires an affirmative vote of a majority of all the qualified electors who shall vote for members of the Assembly. Now, under this proposed amendment, we have the condition that at a special election it would be possible for three men to vote upon an amendment and make it part of the organic law of the State, while at a general election it might require the votes of 500,000 persons to carry the amendment. It is a fact, as I said before, that the great mass of the people of the State of New York do not take the interest in amendments to the Constitution that they should take, and I say, with some confidence, that, intelligent as our people are, as proud as we are of their education and their refinement and their interest in the affairs of the State, that you can to-day find thousands of people in the State who hardly know the fact that a Constitutional Convention is now in progress; or, if they do know that fact simply, can scarcely tell you of a question that has been brought up for consideration here. I desire, sir, at the proper time, after the amendments already offered are disposed of, to offer an amendment, which, it seems to me, will correct the evil or the difficulty of which I have spoken.

Mr. Vedder — It may be, Mr. Chairman, hypercritical, but in the second proposition here, page 2, it reads: "Second, if submitted at a general election, by the affirmative votes of a majority of all the qualified electors who shall, at the same election, vote for members of the Assembly" — commencing at line 14, it would seem to read so that you would have to ascertain in some way who voted for members of Assembly, and that, in order to pass this

amendment, you would have to have a majority of those who did vote for members of Assembly — the same voters. That is the way it reads. It seems to me, Mr. Chairman, entirely clear that it ought to read "by the affirmative vote of a majority of all the electors who are qualified to vote for members of the Legislature."

Again, on page 3, is the same criticism, if it be a criticism. Commencing on line 1 —"shall be decided by the electors qualified to vote for members of the Legislature, and in case a majority of the electors so qualified, voting at such election for members of the Assembly"— it would seem to be the strict construction that you would have to find who voted for members of the Assembly, and would have to have a majority of those who so voted. I simply throw out these suggestions to see if some other language could not be employed, as I have suggested, so that it would be clearer to the ordinary mind.

Mr. Mantanye — I am very much in accord with the general sentiment and principle of this proposed amendment, but it has occurred to me, as has been suggested by the gentleman from Monroe (Mr. Barhite), that there should be, to make this perfect, the same provision for the adoption of a proposed constitutional amendment at a special election as at a general election. We have had some experience in the past, in regard to special elections, and know how difficult it is on such occasions to get the voters out, even when it is on the electing of some officers, as, for instance, in regard to the Constitutional Convention of 1867. The delegates to that Convention, if I remember, were elected at a special election. Therefore, I think that at the proper time an amendment should be made to this section which shall make the same provision, with regard to a special election, as to the number of votes necessary for adoption, that would be required at a general election.

I had also noticed the peculiarity of the wording that has been suggested by the gentleman from Cattaraugus (Mr. Vedder) — that the meaning of these words would seem to require a majority of the same voters who had voted for members of Assembly, which must, by their affirmative votes, declare in favor of the amendment to secure its adoption. But it seems to me that the suggestion that he makes, as to the wording, would not better it at all; that the only change that would be necessary would be to insert in line 15, after the word "of," the words "a number equal to," so that it would read: "Second, if submitted at a general election by the affirmative votes of a number equal to a majority of all the qualified electors who shall, at the same election, vote for members of the Assembly." And that would also be the wording, which

should be inserted, as it seems to me, in line 3, on page 3, so that that would read, "and in case a number equal to a majority of the electors so qualified," etc. At the proper time I desire to introduce amendments which may make these changes, and which do not, as I see, affect the general principle of the proposed amendment, as reported by the gentleman from Onondaga. There being two amendments, I suppose it is now out of order to introduce these. If this committee should rise and report, and ask leave to sit again for the purpose of having all these amendments referred back to them and acted upon by them, I desire, before it is done, to have these amendments formally introduced and put in shape for that purpose.

Mr. Durfee — It occurs to me that the difficulty that has been suggested by several gentlemen, and which has been the subject of the amendments that have been proposed, may be, to a large extent, obviated by referring to the provision concerning the general election next preceding that at which the amendments are submitted, and requiring such a proportion in number as may be deemed advisable of the electors who voted at the next preceding general election to vote upon the subject of the proposed amendment. I should offer an amendment of that character, Mr. Chairman, if it were not that there are already two amendments pending; and it may very probably happen that the matter will be referred back to the committee to formulate some language in this connection which will meet the views that have been expressed here in this committee. I, therefore, simply make the suggestion that such attention may be given to the subject as the committee, in that event, may deem proper.

Mr. H. A. Clark — On page 3 of this proposed amendment the committee have not followed the general expressions of the rest of the amendment. In line 7 they have used the words "next ensuing election at which any members of the Legislature shall be chosen," while, in the other parts of the amendment, they have always used the words "special election" or "general election." In this particular case they, undoubtedly, mean "at the next ensuing general election" at which members of the Legislature shall be chosen; and, I think, it would be quite important that it should be a general election, because it would be very improper to submit this question at a special election, when only one member of the Legislature might be chosen to fill a vacancy. Under the language, as it now stands, a constitutional amendment, I think, might be adopted at a special election called for the purpose of

choosing one member of Assembly to fill a vacancy. At a proper time I shall propose that that be amended by inserting the word "general" before the word "election," and by striking out the word "any" before the word "members," so that it will read, "at a general election," when members of the Assembly are chosen.

Mr. Dean — This proposed amendment has drifted out into the domain of legislation to a considerable extent. There seems to be a very general disposition to amend the proposition of the committee, and, as several gentlemen have proposed amendments, which are not properly before the committee at this time, and it seems impossible to reach any result, I move that the committee rise and report progress, and ask leave to sit again.

Mr. C. B. McLaughlin — I hope this motion will not prevail.

The Chairman put the question on the motion of Mr. Dean, and it was determined in the negative.

The Chairman — What is the further pleasure of the committee?

Mr. Moore — I have been asked to explain an amendment which I proposed, as some of the members did not fully understand it. If they will turn to page 4, I will try to make that amendment plain to them. My idea was, in case of a vacancy by death, resignation or other cause —

The Chairman — The question before the House is not upon your amendment, but upon Mr. Spencer's.

Mr. Moore — Exactly; but I beg your pardon, Mr. Chairman — the Chairman asked for the further pleasure of the Convention and I got the floor.

The Chairman — I think the gentleman is out of order, unless he is speaking to Mr. Spencer's amendment. The question is upon Mr. Spencer's amendment. Is there anything further to be said upon that subject?

Mr. Moore — I have not heard Mr. Spencer's amendment yet. I would like to know what it is.

The Chairman — Will the Secretary read it again?

The Secretary read the amendment offered by Mr. Spencer as follows: In line 17 of page 2, insert the words "voting at said election" after the word "electors."

Mr. Moore — I would like very much to have Mr. Spencer explain what he means by that. It seems to me, at least, to be a good deal tautological, and I have not quite understanding enough

yet to get at just what he means by it. I would like to have him explain.

The Chairman — Will Mr. Spencer try to make this plain to Mr. Moore?

Mr. Spencer — Mr. Chairman, I believe that you have set too difficult a task for me. My proposition was, however, to insert in line 17, after the word "electors," the words "voting at said election." The inference is, from the words "qualified electors," that it does refer to those voting for members of Assembly specified in the alternative proceeding. The subject, as I recall it, was up before the committee, and, as I remember it, those words were there, and that is why I put them there, so that it might be definitely determined who those qualified electors were, how many there were, that it might not be left to the registry list or any other source of information, but that it might be determined by the number of electors voting — actually voting — at the election.

Mr. Spencer then read the entire clause, as amended by his proposition.

Mr. Alvord — I desire to ask the gentleman from Clinton whether he does not find himself rather invidious in asking that the election, in case of a vacancy in the district delegation, shall be held by the district, but the election, in case of a vacancy in the fifteen, shall be made by the entire Convention? Why not also say, as seems to me proper, to carry out his views, in case of a vacancy in the fifteen, the fourteen left should be entitled to fill the vacancy?

Mr. Moore — I will say to the gentleman from Onondaga that it was my desire to leave the Convention, as the people would make it at that time, and by my amendment that is accomplished. Let us take a case, for instance, as a matter of information — I have no desire to debate it twice — and that is, supposing that our friends, the enemy, had carried the election last fall, under this provision. Suppose that I had, as a district delegate, died in the meantime, or, suppose that some other gentleman had cast off the mortal coil, as a Republican; that our friends, the enemy, had a majority in the Convention. They would immediately proceed to elect a Democrat in his place, or *vice versa;* that is, assuming that he was elected as a district delegate. My idea in introducing this amendment, I may state to the honorable gentleman for his information, was that the Convention at that time, in case of a vacancy by death, resignation or any other cause, should be filled so as to leave the political complexion of the Convention exactly as it was left by

the people at the ballot-box; and this proposition, as I have amended it, will do that. But, as it stands now, the party in power would have the right to fill any vacancy with men of their own ilk; and that, whether they were Republicans, Democrats, Populists, Female Suffragists or Prohibitionists, would be manifestly unfair, in my judgment.

Mr. Alvord — I hope that the gentleman will not die during the present Convention, for we should have to lose probably a day or two to see him decently buried. But, sir, I desire to say that he has not given any explanation to my proposition. Supposing, for instance, the district delegation are largely in the majority and swallow up the fifteen who have been elected by the people at large. The people at large elected the fifteen. Should they not have the same right to fill a vacancy among themselves, without the interposition of the Convention that his proposed amendment gives to district delegates to fill their vacancies? In that way only can we preserve the political composition of the parties. That was the question I asked him, and a rambling answer, without getting to the point, was given by the gentleman from Clinton.

Mr. Marshall — There are a number of amendments now before the House for consideration, and it will probably be necessary for these matters to be referred again to the committee for consideration, although it is well enough to have some of the matters disposed of which have been presented this evening, so as to eliminate some of the questions from the consideration that we are to give this article. The proposed amendment of Mr. Spencer is really the result of the conference of the committee. Through some inadvertence, the words which he proposes have been omitted from the printed proposed amendment, and I am very anxious to have that amendment adopted by the House. I have considered the amendments which have been proposed by others, and also the criticisms that have been made by Mr. Vedder and other gentlemen. I would explain that it was the purpose of the committee to retain, as nearly as possible, the language of the old Constitution, and there the provision contains the words which are descriptive of the electors who are to vote upon constitutional amendments —" qualified to vote for members of the Legislature." I think those words have really no longer any useful purpose to perform. They appear several times in this article, and, particularly, at line 13; and it was by reason of the continuance of those words, perhaps, that some of the difficulties of interpretation result which have been suggested. For the purpose of meeting these different suggestions, I desire to

propose an amendment, or to announce that I intend, at the proper time, to propose an amendment, which will, I think, cover all the difficulties which have been suggested. That amendment will be as follows:

Strike out all of line 13 on page 2, after the word "electors," and strike out lines 14 to 18, inclusive, on the same page, and the words "voting thereon" on line 19, page 2, and insert in place thereof the following words: "Voting thereon; second, if submitted at a general election, by the affirmative votes of a majority of all the electors voting at such election; or, third, provided that three-fourths of all the electors voting at such election shall vote thereon, by the affirmative votes of a majority of such electors voting thereon." In lines 3 and 4, page 3, strike out the words, "so qualified, voting at such election for members of the Assembly," and insert in place thereof the words, "voting at such election." The effect of that will be that we merely ask that there shall be either a majority of all the electors voting at said election; or, if three-fourths of all the electors voting at such election vote thereon, a majority of such voters.

Mr. Marshall, upon request, then repeated his amendment, to give members an opportunity to take it down in writing.

Mr. W. H. Steele — I desire to offer the following amendment, if in order at this time.

The Chairman — There are two amendments already pending.

Mr. Mereness — There seems to be no objection at all to Mr. Spencer's amendment, and, I think, we ought to take hold of that and get it out of the way, and get ready for some other amendment. I move that a vote be taken on that —

Mr. Cassidy — I move that the committee do now rise, report progress and ask leave to sit again.

The Chairman put the question on the motion of Mr. Cassidy, and it was determined in the negative, by a rising vote, 58 to 38.

Mr. Vedder — I want to make a suggestion in the committee to dispose of this matter. The third proposition of Mr. Marshall's does not, I think, read as smoothly as it should. I think, if it should go back to the committee, that he could iron it out a little smoother than it now is, or as he suggested it. I would suggest this, and, if it be parliamentary, I would ask unanimous consent that it be done — that all amendments that members desire to submit here in the Committee of the Whole, be submitted; that the committee then rise and report progress on the proposed amend-

ment, send it back to the committee, with all the amendments, retaining its place on general orders; and they can report it back, after fixing it up in the committee, much better than we can here.

Mr. Marshall — I have no objection to that course; but I think that some of the amendments proposed here this evening, as for instance, that of Mr. Spencer, might be disposed of, and we can also take a vote on Mr. Moore's amendment and dispose of that.

Mr. Vedder — I suppose that an amendment of different sections of the article would not be violating the rule that only two amendments can be entertained at the same time. I would ask the gentleman from Onondaga whether there could be different amendments upon different sections, under the head of amendments generally, in order, without violating the rule that we can have no amendment to an amendment. If that be true, then they can suggest all these amendments, let them go into the committee and let the committee consider them.

Mr. Cochran — A point of order, Mr. Chairman. I think the Chairman is here to decide all points of order and all questions of parliamentary practice, without referring to any gentleman on the floor as authority.

Mr. Alvord — Do I understand that I can answer the gentleman from Cattaraugus?

Mr. Vedder — I asked him a question.

The Chairman — Mr. Alvord has the floor.

Mr. Alvord — I desire to say to the gentleman from Cattaraugus that I do not think that any more than one amendment to an amendment can be at any time pressed at any stage of the proceedings. I desire to say to members of the committee here present that it seems to me that we are in an interminable dispute here, which can be very well obviated by rising and reporting progress and asking leave to sit again, and then quietly moving that the matter be referred back to the committee, and the amendments, also, at the same time; and then gentlemen who have amendments who desire to perfect this article, can hand their amendments quietly to the committee, and they can look over them all at their leisure, and come in with, as far as possible, a perfected report.

Under these circumstances, and, thinking this is the only way out of the difficulty — hoping that I may not follow my predecessor, who was beaten, upon my motion — I move the committee do now rise, report progress and ask leave to sit again.

The Chairman then put the question on Mr. Alvord's motion,

which was determined in the affirmative, by a standing vote, 59 to 40.

The President resumed the chair.

Mr. Peck — The Committee of the Whole have had under consideration the proposed constitutional amendment, printed No. 374; have made some progress in the same — several amendments thereto are pending — they now report progress and ask leave to sit again.

The President put the question on agreeing to the report of the Committee of the Whole, which was determined in the affirmative.

Mr. Marshall — I ask that the various amendments which have been suggested, and changes that are made now to this proposed amendment, shall be submitted to the committee and printed for consideration hereafter, and referred back to the Committee on Future Amendments, keeping its place on the general orders.

The President — Mr. Marshall moves that all the amendments that are offered and are ready to be offered be printed, and that the amendment be recommitted, with such amendments, to the Committee on Constitutional Amendments, retaining its place on general orders.

Mr. Tekulsky — I cannot understand why those amendments which are offered here shall be printed. I think the course that has been suggested here is the right one, that the amendments which are proposed shall be given to the Committee on Future Amendments, letting them decide upon and fix up the article in its proper way, and then have it printed; and not have these separate amendments come in here again, to vote upon those same things over again. The committee see the defects of this proposed amendment; let them straighten it out, and come in here with a printed form, so that it will then be perfect, without printing it over two or three times.

The President — The Chair understands that Mr. Marshall's motion will effect the object desired by Mr. Tekulsky, that these are to be printed, recommitted, with the amendment itself, to the Committee on Constitutional Amendments for a further report by them, retaining its place on general orders which it now holds.

Mr. Tekulsky — All right.

The President then put the question on Mr. Marshall's motion, and it was determined in the affirmative.

Mr. Marshall — I submit the following amendments, which I desire to have take the course suggested.

Mr. Moore — I do not hand mine to the Secretary, because I suppose he already has them.

The President — Undoubtedly.

Mr. Peabody — I move that the Convention adjourn.

The President put the question on Mr. Peabody's motion, which was determined in the affirmative by a standing vote, 55 to 54.

Thursday Morning, August 2, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber at Albany, N. Y., Thursday morning, August 2, 1894.

President Choate called the Convention to order at ten o'clock.

The Rev. A. Kennedy Duff offered prayer.

On motion of Mr. O'Brien, the reading of the Journal of yesterday was dispensed with.

The President — General orders. The Secretary will proceed with the call.

The Secretary called the calendar of general orders.

Mr. Vedder — Mr. President, I move that the Convention go into Committee of the Whole on general order No. 16, which is printed No. 218-380 (introductory No. 216).

The President put the question on the motion of Mr. Vedder, and it was determined in the affirmative.

The President — Mr. Acker will take the chair.

Chairman Acker announced that the Convention was in Committee of the Whole on general order No. 16, introduced by Mr. Vedder, entitled "proposed constitutional amendment, to amend section 10 of article 3 of the Constitution."

Mr. Vedder — Mr. Chairman, I move to strike out, for the purpose of explaining the proposed amendment. The Constitution, as it now reads in section 10 of article 3, provides that "the Senate shall choose a temporary President, when the Lieutenant-Governor shall not attend as President, or shall act as Governor." In order to choose a temporary President of the Senate under the present Constitution, the Lieutenant-Governor must vacate the chair, or be in the Senate at the time of its convening and refuse to take the chair. That produces a vacancy. That is generally arranged between the Lieutenant-Governor and the majority of the Senate, whether it is Republican or not. If, how-

ever, under the present Constitution, the Lieutenant-Governor should not vacate his chair for that purpose, no temporary President of the Senate could be chosen, because, such temporary President can only be chosen when the Lieutenant-Governor shall not attend as President or shall act as Governor. We have had trouble in that behalf in the past. We had considerable trouble at the time that the Hon. J. Sloat Fassett was President of the Senate and the Hon. Edward F. Jones was Lieutenant-Governor and presided over the Senate. Since the introduction of this proposed amendment, and the other day upon the floor of this Convention, I saw the present President pro tem. of the Senate, Hon. Charles T. Saxton, and he told me he was exceedingly glad that such an amendment had been introduced. You will remember that last winter the Senate was Republican and the presiding officer was a Democrat, and certain rules of the Senate were changed and amended so that they were more liberal to the majority than the rules theretofore in force. Senator Saxton told me that Lieutenant-Governor Sheehan told him that if he had anticipated that the Republicans were going to change the rules, he would never have left the chair, so that the temporary President could have been chosen, and we would have been acting all last winter without a temporary President of the Senate. In that event, we would have been in this condition, that, if the Senate had adjourned, as it had, and the Governor had been rendered incapable of acting, and the Lieutenant-Governor had acted and he became incapable, there would not have been anyone to act as Governor, because there would not be any temporary President of the Senate, none having been elected. This amendment provides that the Senate may, at any time, elect a temporary President, and that that temporary President may act, in the language of the amendment, "in the absence or impeachment of the Lietuenant-Governor or when he shall not attend as President or shall act as Governor." Now, the words put in, "to preside in the case of impeachment or act as Governor," are for this purpose. As the Constitution is to-day, articles of impeachment may be presented by the Assembly against the Lieutenant-Governor, and, yet, he could act as presiding officer of the Senate, not only during their sessions, but he could act as presiding officer of the Senate sitting upon the trial of his own case as a high court of impeachment. I believe that a Lieutenant-Governor, who is impeached, ought not longer to act until he has been tried and found guiltless, and that no officer should perform his functions after he has been impeached. This amendment comes in conflict with no amendment now before the Convention. It

does not affect the proposition which was sent from the Committee on Legislative Powers to the Committee on Judiciary and is now before that committee, in relation to the Lieutenant-Governor, as that amends article 6 and this amends article 3. That is also my own proposition. Any question that anyone desires to ask, I should be pleased to answer, as far as in my power. I withdraw my motion to strike out.

Mr. Hill — Mr. Chairman, I would like to ask the gentleman from Cattaraugus (Mr. Vedder) as to whether or not he considers the words in the proposed amendment, namely, "to preside," clothes the temporary President of the Senate with sufficient powers to perform the duties of Lieutenant-Governor in the absence of the Lieutenant-Governor?

Mr. Vedder — All his duty is, is to preside, anyway. That is sufficient.

If there is no other motion, Mr. Chairman, to be made, I move that the committee do now rise and report this amendment to the House and recommend its passage.

Mr. Countryman — Mr. Chairman, I would like to make a suggestion to the proposer of this amendment, or ask him a question, if he will withdraw his motion.

Mr. Vedder — I withdraw the motion, Mr. Chairman.

Mr. Countryman — Mr. Chairman, as I understand this proposed amendment, it does not accomplish the purpose for which it is designed. A case happened during the last session of the Legislature where the Lieutenant-Governor, while sitting in his chair, refused to put a motion and thus sought to prevent a vote of the Senate upon a question upon which the majority of the Senate were against him, and this proposed amendment should cover the case, not only of the absence of the Lieutenant-Governor, but of his refusal to act. He is merely the presiding officer of the Senate and not a member of that body, as a legislative body. He is there merely to obey its orders, to put such motions as he is asked to put while sitting in the chair; and I, therefore, suggest to the honorable mover of this proposed amendment that there ought to be a clause in it, where the Lieutenant-Governor refuses to act, although he may be in his chair sitting in the Senate Chamber.

Mr. Vedder — Well, I should have no objection whatever, if the gentleman would frame an amendment covering that case. We have the precedent before us of last winter.

Mr. Countryman — I will.

Mr. Vedder — And I will make the motion to report this proposed amendment to the House and recommend its passage, and, when it comes up for passage, if the gentleman will frame his amendment, I will accept it. I now renew my motion, Mr. Chairman.

Mr. Root — Mr. Chairman, I would like to ask of the chairman of the Committee on Legislative Powers, for information. What is pointed out in the distinction between the absence of the Lieutenant-Governor and his not attending as President of the Senate?

Mr. Vedder — The words "not attend" are in the present Constitution. Just what they mean I do not know, but they are in the present Constitution, and I did not see fit to change them — I simply added by amendment to it. The way they choose a temporary President now, under the language of the present Constitution, is this: The President sits in the Senate Chamber; he is there, but he does not attend as President; he is there; he is in the Senate Chamber; and the chair is vacated and they construe that, that he was not attending, and when he did not attend, then they could elect a temporary President. I have added to the language of the present Constitution in that behalf, that if he should be absent — that is, if he should be in New York when the session was going on — so as to make it more certain when the temporary President could act, that if he was absent from the city, absent from the Capitol, or, if he were in the Capitol and did not attend for the purpose of presiding just the same as he does now when we do choose a President; he is present, but does not attend for that purpose; he neglects to preside, in other words.

Mr. Hawley — Mr. Chairman, I beg leave to offer to the Convention a single suggestion, which, to my mind, seems to be one of some considerable weight and which has, as yet, received no consideration in the discussion; and that is, whether, by an amendment to the Constitution, we shall put it in the power of a hostile Assembly to prefer articles of impeachment against the Lieutenant-Governor and thus oblige him to vacate the chair as President of the Senate. Of course, this suggestion goes to the very root of the propriety of this amendment, and, it seems to me, that it is fraught with very great danger, and that the Constitution, as it now is, is a safer instrument than we should have, if this amendment was incorporated in it. On occasions when party feeling runs high, it would not be a difficult matter to dispose of a hostile Lieutenant-Governor, by preferring in the Assembly articles of impeachment against him. That practically vacates his office, until he shall have

been acquitted; that practically reverses the fundamental principles of the government that a man is presumed to be innocent until he shall have been found guilty by a trial court. That practically convicts and it disfranchises a man by a bill of indictment before trial. I think at this stage of the discussion that it would be ill-advised on the part of the Convention to report this amendment to the House recommending its passage.

Mr. Countryman — Mr. Chairman, there is another aspect than that which has been suggested by the gentleman who has just taken his seat, and it is this. It is whether a presiding officer of a legislative body, particularly a Lieutenant-Governor, who is not a member of the body, but a mere presiding officer by virtue of his office; the question is whether he shall be permitted, in his discretion, to obstruct all legislative proceedings whatever by refusing to entertain a motion or to put a question to a vote of the Senate or body over which he presides. That very question arose in our State last winter, where the Lieutenant-Governor refused to do so, and where it became necessary for the President pro tem. of the Senate to put the question in his place. And in a recent case in the State of Colorado, where the Speaker of the House refused to entertain a motion for his own impeachment and thereby proposed to prevent any vote upon that question, the House was obliged to ignore him entirely while sitting in the chair and to entertain the motion on the part of another member of the House and thus dispose of the question, and it was held by the Supreme Court of that State, in passing upon it, that the House had a right to do it. It was held by the Senate of this State last winter that its power was unquestioned, as a matter of parliamentary law. But, to save all questions over it, I submit that it ought to be incorporated in the Constitution and settled by a provision of this character.

Mr. Alvord — Mr. Chairman, I differ with the gentleman from Seneca (Mr. Hawley) upon this matter, for it takes, in the case of an impeachment, the consent of both Houses of the Legislature. The House presents the indictment, and, if it is ignored by the Senate, it drops at once. The Senate must receive the indictment and approve of it and call the court of impeachment together. Under the provisions of the Constitution, as it now stands (God forbid that it will ever be put into execution) the Lieutenant-Governor of the State has not only the right to preside in the Senate upon his own impeachment, but he has a right by statute and constitutional law to act as the judge of the high court of impeachment. It does seem to me that it is proper and right to put up a

bar against such a state of affairs. I trust that the original proposition, made by the gentleman from Cattaraugus, will receive the approval of this committee and be reported favorably to the Convention proper.

Mr. Vedder — Mr. Chairman, I renew the motion that the committee now rise and recommend the adoption of this amendment to the Constitution, with the condition that when Judge Countryman shall offer his amendment I will accept it, as far as I can do that.

The Chairman — I do not see how you can impose a condition upon that.

Mr. Mereness — Couldn't the difficulty be obviated by inserting in Mr. Vedder's amendment the words "or refusal to act?"

Mr. Vedder — Judge Countryman suggested this amendment and I would prefer that he should put it in proper shape. If there is going to be any difficulty about getting his amendment in, I will change my motion so that we can go into Committee of the Whole again. Therefore, I move that the committee rise, report progress and ask leave to sit again.

The Chairman put the question on Mr. Vedder's motion that the committee rise, report progress and ask leave to sit again, and it was determined in the affirmative.

The President resumed the chair.

Chairman Acker, from the Committee of the Whole, reported the action of said committee on Mr. Vedder's proposed amendment, and the report was agreed to.

The President announced the order of presentation of memorials.

The President presented a memorial from the president and secretary of the Advance Labor Club, L. A. 1562, in reference to the method of nominating candidates for office.

Referred to the Committee on Industrial Interests.

The President also presented the petition of citizens of the county of Columbia in favor of equal suffrage for women.

Referred to the Committee on Suffrage.

The President also presented the petition of citizens of New York city and Brooklyn, praying for an amendment prohibiting bequests of over $50,000, the residue to be paid into the public treasury.

Referred to the Committee on Preamble and Bill of Rights.

Mr. Barhite — Mr. President, I desire to introduce some additional statistics, which show that in the city of Troy there is some-

thing over seventeen millions of property assessed to women, and in the city of Albany something over fifteen millions. We thus get an idea of the relative merits of the two cities.

Mr. Roche — Mr. President, may I inquire what those figures are?

The Secretary read the figures as follows:

Taxable property owned by women in the city of Troy, $17,429,720, and taxable property owned by women in the city of Albany, $15,093,632.

Mr. Roche — I simply want to express my great satisfaction, Mr. President, at what the gentleman has termed "the relative merits of Troy and Albany."

Mr. Johnston (by request) presented the petition of the Citizens' Union of the Seventeenth Ward of Brooklyn, in regard to prohibiting bone burning, fat boiling, etc., within three miles of the city limits of any city having a population of one hundred thousand or more.

Referred to the Committee on Industrial Interests.

Mr. Deyo — Mr. President, I desire to request indefinite leave of absence for Mr. Durnin, on account of illness.

The President put the question on granting leave of absence to Mr. Durnin, and it was determined in the affirmative.

Mr. Holcomb — Mr. President, I have to go to New York to-night and I would be obliged, if I could have leave of absence for to-morrow.

The President put the question on granting leave of absence to Mr. Holcomb, and it was determined in the affirmative.

Mr. Roche — Mr. President, I have official business which renders it necessary for me to be in Troy this evening, Friday and Tuesday morning, and I would like to be excused from attendance.

The President put the question on granting leave of absence to Mr. Roche, and it was determined in the affirmative.

Mr. Goodelle — Mr. President, I have a dispatch from Mr. Lewis, of Onondaga, asking leave to be excused to-day on account of a business engagement.

The President put the question on granting leave of absence to Mr. Lewis, and it was determined in the affirmative.

Mr. McClure — Mr. President, I ask to be excused to-morrow on the ground of urgent professional business.

The President put the question on granting leave of absence to Mr. McClure, and it was determined in the affirmative.

Mr. Cornwell — Mr. President, I ask to be excused to-morrow on account of business engagements.

The President put the question on granting leave of absence to Mr. Cornwell, and it was determined in the affirmative.

Mr. Jesse Johnson — Mr. President, I ask leave of absence for to-morrow on the ground that I did not use the former leave of absence given me.

The President put the question on granting leave of absence to Mr. Johnson, and it was determined in the affirmative.

Mr. Powell — Mr. President, I ask to be excused from the session of the Convention to-morrow on account of pressing business.

The President put the question on granting leave of absence to Mr. Powell, and it was determined in the affirmative.

The President announced communications from State officers in order.

The Secretary read the following communication from the State Engineer and Surveyor (communication No. 23, in response to resolution No. 135):

"I have the honor to submit the following report, pursuant to a resolution of the Convention of July 18, 1894, requesting the State Engineer and Surveyor and the Superintendent of Public Works to obtain and report the first day of August, a detailed estimate of the cost of improving the various canals of the State.

"Office of the State Engineer and Surveyor, Albany, N. Y., August 1, 1894."

Mr. Hottenroth — Mr. President, I move that the reading of that be dispensed with and that it be printed and placed on file.

The President put the question on Mr. Hottenroth's motion, and it was determined in the affirmative.

The President announced the order of notices, motions and resolutions, and the Secretary proceeded with the call of the districts.

Mr. Floyd — Mr. President, I desire to send up a resolution, which I will read. It is as follows:

R. 160.— Resolved, That the communication received from the second vice-president of the Pennsylvania railroad, upon the subject of passes, be printed and placed upon the files of the delegates.

This communication at present is entombed in the bosom of the Railroad Committee, and it might as well be entombed in Abraham's bosom, in which case the Convention could only see it far off. This communication is both instructive and forcible, and I know of no other way of bringing it to the notice of the Convention than by having it printed. There are in the Railroad Committee three proposed amendments on this matter. Some of them will, undoubtedly, be brought before the Convention for discussion, and there can be no better preparation for that side of the question than the printing of the communication. That is the reason I introduce the resolution asking that it be printed.

The President put the question on Mr. Floyd's resolution, and it was determined in the affirmative.

Mr. I. Sam Johnson offered the following resolution:

R. 161.—"Resolved, That the commissioners of taxation and assessments of the city of New York be respectfully requested to furnish this Convention with a statement of the condition of the several trust companies of said city, showing the gross capital stock paid in or secured to be paid in, surplus earnings, rate of dividends for the last year, deductions and nature of deductions made, and the amount of property upon which each company pays taxes; and, also, the time of purchase of non-taxable property or securities by said companies, so far as the same is known by said commissioners."

The President — Referred to the Committee on Banking, Mr. Johnson?

Mr. Johnson — I should like to have it go to the Committee on State Finances and Taxation.

The President — Referred to the Committee on State Finances and Taxation. The call for proposed amendments is now suspended, under the rules, and they will not be called for from to-day on. Reports of standing committees are in order.

Mr. Francis, from the Committee on Preamble and Bill of Rights, to which was referred the proposed constitutional amendment, introduced by Mr. Goeller (introductory No. 262), entitled "Proposed constitutional amendment, to amend the Constitution by adding a new section thereto to protect innocent purchasers of real estate and to prevent fraud and limit the time for which remedy for the fraud can be had," reported adversely thereto.

Mr. Goeller — Mr. President, the reading of that amendment would take up considerable time and occasion delay, and I, being

actuated by the belief that there is a disposition on the part of the Convention to adopt committee reports, ask that the amendment be not read, and, being the introducer of the proposed amendment, and, in view of the belief that I have formed, I shall practice the virtue of desisting, yielding, etc., and ask that the report of the committee be approved.

The President put the question on agreeing with the report of the committee, and it was determined in the affirmative.

Mr. Davies — Mr. President, I desire to present a report from the Committee on Railroads, and in connection with that report I desire to state that several members of the committee wish to take such action in the Committee of the Whole, or on the final passage of the proposed amendment, as they deem proper.

Mr. Davies, from the Committee on Railroads, to which was referred proposed constitutional amendment, introduced by Mr. E. R. Brown (introductory No. 47), entitled "Proposed constitutional amendment, to amend article 1 of the Constitution, prohibiting public officers riding on passes," reported in favor of the passage of the same, with some amendments.

The Secretary read the proposed amendment, as amended by the committee, and it was referred to the Committee of the Whole.

Mr. Foote, from the Committee on Revision and Engrossment, to which was referred the proposed constitutional amendment introduced by Mr. Dickey (introductory No. 6, printed No. 339), entitled "proposed constitutional amendment, to amend article 10 of the Constitution, so as to do away with the office of coroner as a constitutional officer," as reported by the Committee of the Whole, reports the same as examined and corrected by the committee and as correctly engrossed.

The Secretary read the amendment, as reported from the committee.

The President — The question will be on ordering it to a third reading.

Mr. Foote — Mr. President, the report of the committee upon that amendment consists of a draft of the section from which the word "coroner" is omitted by the amendment, and we have taken the liberty of calling attention to the fact that the word "coroner" does occur in another section of the Constitution, a section of a temporary character, however, which provides for the continuing in office of certain coroners, and it may be necessary to change the language of that other section as well.

Mr. Dickey — Mr. President, the section that the committee calls attention to, where the word "coroner" appears, is an obsolete section. It merely provides for the continuing in office of the then incumbents of the office of coroner, and, as their terms were two years, or three at the most, that time having passed many years ago, this section is obsolete, and I don't think it needs any amendment. Anyway, it should not interfere with the third reading of the amendment as favorably reported.

The President — The rule seems to be this, and this is the first time that such a matter has come up for disposition, that when an amendment has been reported by the Committee on Revision and Engrossment as correctly revised and engrossed, it cannot be read a third time until it has been reprinted. This amendment has never been so printed, and, therefore, the third reading cannot be moved until that printing has taken place.

Mr. Dickey — Mr. President, will a motion be necessary to print?

The President — Under the rules it must be printed.

Mr. Mantanye — Mr. President, it seems to me that the report of the Revision Committee upon this section should not have been made or presented to the Convention, and it should not, as yet, be printed. This section contains in it provisions in regard to all county officers, sheriffs and other officers, specifying who shall be the constitutional county officers, their terms of office and other matters in relation to them. When this matter was reported from the Committee on County, Town and Village Officers, we were in favor of the amendment which would drop the office of coroner from this section. It was then stated that this was only one of several propositions which were before us. For instance, there is another proposition to make the office of county treasurer a constitutional office, as it is not a constitutional office at this time. There is another proposition to make the sheriff eligible to re-election and others to make the county treasurer ineligible, and there are propositions to create other county officers, and to make other provisions. All these matters are still pending before that committee and we are having hearings upon them from day to day when our committee meets. Those matters will be reported as fast as we can decide upon them, and, as was stated when this matter was here, it was thought better to report upon each proposition separately, as to each officer, and take the action of the Convention before reporting the whole section together, and that then the whole section would be reported from that committee in accordance with other constitutional amendments, which include the whole section,

and the whole matter would then go before the Revision Committee. It was with that view, when the matter was ordered, or about to be ordered, to the Revision Committee, after passing the Committee of the Whole, that I made the motion that the matter stand and be referred back to the committee from which it came until these other matters could be settled and reported for the action of the Convention. It would, therefore, seem to me to be entirely out of order to print this proposition alone, that is, it would seem to me to be entirely unnecessary work and would have to be done over again. I, therefore, move that the matter lie on the table until the report of the committee is received on the other questions.

The President — Do you make that motion?

Mr. Mantanye — Mr. President, I made that as a motion, but it is suggested by others that the motion should be to refer this back to the committee, to be held until the other matters are reported by the committee. I will make the motion, then, to refer it back to the Revision Committee, to be held until the report of the Committee on County, Town and Village Officers upon the other proposed amendments is disposed of.

Mr. Dickey — Mr. President, I hope that resolution will not prevail. We are moving forward and making progress and I hope we will continue to do so, and, if we can dispose of a matter, we should do so and make room for something else. The motion is entirely unnecessary and uncalled for.

Mr. Hawley — Mr. President, I would like to inquire if Mr. Mantanye desires to send this amendment back to the Committee on County, Town and Village Officers or back to the Committee on Revision?

Mr. Mantanye — My motion was to send it back to the Committee on Revision.

Mr. Hawley — Mr. President, that was my understanding of it, but other gentlemen did not understand it in the same way. It seems to me, Mr. President, that that suggestion is not an improper one. The Committee on Revision reported this under the stress of the rule that they should report the amendments committed to them in the order in which they are committed. But, if this same section is to receive further revision, the Committee on Revision consider that their duties are quite technical and we have taken the pains, in this instance, and we propose to take the pains in other instances where parts of the present Constitution remain in an amendment, to compare the text with the original engrossed copy of the Constitution in the office of the Secretary of State, and to

follow exactly capitalization and punctuation to the minutest particular, and so it involves, if this section comes to us again, its examination the second time, and, if it is to come to us again, it seems to me exceedingly advisable that we might take it up and scrutinize it and report it to the Convention once for all.

The President — The question is on Mr. Mantanye's motion to refer this proposed amendment back to the Committee on Revision. If that is not done under the rules, it is printed and put upon the order of third reading.

Mr. Maybee — It appears to me, sir, that the method of procedure proposed by the gentlemen from Cortland (Mr. Mantanye) will defer final action on any of the proposed amendments before this Convention until very near the close of the session. If an amendment is reported favorably by a committee and then goes to the Committee on Revision before final action of the Convention, and is to await the action of all other committees, why, all final action will be deferred until the closing week of the Convention. I think, Mr. President, that that is very unwise, and that we should complete our business, so far as we can, as we go along.

Mr. E. A. Brown — It seems to me that if there are any matters now in the Committee on County, Town and Village Officers; the action of the Convention in passing this proposed amendment would be made much more easy by that committee reforming their report, and thereby save us the time necessary to defer this.

The President put the question on Mr. Mantanye's motion, and it was lost.

The President — Mr. Mantanye's motion is lost, and the amendment, under the rule, is ordered to be printed and put upon the order of third reading.

Mr. Foote, from the Committee on Revision and Engrossment, to which was referred the proposed constitutional amendment, introduced by Mr. Vedder (introductory No. 269), entitled "Proposed constitutional amendment, to amend section 7 of article 4 of the Constitution," as reported by the Committee of the Whole, reports the same as examined and corrected by the committee, and as correctly engrossed.

The President — Ordered printed and placed upon the order of third reading.

Mr. Cookinham — Mr. President, I fear the Convention will get into difficulty if this course is pursued. It seems to me, sir, that all of these amendments should not go to third reading until the sec-

tion is complete. Let me illustrate. Take the case upon Mr. Mantanye's motion. The same section is again amended, again sent to the Committee on Revision, and again reported to the Convention; again sent to the printer and again put on the order of third reading. Now, what will be the position of the Convention? Two sections before the Convention, or the same section before the Convention, upon third reading, but reading differently. Now, it comes up upon third reading, and, under the rules, it cannot be amended. Therefore, the Convention is obliged to vote upon it, and, if it passes it, it adopts that amendment. Then you have the same section in two forms adopted to go to the people. Is that what the Convention intends to do? It seems to me that unless it can be stated authoritatively that there are no amendments to a particular constitutional amendment, that it should not be passed to a third reading, as the one that has been reported from the committee. I would ask, Mr. President, that we be informed by the Committee on Revision whether or not there are other pending amendments to this section?

Mr. Foote — I understand the question of the gentleman from Oneida to be whether there are other pending amendments to these same sections?

The President — Yes; correcting the same section.

Mr. Foote — The Committee on Revision has no knowledge on that subject. There are no other pending amendments before that committee.

Mr. Roche — I would like to ask, with reference to this first report from the Committee on Revision, this question: If this amendment is printed, and is ordered to a third reading, according to the present rule, will it be considered as a final adoption of that section in such manner as to preclude the presentation of other amendments to the same section, or their consideration? I ask that question, because I have an amendment which is before the Committee on County, Town and Village Officers, relative to this same section, but covering different officers named in that section. Now, the entire section is reported with the word "coroners" simply left out. If it is adopted in the form in which it is reported, what will be the effect upon the other amendments which are now in it?

Mr. Foote — Mr. President, I understand that rule 67 is intended to provide for the contingency, among others, mentioned by the gentleman from Troy. That rule provides that at least five days before the final adjournment of the Convention the Committee on

Revision and Engrossment shall be instructed to accurately enroll and engross the present State Constitution, with all proposed amendments thereto properly inserted — or the proposed new Constitution — and that the same shall be reported by said committee to the Convention, read through therein, and submitted to a final vote of the Convention prior to final adjournment. Under that rule, I suppose it to be the duty of the Committee on Revision and Engrossment to then insert all amendments which had been adopted by the Convention.

Mr. Cookinham — The gentleman who has last addressed the Convention (Mr. Foote) may be correct; but, sir, after an amendment has been passed upon by the Convention on the order of third reading that amendment can never be voted on again until you have reconsidered the vote, and that has been carried, and then the amendment is before the Convention for another vote; so that should the gentleman's views be carried out in this regard, it would be necessary for us at least within five days of the adjournment of the Convention, to reconsider every vote upon every amendment, and then pass the Constitution as a whole. Now, for the sake of disposing of this matter and giving us time to investigate, I move that the report of the committee be laid upon the table for the present.

The President — You mean all of the amendments, I assume?

Mr. Cookinham — Yes, sir; all three of them.

Mr. Acker — I do not think that proposition is necessary. The Committee on Revision and Engrossment has presented its report upon the proposition introduced by Mr. Dickey. Now, then, although a dozen other members may desire, by a special proposition, to amend this same section, how are we to get rid of voting upon those propositions if the Committee on Revision and Engrossment hold them all and bring them out here together? Then the motion will occur upon each one separately. We might just as well vote when they have reported, as to wait until they gather them all together and then vote upon each one separately. The whole matter will have to go to the Committee on Revision five days before our adjournment and the Constitution, as a whole, put together. If we stand around here and wait until the last proposition is adopted, when in the world will we vote on the first one? Is it not about time that we decided whether we wanted a coroner or not? Do not let us wait until somebody has introduced another proposition, and then wait until the last day of the Convention before we take final action. The proper way to do is to go on just as we have done,

follow these rules right straight through, and not lay every proposition on the table until we can consider it longer. I hope this motion will not prevail, and that the Convention will proceed with its work and observe its rules, and then we will get through some time.

Mr. Alvord — Understanding the President, by his silence, to rule that the motion made by the gentleman from Onondaga is not a previous question to lay upon the table, I ask leave of the Chair to make a few remarks. I hold that the proposition of the gentleman from Oneida is the correct one. It is the only way we can raise propositions until we get the whole of them before the Convention, and then act upon them understandingly in selecting the best of those which are before us. There is no other way of getting out of this dilemma; and, I trust, therefore, that the Chair will rule that this is not a debatable question, being a motion to lie on the table, and that the gentleman from Oneida will prevail in his motion.

The President — The motion is not debatable, except by Mr. Alvord. The question is upon laying on the table for the present these three amendments that have come from the Committee on Revision.

The President put the question, and the motion to lay on the table prevailed by a vote of 54 to 21.

Mr. Peck — I rise to a question of order. I would like to inquire where those reports now are? They were once ordered on third reading and are now said to be laid on the table. Are they now, on third reading, laid on the table?

The President — I understand that, having been printed and put on the order of third reading, any further proceeding is suspended by their being laid on the table by the order of the house.

Mr. Forbes — I wish to ask the Chair whether they will be printed as a matter of course. Otherwise, if they are not to be printed as a matter of course, I would move that they be printed.

The President — The Chair understands that the business of printing has been suspended by the order of the House. It would require a further vote of the House to order them printed. Do you make that motion?

Mr. Forbes — Yes, sir.

The President put the question on Mr. Forbes's motion, and it was carried.

Mr. Goodelle, from the Committee on Suffrage, presented a report referring to the proposed constitutional amendment intro-

duced by Mr. Dean (introductory No. 21), entitled "Proposed constitutional amendment to amend article 2, to enfranchise women, to disfranchise mercenary voters, to suspend the suffrage under certain conditions, and to preserve the integrity of the ballot," reporting adversely thereon.

Mr. Goodelle — As the bill is quite long, unless the proposer desires to have it read, I would suggest a suspension of its reading; and I desire to say at this time, as I am instructed to say by the Committee on Suffrage, that the committee are unanimously of the opinion — including the advocates of women suffrage as well as those opposed to the proposition — that these matters that I present at this time shall be disposed of, and that before we are through I shall ask that one of the propositions be made the special order for next Wednesday evening, and the other be laid upon the table, which two propositions, as I understand it, according to the concensus of opinion of the people that are interested in this question on both sides accord with it. I cannot speak from authority, but all those who are interested have suggested to me that when the question comes up we shall ask to have it made the special order for next Wednesday evening, so that the whole question may then be raised and open to discussion. That proposition will be an amendment introduced proposing that the entire question of female suffrage be left as an independent proposition to the people of the State, to be voted upon at the same time as the other constitutional amendments, but in a separate proposition. I am aware that there are several gentlemen who desire to be heard upon the question, and that question when it comes up, as I understand, will open the entire field; for everyone who wants to discuss the proposition for female suffrage can then discuss it under that head. As I understand it, as it is suggested, those who are interested in the question of female suffrage and desire to concentrate their forces upon that proposition, the discussion shall be confined to the question as coming up on that proposition. The apparent purpose of the suggestion, of course, will occur to every member of the Convention, and it is that the same question shall not be discussed over and over again upon these separate propositions as they shall come up, where they all involve the same question. I make that suggestion, and I move, therefore, that the report be agreed to.

Mr. Dean — As the mover of that proposition, Mr. President, I am very glad to know that at some time the movers of these propositions are to be given a hearing. That courtesy has not been accorded by the committee. Therefore, I am entirely willing to

allow the matter to go as the chairman of the committee has suggested.

The President put the question on the motion of Mr. Goodelle, that the report of the committee be agreed to, and it was carried.

Mr. Goodelle, from the Committee on Suffrage, to which was referred the proposed amendment of Mr. Moore (introductory No. 181), entitled "Proposed constitutional amendment to amend article 2 of the Constitution, by adding a new section relating to the qualifications of voters to be known as section 6 of article 2 of the Constitution," reports adversely thereto.

Mr. Goodelle — I move that the report of the committee be agreed to.

The President — Is the Convention ready for the question?

Mr. Moore — I have no objection to agreeing to the adverse report of the committee on the grounds stated by the chairman thereof, that the whole matter be relegated to a special order for next Wednesday evening. Accordingly, for that reason, I am willing to agree to it.

The President put the question on the motion to adopt the report, and it was carried.

Mr. Goodelle, from the Committee on Suffrage, to which was referred the proposed amendment introduced by Mr. Foote (introductory No. 224), entitled "Proposed constitutional amendment to amend section 1 of article 2 of the Constitution, by providing for submitting to a vote of the people, male and female, the question as to whether the word 'male' shall be stricken from said section," etc., reports adversely thereto.

The President — The question is on agreeing to this adverse report.

Mr. Foote — I have never been an advocate of the proposition embodied in this proposed amendment. I presented it to the Convention at the request of a friend. I move that the adverse report of the committee be agreed to.

The President put the question on the motion of Mr. Foote, agreeing to the adverse report of the committee, and it was carried.

Mr. Goodelle, from the Committee on Suffrage, to which was referred the proposed amendment introduced by Mr. Lincoln (introductory No. 108), entitled "Proposed constitutional amendment to amend article 2 of the Constitution, relating to voting by women who are taxpayers," reports adversely thereto.

The President put the question on agreeing to the adverse report of the committee, and it was agreed to.

Mr. Goodelle, from the Committee on Suffrage, to which was referred the proposed amendment introduced by Mr. Tibbetts (introductory No. 297), entitled "Proposed constitutional amendment, to amend section 1 of article 2 of the Constitution, in reference to suffrage," reports adversely thereto.

The President put the question on accepting the adverse report of the committee, and it was agreed to.

Mr. Goodelle, from the Committee on Suffrage, to which was referred the proposed constitutional amendment, introduced by Mr. Abbott (introductory No. 222), entitled "Proposed constitutional amendment to amend section 1 of article 2 of the Constitution, relating to suffrage," reports adversely thereto.

Mr. Abbott — In accordance with the understanding, as stated by the chairman of the Committee on Suffrage, I am content that this amendment should go to the cemetery with the rest. I move that the report be agreed to.

The President put the question, and the motion to agree to the report of the committee was carried.

Mr. Goodelle, from the Committee on Suffrage, to which was referred the proposed amendment introduced by Mr. Lincoln (introductory No. 110), entitled "Proposed constitutional amendment to amend article 2 of the Constitution, relating to female suffrage," reports adversely thereto.

The President put the question, and the report of the committee was adopted.

Mr. Goodelle, from the Committee on Suffrage, to which was referred the proposed amendment introduced by Mr. McKinstry (introductory No. 88), entitled "Proposed constitutional amendment to amend section 2 of article 10 of the Constitution, in regard to extending the right of suffrage in city, town and village elections to all citizens," reports adversely thereto.

Mr. McKinstry — I do not wish to take up the time of the Convention now on this amendment, but there might be a contingency in which I would like to be heard for a few moments.

The President — You are entirely in order if you wish to be heard now.

Mr. McKinstry — This refers exclusively to local elections. I am anxious that it shall not be disposed of just at this moment. Without meaning any disrespect to the committee, I would move

to lay this report upon the table, so that I may bring it up again if I wish to, though that is very doubtful, but if I do want to bring it up again, I wish to have the right to do so.

Mr. Goodelle — If the gentleman desires it, I second his suggestion, that it be laid upon the table.

The President put the question on the motion of Mr. McKinstry to lay this report of the committee on the table, and it was carried.

Mr. Goodelle, from the Committee on Suffrage, to which was referred the proposed constitutional amendment, introduced by Mr. Moore (introductory No. 45), to amend section 1 of article 2 of the Constitution, relative to female voters, reports adversely thereto.

Mr. Moore — I do not know that I should ever want to bring it up again, but, in case I should, I would like to leave it in such shape that I can, and rest. I move that the report be laid on the table.

Mr. Cochran — That motion not having yet been seconded, I desire to say that I sincerely hope it will not prevail —

The President — The motion is not debatable. The question is, on laying this report on the table.

Mr. Goodelle — Mr. President, I ask that the report be read.

Mr. Moore — Mr. President, I will withdraw the motion.

The President — The motion to lay on the table is withdrawn, and the question is, therefore, on agreeing to the adverse report of the committee.

The President put the question and the report of the committee was adopted.

Mr. Goodelle, from the Committee on Suffrage, to which was referred the proposed constitutional amendment introduced by Mr. Bigelow (introductory No. 232), entitled "Proposed constitutional amendment to amend section 1 of article 2 of the Constitution in relation to female suffrage," reports adversely thereto.

Mr. Goodelle — At the request of Mr. Bigelow, I ask that the report be laid upon the table. I make that motion.

The President put the question, and the report of the committee was laid on the table.

Mr. Goodelle, from the Committee on Suffrage, to which was referred the proposed constitutional amendment introduced by Mr. Tucker (introductory No. 194), entitled "Proposed constitutional amendment to amend article 2 of the Constitution, so as to

separately submit to the electors of this State the question of woman's suffrage," reports adversely thereto.

Mr. Goodelle — By the unanimous request of the Committee on Suffrage, as well as of the proposer of this amendment, I ask that the consideration of this question be made a special order for next Wednesday evening. I make a motion to that effect.

Mr. Tucker — I desire, on behalf of myself, as a minority member of that committee, to present a minority report.

The President — Mr. Tucker presents a minority report, which, under the rules, will be printed and laid on the desks of the members. The question before the House is Mr. Goodelle's motion that the adverse report of the committee be made a special order for next Wednesday evening.

Mr. Cochran — I agree with the chairman of the committee that the Committee on Suffrage unanimously directed him to request this Convention to make this particular proposed amendment a special order for next Wednesday evening; but, sir, it was done with the understanding that all of these adverse reports should first be disposed of. Our object in having that understanding was this; that, if these adverse reports are lying on the table after this proposed amendment is discussed by the Convention, and the Convention should then agree with the adverse report, it would be obliged to go twice over the matter (as we have already laid two on the table), which we are to discuss on next Wednesday evening. I submit that this entire matter should come before the Convention once for all and be disposed of one way or the other. We do not want to be occupying our time in discussing the same question two or three times over. I, therefore, move that the motion to make this a special order for Wednesday evening next, be laid on the table until I have an opportunity of moving a reconsideration of the votes which laid the other two amendments on the table. If this motion to make this a special order for next Wednesday evening is laid on the table, I will immediately move a reconsideration of the votes by which the other two adverse reports were laid on the table, so that we may have them disposed of this morning.

The President put the question on the motion of Mr. Cochran to lay the motion of Mr. Goodelle, providing that the report of the Committee on Suffrage be made a special order for Wednesday evening next, on the table, and it was lost.

The President — The question now recurs on the motion of Mr. Goodelle to make this a special order for next Wednesday evening. Gentlemen will remember that it requires a two-thirds vote.

Mr. Becker — I desire to raise a point of order in reference to this amendment — not specifically for the purpose of having it decided, but so that when the matter comes up for consideration at a special session for that purpose, the point of order will, in the meantime, have been considered — I raise the point of order, which I will subsequently withdraw only to raise it again at the special session, that this method which is provided by this bill, of submitting the question to the voters, whether something shall be done or not, is not permissible under the limitation imposed upon this Convention under the present constitutional provision. The Constitution provides two methods of amending. One is through the operation of legislative action at two successive sessions, and the other is through the operation of the Convention. Now, my point of order is, that the only way in which any matter can be brought before the people is by a specific amendment to the Constitution, and not by dodging the question in this way and submitting it as a separate question of whether this or that shall be done, but an amendment, positive in its terms, must be proposed to be voted upon and adopted, or to be voted against and rejected, by the people, under the present existing organic law. I withdraw my point of order, stating that I will raise it again when this matter comes up at the special session, asking that Mr. Tucker and the other gentlemen who have this matter in charge will, in the meantime, give it some consideration.

The President put the question on the motion of Mr. Goodelle, making the consideration of the subject a special order for Wednesday evening next, and it was carried by more than a two-thirds vote.

Mr. Goodelle, from the Committee on Suffrage, to which was referred the proposed amendment introduced by Mr. Bigelow (introductory No. 288), entitled "Proposed constitutional amendment to secure proportionate representation," reports the same to the Convention, with the recommendation that it be referred to the Committee on Legislature, its Organization and Apportionment, and that the Committee on Suffrage be discharged from further consideration of the same.

The President put the question on the recommendation and report of the committee, and it was agreed to.

Mr. Goodelle, from the Committee on Suffrage, to which was referred the proposed amendment introduced by Mr. Tucker (introductory No. 193), entitled "Proposed constitutional amendment to amend article 1 of the Constitution providing against property qualifications for voting or holding office," reports adversely thereto.

Mr. Goodelle — I move that the report be agreed to. Perhaps Mr. Tucker desires to say something on it.

The President — Does Mr. Tucker desire to be heard?

There being no response, the President put the question, and the report of the committee was agreed to.

Mr. Peck — Would it be in order now for the Convention to take up these two proposed constitutional amendments which have been laid on the table, but which refer to the same matter that has now been made a special order for next Wednesday evening, and send them to that same evening in connection with that same special order?

The President — The Chair is of the opinion that it would be in order.

Mr. Peck — I then move that we take from the table these two proposed constitutional amendments, of these two reports from the Committee on Suffrage, and that they be considered at the same time with the special order already set down for next Wednesday evening.

Mr. Cochran — I sincerely hope, for reasons that I have already stated, that this motion will prevail. I might say to the Convention that the Suffrage Committee — I do not desire to reflect on the Judiciary Committee — did not feel justified in reporting a number of amendments adversely in one report. We felt that we should give every man who had proposed an amendment an opportunity to be heard in this body if he desired it, and we feel now that if there is anything to be said on this subject it should all be said on the same evening, and I trust this motion will prevail.

Mr. Goodelle — I desire to amend the motion by adding that Mr. McKinstry's amendment shall be the first subject in order and Mr. Bigelow's the second one in order before taking up that of Mr. Tucker.

Mr. Peck — I will accept this suggestion and incorporate it in my motion.

Mr. Moore — I move to amend the motion of Mr. Peck, by including my proposed amendment, No. 181.

The President — Your proposed amendment has been brushed aside, as the adverse report has been agreed to.

Mr. Dean — The action of this Convention was predicated upon the proposition that what has been done was to be done, and it seems to me that we cannot act in good faith by any such arrangement at this time.

Mr. Lauterbach — The understanding that was arrived at unanimously in the committee has been correctly expressed, and it was and is the unanimous desire of every member of the Suffrage Committee that the broad question that is to be presented shall be in such situation as to be presented as clearly as possible and without the impediment in the discussions that might arise from treating questions that are not as broad as the broadest feature of the proposition can possibly be. The two proposed amendments sought to be discussed at the same time as the broad, all-embracing amendment of Mr. Tucker are as follows: Mr. McKinstry's proposition, which refers, I think, to voting at municipal and village elections, which is a limited branch of the general subject. Mr. Bigelow's is one by which it is sought to leave to a single Legislature the determination of a question which, under the present Constitution, and probably under the Constitution as it is to be amended, would be left to consecutive Legislatures and then to a vote of the people. That is a matter of detail and of form and method. I should like to have the subject considered in its broader sense first, and then to have these subjects that are in the nature of an amendment or of limitation discussed subsequently. It appears to me that the true order of procedure — if these other two matters are to be taken from the table at all at this time — would be to consider the Tucker amendment first and have the discussion proceed on those lines, and leave the discussion of other limited methods to be entertained afterwards. There is not any desire to extend this discussion beyond its proper scope, and there is no desire to have the Convention's time frittered away by the discussion of trivial matters instead of the broad matter which has excited so much attention. I, therefore, desire to amend the suggestion. Do you press the matter, Mr. Peck, of taking from the table these two propositions at the present time?

Mr. Peck — I do, simply to have everything before the Convention at that one meeting.

Mr. Lauterbach — They are matters of detail.

Mr. Peck — It seems to me that we can carry the details with the general principle.

The President — All that remains to be considered are these three amendments.

Mr. Lauterbach — May it not be proper instead of considering these other two matters, which in some respect might interfere with the proper discussion of the Tucker proposition not to take these

matters from the table at this time, but to permit either Mr. McKinstry or Mr. Bigelow to appeal to the Convention at the proper time to take them from the table. If, when they make application, it shall appear to be unwise to discuss the measures at all, a majority of the Convention can refuse the application. Therefore, there is no injury done. It will not follow that if these matters are left upon the table now they must necessarily be discussed. They can only be discussed if a majority of the Convention shall permit them to be taken from the table. If the Convention shall have heard these subjects *ad nauseam* at that time, they will refuse to take them from the table. But is it not just to not impede the program that has been laid out by such a course as is now suggested? I hope that the proposition now to take from the table, and designate as special orders the two projects in question, will not prevail, and that the Tucker amendment may, by itself, remain the special order for next Wednesday evening.

Mr. Alvord — I desire to say that I heartily agree with the gentleman who has just taken his seat, and I for one pledge myself now and here that if the majority of the committee succeed in carrying the original proposition I will with both hands give the opportunity to those who desire to bring up the lesser propositions which now lie on the table. I trust, therefore, that the motion to reconsider at this time will not prevail.

Mr. Peck — In deference to the suggestions of more experienced persons than myself in legislative matters, I will withdraw my motion, although it seems to me to be an improper division of the business to discuss the main question and leave the other matters on the table.

Mr. McClure — I desire to support Mr. Lauterbach's position, the main question being Mr. Tucker's amendment, and the only one that I think will ever be discussed in connection with the question.

Mr. Francis — I beg leave to present, from the Committee on Preamble and Bill of Rights, two reports, one of them special, upon a cognate subject.

Mr. Francis, from the Committee on Preamble and Bill of Rights, to which was referred the proposed constitutional amendment introduced by Mr. Marks (introductory No. 364), entitled "Proposed constitutional amendment to section 7 of article 1, relating to the taking of private property for public uses," reports in favor of the passage of the same with some amendments.

Mr. Francis made the additional special report in connection therewith:

The Committee on " Preamble and Bill of Rights," to whom was referred a proposed amendment offered by Mr. Marks (introductory No. 364), but not printed, report the same favorably, with an amendment, striking out the words " the owner of the property," and inserting in the place thereof the words, " either party in interest," so that the proposed amendment shall read as follows:

" Section 7. When private property shall be taken for any public use, the compensation to be made therefor, when such compensation is not made by the State, shall be ascertained by a jury, when required by either party in interest, and if not so required, such compensation shall be ascertained by not less than three commissioners appointed by a court of record, as shall be prescribed by law.

Private roads may be opened in the manner to be prescribed by law; but in every case the necessity of the road, and the amount of all damage to be sustained by the opening thereof, shall be first determined by a jury of freeholders, and such amount, together with the expenses of the proceeding, shall be paid by the person to be benefited."

It is proper to state, for the information of the Convention, that Mr. Marks requested an adverse report from the committee on his proposed amendment, but it did not appear to the committee that favorable action on the principle, only extending it to embrace the two parties to the proceeding, instead of confining it to one, could be fairly construed as an adverse decision, to be reported as such to this Convention.

With this explanation, the amendment, as agreed upon by a majority of the committee, is hereby submitted for the consideration and action of the Convention.

JOHN M. FRANCIS,
Chairman.

Mr. Alvord — I desire to be recorded at the Secretary's desk in opposition to the proposition from the committee.

The President — Mr. Alvord wishes it to be understood that he dissents from this report, although making no minority report.

Mr. Marks — May I ask, Mr. President, to have the amendments read?

The President — The Secretary will read the amendments reported by the committee.

The Secretary read the same.

The President — Referred to the Committee of the Whole.

Mr. Francis — I ask that the special report be read.

The President — The Secretary, in accordance with the request of the chairman, will now read the special report.

The Secretary read the same.

Mr. Marks — As I understand it, the committee reported favorably upon my amendment, and said in their special report that they did not think my request for an adverse report should be granted because it was not a subject for an adverse report. I requested the committee to make an adverse report on my proposition. I do not think my amendment ought to be reported favorably, with some amendments of the committee's, when the amendments kill the very object which I had in view in introducing the first one.

The President — The matter has gone to the Committee of the Whole, Mr. Marks.

Mr. Veeder — Is it in order to state that Mr. Marks is mistaken about what occurred in the committee?

The President — Yes, as a matter of privilege.

Mr. Veeder — The fact obtains, as I understand, in some of these committees to adopt a resolution that, if the committee report, they will report adversely. But until the committees do determine to report no demand can be made on the committee. Therefore, Mr. Marks's request would not apply in this case, because the committee never agreed to report adversely.

The President — Mr. Marks will undoubtedly be heard before the Committee of the Whole. Are there any reports from any select committees? The Chair will call attention to the situation in which the matter of the special order of the suffrage hearing has been left. It has been made a special order for Wednesday evening only, and, unless further order is made, it is limited to that evening only.

Mr. Alvord — I move you, sir, that we add in addition thereto the words " and that the same shall be continued on every succeeding evening until it is disposed of."

Mr. Cochran — I second that motion.

Mr. Dickey — I would like to inquire, for information, whether that would necessitate the sitting on additional evenings, such as Friday and Saturday and Monday evenings?

The President — It means legislative or Constitutional Convention evenings, I suppose. The effect of this would seem to be to provide for unlimited debate. What the Chair wanted to call attention to is whether the Convention desires to bring into operation rule 56, prescribing some limit of debate, longer or shorter.

Mr. McMillan — I move to amend by referring the resolution to the Committee on Rules, with a request that they fix a limited time for the debate, and report to this Convention.

The President — The Committee on Rules has no power to fix the time of debate.

Mr. Bowers — I see no reason for requesting the services of the Committee on Rules in this matter. I see no reason why we should not proceed under Mr. Alvord's motion, and debate this adverse report until such time as the Convention pleases. I see no reason why, on every important question we should proceed at the outset to limit debate. I hope the Convention will not make such an order until we ascertain from the character of the debate that a limit should be fixed.

Mr. Dean — I am satisfied that there will be no abuse of the privileges of the Convention in the discussion of the suffrage question. I am somewhat familiar with the gentlemen interested in this question, and I know there will be no disposition to impose upon the good nature of the Convention. I, therefore, hope that the resolution will not prevail.

Mr. Cochran — I might say, sir, that when this matter was originally brought up before the Committee on Suffrage the question was there discussed as to whether any limit should be placed by the committee on the discussion of this important question. We decided that there should be no limit, for the reason that whatever arguments could be made, either for or against this proposition, should be presented fully. I do not think that any subject has been discussed before this Convention so that its time has been wasted or the privilege of the floor abused, and I, therefore, think, as Mr. Bowers has suggested, that no limit should be placed on the debate.

Mr. Moore — I hope the motion will not prevail. I believe this Convention is perfectly able to take care of itself without running every few minutes into the nursery of the Committee on Rules. I believe that if the committee see any disposition to abuse the good nature and leniency of the Convention in the debate upon this most important subject it can find a way to remedy it and to shut off all obnoxious debate. I certainly hope the resolution to limit debate upon this question will not prevail.

Mr. McMillan — I desire to withdraw my amendment. It was made for the purpose of protecting those who desired to discuss this question. I am perfectly content to leave with the Convention the previous question.

Mr. Goodelle — I would like to inquire what the motion is before the House?

The President — The motion is that the reports which have been made a special order for Wednesday evening be also a special order for each succeeding evening on which the Convention sits until the subject is disposed of.

Mr. Goodelle — And the motion does not involve a limit of the time?

The President — No, sir; it removes it.

Mr. Goodelle — That is what I desired. The committee did not wish that the debate should be at all limited.

The President — It leaves the matter subject to the previous question, to be moved by the gentleman from Cattaraugus, or any other gentleman.

Mr. Barhite — I would like to ask whether under this motion the Convention will be obliged to finish the consideration of the question without any intervening evening? My idea is that it may appear, after we enter upon that debate, that it might be all right and proper to adjourn the debate, and I do not think this Convention should tie itself up in that regard, and so I would like to ask whether under this motion it would not be possible to lay the subject over for a week or two weeks.

The President — The Chair understands that it will go on from evening to evening.

Mr. Alvord — I desire to say, before the Chair decides this question, that the Convention always has the power in their own hands to direct on each occasion what they desire to do, and that, therefore, a motion to lay upon the table the present subject, if it shall come up, will, with the votes of the majority of the Convention, be sufficient to carry it over the night.

The President — But unless otherwise ordered the effect of the motion will be to carry the matter on from evening to evening.

The President put the question on Mr. Alvord's motion, and it was carried.

Mr. Veeder — I desire to move that Document No. 36, which is the report of the minority of the Committee on Preamble upon the subject of limitation of damages in accidents causing death, be referred to the Committee of the Whole that shall consider general order No. 15, which is an adverse report. I will say that, from an examination of the rules, I know of no other way for its consideration in connection with the adverse report, and, that being disagreed

to, it leaves the original proposition of Mr. Tucker's before the Convention, and it has gone on general orders. Now, to consider the minority report, I assumed that it was necessary to get it before the same Committee of the Whole.

The President — Will Mr. Veeder please restate his motion?

Mr. Veeder — My motion is that Document No. 36, being the report of the minority of the Committee on Preamble, be considered in the same Committee of the Whole as proposition No. 192 (introductory No. 191), which is upon general orders as No. 15.

The President — Are they not both on general orders?

Mr. Veeder — No, sir; I do not understand that they are. Document No. 36 is not on general orders. It is not on the calendar.

The President — It was certainly intended to be.

Mr. Moore — If that motion of Mr. Veeder's requires a second, I will second it.

Mr. Alvord — It is already on general orders.

Mr. Veeder — It has not been so indicated by the Secretary. It is not on the calendar.

The President — Mr. Veeder moves that the minority report, in respect to Document No. 36, be referred to the Committee of the Whole, in connection with general order No. 15, which carries the majority report.

Mr. C. H. Truax — Mr. President, I ask to amend by striking out the document and inserting the following:

"Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who, or the corporation which, would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death of the person injured shall have been caused under such circumstances as amount in law to felony. Every such action shall be brought by and in the names of the personal representatives of such deceased person, and in every such action the jury may give such damages as may be just and fair, with reference to the pecuniary injury resulting from such death, to the husband or wife and next of kin of such deceased persons. The Legislature shall prescribe for whose benefit such action shall be brought. No law shall be passed limiting the amount to be recovered for damages to person or property."

I propose, Mr. President, to amend the minority report so that it shall read in that way.

The President — The Chair holds that that will have to be brought up in Committee of the Whole, if the minority report is there brought up.

The President then put the question on the motion of Mr. Veeder, and it was carried.

Mr. Marks — Mr. President, in order to have the report of the Committee on Preamble properly before the Convention when we get into Committee of the Whole, I should like to have my amendment, which I presented to that committee, printed and placed on the desks of the members. The amendment which I have presented to that committee is that the compensation to be paid to the owner of property shall be ascertained by a jury when the owner of the property requires it. The Committee on Preamble have seen fit to amend that amendment and report it favorably, and make it, when required by either of the parties in interest. I, therefore, move that my amendment be printed and considered at the same time that the report of that committee is considered in the Committee of the Whole.

Mr. Alvord — Mr. President, I rise to a point of order.

The President — Mr. Alvord will state his point of order.

Mr. Alvord — My point of order is that every proposition that goes to a committee can be altered and modified as the committee see fit, and that any amendment offered before a committee can be accepted or rejected by the committee having the matter it refers to under consideration; that Mr. Marks's amendment is a matter that can be considered in the Committee of the Whole, and the gentleman has his full remedy by amending the report of the committee when we are in the Committee of the Whole, to suit his peculiar opinions, and, therefore, the gentleman's motion is entirely out of order.

The President — Mr. Alvord's point of order is well taken.

Mr. Jesse Johnson — I desire to give notice as to an order of business. On Tuesday morning the Cities Committee will move the cities' article in general orders.

Mr. Vedder, from the Committee on Legislative Powers and Duties, to which was referred the proposed constitutional amendment introduced by Mr. Roche (introductory No. 116), entitled "Proposed constitutional amendment to amend section 18 of article 3, by adding certain subjects to those which the Legislature

is forbidden to pass special and local acts on," reports in favor of the passage of the same, with some amendments, and it was referred to the Committee of the Whole.

The Secretary announced the meetings of standing committees.

On motion of Mr. Hill, the Convention took a recess until eight o'clock this evening.

EVENING SESSION.

Thursday Evening, August 2, 1894.

The Constitutional Convention of the State of New York met pursuant to recess, in the Assembly Chamber in the Capitol, at Albany, N. Y., Thursday, August 2, 1894, at eight o'clock P. M.

President Choate called the Convention to order.

Mr. Cookinham — Mr. President, I ask that Mr. Goodelle be excused from attendance upon the Convention to-morrow, on account of important business engagements.

The President put the question on the request of Mr. Goodelle to be excused from attendance, and he was so excused.

Mr. Schumaker — Mr. President, I ask indefinite leave of absence for Mr. Van Denbergh, on account of sickness. He is now confined to his house.

The President put the question on excusing Mr. Van Denbergh from attendance, and he was so excused.

Mr. Hirschberg — Mr. President, I ask to be excused from attendance to-morrow, on account of sickness in my family.

The President put the question on the request of Mr. Hirschberg to be excused from attendance, and he was so excused.

Mr. Cornwell — Mr. President, Mr. Tibbetts asks to be excused from attendance to-morrow on account of illness in his family.

The President put the question on the request of Mr. Tibbetts to be excused from attendance, and he was so excused.

The President announced the following committee, appointed upon Mr. McClure's motion, as the Select Committee upon the Preservation of the State Forests: Mr. McClure, Mr. Peabody, Mr. C. B. McLaughlin, Mr. McIntyre and Mr. Mereness.

The President — The business which is made a special order for this evening is the report of the Committee on Privileges and Elections, relative to the contest in the Sixth Senatorial District; and the immediate question before the Convention is the consideration

of the resolution offered by that committee at the end of their report, to the effect that the sitting members, Messrs. Riggs, Curran, Roderick, Mullen and Fitzgerald, are not entitled, as delegates from the Sixth Senatorial District, to the seats now occupied by them in the Convention, and that Messrs. Kinkel, Pashley, Deterling, Nostrand and Kurth are duly elected from the Sixth Senatorial District, and are entitled to the seats now occupied by the first-named gentlemen.

Mr. Lester — Mr. President, moving the adoption of the report of the Committee on Privileges and Elections, it seems proper that a few words at least should be said in reference to the questions involved in this, probably the most difficult and intricate of the contested election cases that have engaged the attention of the Convention; and, inasmuch as it was my duty, in company with other members of the sub-committee, to take the testimony upon which this report is based, and inasmuch as I thus had an opportunity of hearing the evidence given by the witnesses, seeing the witnesses who testified, hearing the arguments advanced by the counsel for the respective parties, it seems proper that I should say a few words upon this subject.

The testimony taken in this case has been printed, so far as the oral testimony of the witnesses is concerned, and is upon the desks of the members. But by far the greater portion of the testimony has not been printed, but consists of the exhibits in the case: the poll-lists, the registry lists, the returns of the inspectors in six districts in the town of Gravesend and in three districts in the town of Castleton, Richmond county; also voluminous records in proceedings instituted by William J. Gaynor against John Y. McKane; the record of the punishment for contempt of McKane and Johnson and others for the violation of an injunction order, and the record of the conviction of McKane and the officers in charge of the election of different crimes in connection with the general election in November last.

Now, sir, I suppose there can be no doubt in regard to the principles which are to govern the Convention in the disposition of this case. It was laid down by the Court of Appeals in the case of the People ex rel. Judson v. Thacher (55 N. Y., 525), and has never been questioned since, that the certificate of the proper officers is *prima facie* evidence of the election to a public office, but that the certificate and the returns upon which it is based are open to inquiry, and the returns will be corrected or set aside so far as they are shown to be erroneous, if necessary to promote the ends of justice, and that where a return is proved to be so uncertain and unreliable that its value as evidence is wholly destroyed and justice requires its rejec-

tion, each claimant can only be allowed such votes as the other evidence in the case shows that he received.

This principle is recognized in the case of the People ex rel. Stapleton et al. v. Bell (119 N. Y., 175), in which it was held that inspectors of election were simply ministerial officers without discretionary power to reject the vote of a person, who, upon being challenged, qualified himself to vote by the application of statutory tests, in which case the court says, Judge Grey writing the opinion, that election returns are only *prima facie* evidence, and may be impeached and set aside for errors and frauds.

In this connection, it might be well to call the attention of the Convention to what the Court of Appeals held, in the case of the People v. Thatcher, was sufficient evidence of irregularity and fraud to call for the entire rejection of the return of the canvassers, as evidence of the vote cast. In that case the box which contained the votes for the office of mayor of the city of Albany was the third box canvassed. It was noticed that this box was unlocked during the time when the other boxes were being canvassed and stood upon a shelf near by. When the other boxes had been finished the box containing the ballots for mayor was put upon the table and the canvass of the votes in that box was begun. Suddenly the lights were extinguished, and, after an interval of darkness, light was procured and it was then found, upon counting the ballots, that a number of ballots had been abstracted. The number of votes, as stated in the return of the inspectors, was 652, but it was proved that seventy-seven more votes had been cast. An opportunity to abstract these ballots was offered by the box having been unlocked during the time the lights were extinguished, and the loss of these ballots could not be reasonably accounted for upon any other theory than that they had been thus fraudulently taken. Other evidence in the case established the fact that among the ballots upon the table were sixty-five spurious votes which were counted and returned as genuine. In disposing of the case the court says that, although but sixty-five spurious votes had been proved to have been placed in the box, it would not assume that that was the limit of the number, and that the evidence that these spurious votes had been put in that box and had been canvassed and included in the return of the inspectors was sufficient wholly to discredit the return and to make it worthless as evidence.

Such, then, being the principles upon which I suppose this case is to be disposed of, I desire to call the attention of the Convention briefly to the facts of the present case.

The town of Gravesend contains six election districts, which were

so arranged that they came to a common centre at the town hall., in which building the polls of all the districts were located. Temporary partitions were erected in this hall so as to make six different rooms which served as the polling places for the six different election districts of the town. Each of these polling places was about twelve by fifteen feet. Each contained four or five booths for voters and the tables and chairs and election paraphernalia. Besides these things, there is said to have been room enough for six or eight voters at a time. Into such a place, the returns show went between sunrise and sunset upon the day of the last general election, 1,512 voters of the second election district of the town of Gravesend and cast their ballots. Only upon one or two occasions during the day was there any line of voters in front of this polling place; and one witness, who stood in front of the building for an hour and a half or two hours, did not see any people going in or coming out, though he did see many standing outside. Although the census taken in the town of Gravesend in 1892 showed a population of 8,418, over 6,000 voters were registered, and over 3,500 votes cast at the general election of 1893. In the second district the voting population in November, 1893, was variously estimated by the contestant's witnesses, as follows:

Robert Schimmerhorn	487
John W. Pierce	450 to 500
Charles C. Overton	425
Charles S. Voorhees	487
James N. Brewster, not over	500

At the spring election in 1894, which was a hotly-contested election, only 423 votes were cast.

In this district 2,464 names were registered and 1,512 votes returned by the inspectors as having been cast at the general election in 1893, all but ten of which were for the sitting members. Robert Burkhart, who voted at nine P. M., had ticket No. 724. James N. Brewster, who voted at three P. M., had ticket No. 1223.

If the ballots were given out in regular order as they ought to have been, voting must have taken place at the rate of five votes per minute up to nine o'clock A. M., and at the rate of about two and a half votes per minute up to the closing of the polls.

The contestants proved the result of an experiment which seemed to have been conducted with considerable care for the purpose of ascertaining the greatest possible rapidity with which votes could be cast at an election, where the requirements of the ballot reform law were observed. The result of this experiment indicated that

twenty-seven votes in twenty minutes, or about one and one-third votes per minute, was the greatest speed attainable, and that it would doubtless be impracticable to maintain this speed for an entire day. On the other hand, the contestees proved that at the last town election in Flatbush 1,685 votes were cast, and in the opinion of the witnesses from 100 to 300 more votes might have been cast. It appears, however, that in the Flatbush election eight districts participated and each district had a separate registry list and a separate clerk in charge of it. The great majority of the voters knew in what election district they resided and announced their names and the number of their district to the officer in charge. The work of finding their names and checking them off was, therefore, greatly expedited. The number of booths, too, was greatly increased. It is evident that the rapidity of voting under such conditions is no criterion as to that at an election where there was a single registry list with 2,400 names upon it and a single clerk in charge. But, even under these conditions, no such speed as that indicated by the testimony of Robert Burkhart would have been possible.

This registry list which I have here contains between 2,400 and 2,500 names.

The President — Is it the original registry list, Mr. Lester?

Mr. Lester — This is the original registry list, Mr. President. It was written in a book which was indexed through, but the book was entirely inadequate to the necessities of the case and so additional leaves were inserted in this manner. I find that under the letter M, for instance, in addition to the two pages which the book gives to that letter, there are twelve other pages inserted upon ordinary legal cap in the form of leaves. These names are not arranged in strict alphabetical order. All the M's are grouped together, it is true, under one letter, but no further arrangement in alphabetical order is attempted. This book contains as many names as the directory of a populous village. It is written in a fairly legible hand. But the clerk in charge of this book, if he performed his duty upon election day, would have been compelled to find names in this book at the rate of two and one-half names per minute from the rising of the sun until the setting of the sun; a feat which it would have been impossible for any human being to perform. This book we have had before the Committee on Privileges and Elections, and we have made several experiments there for the purpose of ascertaining how rapidly it is practicable for a person to find names in it.

I am satisfied that the greatest possible speed which one could attain for a short period of time, a person who was entirely familiar

with the record itself, would be about one name per minute, thus reducing the possible vote in this district of Gravesend to 612 votes on the day of the last general election.

This registry list it is said, was made up in great part by a police officer and some other person going about Coney Island in the month of August, 1893, at a time when there was the greatest crowd of people there, and taking the names of everyone employed or found about any of the hotels, saloons and other places of entertainment which formed the principal portion of the buildings at Coney Island. The witness, Charles Foster, who swore to that fact and said that his name had been taken down by the police officer, seems to be corroborated by the fact that Charles Foster's name is found upon the register, although, being a voter in the city of New York and having voted in the city of New York, he is not marked upon this register as having voted at Gravesend.

The records of conviction of Richard V. B. Newton and others were produced and received by the committee, and are mentioned in the evidence which is upon the tables of the members. Richard V. B. Newton, a justice of the peace of the town of Gravesend, and the three inspectors of election in the second election district, were convicted of conspiracy to permit persons to vote who were not entitled to vote. These were the same inspectors who were in charge of the polls on election day, and thus had an opportunity to carry out the purpose of their conspiracy.

John Y. McKane and Richard V. B. Newton excluded Republican watchers from the polls in this district, and in so doing acted in violation of an injunction of Judge Barnard, and were afterwards punished for contempt of court. The question of the regularity of the appointment of these watchers raised by the contestees was also raised in the contempt proceedings, but did not prevent the punishment of McKane and his associates.

Kenneth F. Sutherland, a justice of the peace of the town of Gravesend, a resident of the second election district, whose name appears at the head of the poll-list as having cast the first vote in that district at the general election of November, 1893, was afterward convicted of having induced the inspectors to make a fraudulent return. Sutherland signed a statement which was read to the court when he was brought up for sentence, in which he declares that he put into the ballot-boxes in the second district of the town of Gravesend somewhere between 200 and 400 fraudulent votes at the election in question.

It is proper to state that the contestees introduced evidence in explanation of the great discrepancy between the apparent voting

population of Gravesend, as shown by contestants' witnesses, and the number of names on the registry lists and the number of votes cast, to show that there was a large transient summer population at Coney Island, in the second and third election districts composed of waiters, cooks and other servants and employes in the hotels and saloons which abounded there, who came in the spring and early summer and remained until the end of September, but many of whom claimed Coney Island as a residence and were accustomed to return there in November for the purpose of voting.

It should also be stated that the contestees strenuously objected to the introduction of the records of conviction of these various election officials of the town of Gravesend and the statement of Sutherland, on the ground that they were not evidence as against the contestees. This brings up a somewhat difficult question. There is no doubt that the questions whether the inspectors of election did enter into a conspiracy to permit persons to vote who were not entitled to vote; whether McKane and Newton did exclude Republican watchers from the polls; whether Sutherland did induce the inspectors of election to make a fraudulent return and finally whether Sutherland did deposit hundreds of fraudulent ballots in the box, are all questions of the highest materiality in this investigation. But if it were necessary that the commission of all these crimes should be proved by the same evidence that would be required upon the trial of indictments against these officers for the crimes alleged to have been committed by them, the committee could not complete its labor during the lifetime of the Convention. Similar questions requiring similar treatment were found in the other five districts of Gravesend and in the town of Castleton, Richmond county.

The printed papers in the contempt proceedings against McKane and Newton alone cover 458 pages, and that is a mere suggestion of the way in which each one of these questions would amplify if it were held to be necessary to pursue each of them on the lines of an original investigation. McKane, Newton, Sutherland and the three inspectors in the second election district of Gravesend are all now undergoing imprisonment for their crimes. The others would doubtless follow the example of Sutherland and refuse to give any evidence whatever in the case, claiming their constitutional privilege, and even if it were waived the punishment that this Convention could inflict upon them for a refusal to testify would be unworthy of consideration in comparision with that already imposed; in fact the Convention could not practically impose any punishment upon them whatever. Therefore, the Convention must either confess itself powerless in the premises or resort to some other method of

determining the truth than through the narrow avenues of common law evidence. The common law itself recognizes the propriety of a frequent relaxation of its rules upon the principle of necessity, and has on that principle admitted testimony that ordinarily would have been excluded. Moreover, it is well settled that, in such inquiries as the present, legislative bodies are not bound by strict common-law rules.

The House, it has been said, and the statement is certainly not less true of this Convention, is "as well a council of State, and a court of equity and discretion, as court of law and justice, and applies, therefore, the legal rules of evidence rather by analogy and according to their spirit than with the technical strictness of the ordinary judicial tribunals."

In a controverted election case tried in Philadelphia in 1851 under a special statute of Pennsylvania, the learned judge who heard the case said: "This is a great public inquiry in which the community are most deeply interested, bearing upon and affecting rights and the exercise of them that lie at the basis of our whole government. It is not a suit, but a public investigation." And, upon that ground, his colleague concurring, he set aside the common-law rule upon the subject and admitted the parties to the record to testify.

It has been said that the House are "entitled to hear and weigh everything advanced, and to form their opinion from the general conviction arising upon the whole circumstances."

"Such a tribunal, then," it has been said, "is not to be circumscribed by the narrow technicalities of the common law."

However admirable may be those rules that limit the evidence upon which judges and courts must act; however important it may be that these institutions of the sovereign State should be limited and restricted in their action, when the State, in its sovereign capacity, acts, it is manifest that it can itself regard no such restrictions.

It may fear for its ministers that they may err and shut them up as far as practicable from error. It cannot entertain any such doubts as to its own action, since all the institutions of the State must rest upon its wisdom as their ultimate foundation. A man in the management of his own affairs turns away from no source of information. He gets the best information he can from every source, and then acts upon it with the greatest wisdom he can command. So the sovereign gathers information from every source, and acts in respect to affairs of State with a sovereign's wisdom. The State is entitled to hear and weigh everything. In the light of this sovereign right, it is evident that legislative committees, in

receiving in like cases what is denominated incompetent evidence, are not wantonly overriding individual and public rights and presenting a spectacle of moral turpitude; on the contrary, they are asserting and exercising the prerogative of the sovereign to hear and weigh everything. Such is not only the sovereign's right, but such is the sovereign's duty. To refrain from exercising it would make the State a just object of contempt. I insist, then, that this evidence is before the Convention, and rightly before it.

The committee received this evidence, and it is printed and before the Convention. It remains for the Convention to weigh it; to say what effect it will give to it, and what it will conclude from it. If it is insufficient to convince the minds of any members that these crimes were, in fact, committed, it is the moral duty of such members not to infer that fact from the proof; but if, on the other hand, it does lead a member to the honest belief that these crimes were in fact committed, then I say it is the right, nay, more, the duty, of that member to act upon the evidence and assume the facts as proven.

In respect to the effect of the admission of the statement, or confession as it is called, of Sutherland, to the effect that he, with his own hands, folded and fraudulently placed in the ballot-box two lots of ballots, each containing between 100 and 200 straight Democratic ballots, I entertain more doubt, for I feel, personally, great hesitation in assuming any facts as proven by the unsworn statement of such a criminal as Sutherland. But, sir, it is unnecessary to assume that the statement of Sutherland is true upon the evidence of the statement itself. If the Convention assumes, as I believe it will assume, that these men who were convicted of these various crimes were guilty of the crimes with which they were charged, then the Convention has gone far enough to determine the present case. If Sutherland was guilty of inducing the inspectors to make a false return; if the inspectors themselves conspired to permit persons to vote who were not entitled to vote, then these facts are sufficient to determine the action of the Convention; and the mere fact that these inspectors were guilty of this conspiracy, in connection with the other uncontradicted proof in the case, is sufficient. For, sir, it is one of the commonest presumptions of law that where a criminal intent is shown to exist in the mind of a party, and the party has an opportunity to carry out his criminal intent, it will be presumed that he did so and that he in fact committed the crime. That principle is one of the most common application. I have in my mind now a large class of cases touching the

most sacred personal rights in which that presumption is every day invoked for the purpose of determining the controversy; where when a criminal intent is shown and an opportunity for carrying out that intent is proved to have existed, the fact of the crime is always inferred. So if these inspectors of election were guilty of conspiring to permit persons to vote at the Gravesend election who were not entitled to vote, and they afterwards, being in charge of the polls as they were under the circumstances that existed in the town of Gravesend, had an opportunity to carry out that conspiracy, then, sir, it is the duty of the Convention to infer that the conspiracy was, in fact, carried out, and that they were guilty of the crime which they conspired to perpetrate.

But, there is another method of determining this case, which is, if possible, more satisfactory and conclusive than the one which I have just mentioned, and leads inevitably to the same result. When we come to examine the records of this election, the poll-lists and registry lists, we find a most remarkable series of facts. We find in the first place that upon the poll-list the ballot which has the highest number entered upon the list is ballot No. 1,512. Now, the inspectors certify that 1,512 votes were cast, yet there are sixty-six ballots whose numbers do not appear at all upon the list. In thirty-one instances the same ballot is entered upon the poll-list as having been issued to two different persons and in two instances as having been issued to three different persons. These duplicate and triplicate numbers would appear much oftener were it not for the fact that many numbers, after having been entered, were afterwards nearly or quite obliterated by writing other different numbers over them in a heavy hand. In every case, so far as it is possible to determine, these changes were made for the purpose of covering up some duplicate number by the use of a number that had been omitted. This is the original poll-list which I hold in my hand. The highest number upon this list is 1,512, and the inspectors return that 1,512 ballots were cast, and yet there are sixty-six numbers which do not appear upon this list at all. Thirty-one votes seem to have been issued to two different persons. Now, that is a manifest physical impossibility. It shows to that extent at least this record is not a true record of the events which took place at the Gravesend election. Of course it is utterly impossible to issue the same ballot to two different people, and yet the inspectors returned that that was done in thirty-one instances and in two instances it was issued to three different people.

Now, when we come to arrange the ballots in consecutive order and compare them with the names of the voters, the most remark-

able results appear. In over 180 instances this arrangement produces groups of names which began with the same letter, including from two to eight names in each group. In the last 175 votes cast, twenty-four such groups appear, eighteen of two names, four of three names, and two of four names.

One of the largest groups of this character contains seven names, all beginning with the syllable " Mc," another group contains four, another three, and eleven groups contain two names each beginning with that syllable; so that out of a total of seventy-one names beginning with the syllable " Mc," more than one-half voted in groups of from two to seven. In twenty-three consecutive votes, beginning with 160, fifteen were cast by " Mc's." Eight voted in the first 100 votes cast; twenty-one in the second 100; ten in the third 100; eleven in the fourth 100, and the remaining twenty-one were distributed through 1,112 votes or ballots. In two instances nearly 300 consecutive ballots were cast without any " Mc " appearing.

Instances are too numerous to be mentioned where several names appear upon the poll-list in the precise order in which they occur upon the registry. In one instance eleven names following each other consecutively on the poll-list are taken from a single page of the registry, first going down the page and then back up it.

Attention should be here called to the explanation attempted to be made by the supposition that persons might have drawn off from the registry lists of voters who had not come to vote, and that they might have been sent for and brought in in groups as they appear on the poll-lists. There are several difficulties in the way of this hypothesis, beside the difficulty of the entire absence of any testimony that such a thing was, in fact, done. If the registry list was used for any such purpose, it renders still more highly improbable the proposition that the clerk in charge of it ever did find these 1,512 names and check them off in the 600 minutes allotted for that purpose. That proposition, under the most favorable conditions, is too great a strain for ordinary credibility, and weighed down by such an additional burden, it would seem past the belief of any rational being. But do the members of the Convention believe that, if such a state of facts existed, the astute and able lawyers who have had charge of the contestees' case would not have offered some proof of it? The tables made by William Deterling, in which these groups of names were pointed out, were made during the prosecutions of election officials and during the Senate contests of last winter. The claim of the contestants based upon them is no new one, and the contestees who have been familiar with all the details of this controversy from the time it arose have had ample

time to procure evidence in explanation of these facts if it were attainable. Yet not one of these supposed votes thus challenged has been supported by the production of the voter who cast it. Not one of the individuals composing any of these suspicious groups has been brought forward to show how it occurred, and that men representing such names actually went to the polls. If proof of a single such case had been given, the explanation would have had some plausibility. As it is, it has none. The conclusion is irresistible that the statement of the contestants' counsel is true "that names were transferred in squads or in platoons from the registry list to the poll-list."

Singular coincidences will, of course, occasionally occur in practice, where all the proceedings are conducted in a perfectly legal, honest and orderly manner, but an examination of the tables of comparison, prepared by William Deterling and Deputy Attorney Shepherd, will show such a condition of affairs as is utterly inconsistent with any theory, except that the voting in the second district of Gravesend at the general election in November last was a complete farce, and that the poll-lists and the returns of inspectors contained nothing but the results of continued frauds from the opening of the polls to their close. If these poll-lists and registry lists were all the evidence in the case, the conclusion of fraud sufficient to damn the whole proceedings would be irresistible. But, in addition to this overwhelming internal evidence of fraud in the registry and poll lists is the proof of the criminal conduct of the election officials in this district and the arrangements so evidently made by them in advance for the better carrying out of their criminal designs. No question can remain in the mind of anyone who seeks simply to establish the truth.

It seems unnecessary, under these circumstances, to say anything about the other districts of Gravesend and the three districts of the town of Castleton. Proof was offered tending to show frauds in all of these districts, and frauds were proved in some of them which affected the vote as returned by the inspectors, but, as this second district of Gravesend exhibits the most extensive and flagrant frauds and violations of law and is decisive of the result, it seems hardly worth while to dwell on the other cases in some, at least, of which I think the frauds might not call for the rejection of the entire vote, but only a deduction of the fraudulent votes which in any single district would be insufficient to change the result, though, in the aggregate, would be enough to accomplish that result.

It is so evident that the frauds and irregularities in the second

district of Gravesend are of such a character that they render the returns of the inspectors in this district utterly unworthy of credence, and that under the rule established in the case of the People v. Thacher, it must be wholly disregarded, that I do not deem it worth while to take up the time of the Convention by going into any examination of the evidence in relation to these other districts.

It is an ungrateful duty that I am called upon to perform in advocating the adoption of a report that will unseat five members of this Convention for whose qualifications and abilities I entertain the greatest respect. Yet the frauds at Gravesend have shocked the moral sense of the entire country, and roused such a storm of indignation as has swept the chief actors in the disgraceful transaction into prison, and it was as the result of these frauds that the certificate of election was issued to these sitting members. There can be no doubt in the mind of every honest man that the contestants received the majority of the votes cast in the Sixth Senatorial District and are entitled to represent it in this Convention. Under these circumstances, and, much as I may regret it, there is one and but one course open to me, and that is to urge the adoption of the committee's report, with all its consequences, and the award of the seats in the Convention, too long withheld, to those who were honestly elected to them.

Mr. Mullen — Speaking for the members from the Sixth Senatorial District — when I say that, I mean the members now sitting — I desire to say for myself that if there has been one thing that has been the ambition of years, and for which I have persistently refused nomination to other high and honorable office, it has been that when I had reached the half-century of life I might round out the period in becoming a member of this honorable body. It was a dream with me for years — an ambition which I hoped to gratify, an ambition which I thought honestly and conscientiously would be justified by my past life, and which I might in the end acquire and accomplish.

It is quite unnecessary for me to say, Mr. President, that I do not know the gentleman whom the last speaker has so frequently referred to. I have never had the pleasure of his acquaintance. I have never been in contact with him, save at the last senatorial convention. As for any fraud, or participation in fraud, or knowledge of fraud at Gravesend, I was as ignorant of that and as innocent of that as any gentleman within the sound of my voice to-night. Where I reside, it is at least ten or twelve, perhaps, fifteen miles, as the crow flies, from Gravesend. A vast expanse of water intervenes. Our interests are not identical; our affiliations are not

identical, but, through the political division of this State, we were made a part and parcel of the Sixth Senatorial District. In 1892 we anticipated that a State Constitutional Convention would assemble here in this chamber, in the city of Albany, whose members would be elected from the Assembly districts. Had that been the case, I would have occupied my seat in this Convention by an honest and overwhelming majority of my neighbors and fellow-citizens of the county of Richmond; and, notwithstanding, Mr. President, this contest and conflict which existed between two wings of the Democratic party at the last election, and, notwithstanding the fact that a certain wing of the party hold at least 800 votes in the county of Richmond, and ignored my name as a Democratic candidate on the ticket, I carried my home county by 675 majority. When I accepted this nomination, with my four colleagues, I did it in anticipation of being elected, because I had no reason to think to the contrary. Had the election taken place in the Sixth Senatorial District in 1892, an unquestioned majority of from five to six thousand would have been given for the sitting members that are here to-night. But, unfortunately, in the avalanche that overwhelmed the State of New York in 1893 there was such a falling off that my majority in the district was but 312.

Mr. President and gentlemen of the Convention, when I received the announcement that I had been elected a member of this Convention, I deemed it my duty to the State to see that I obtained my certificate of election. I found that, by an oversight in the Secretary of State's office, the votes cast in the county of Richmond had been entirely omitted from the canvass made by the Board of State Canvassers. I at once came to Albany, by request of the Secretary of State, so that the Board of State Canvassers might be placed straight and right in the eyes of the people, so that apparent justice might be done to those who seemed to have been elected by the returns filed in the office of the Secretary of State. I applied to the General Term for a mandamus, compelled the Board of State Canvassers to reassemble and recanvass the vote in the Sixth Senatorial District. In that application I was opposed by the contestants. They knew the vote of the county of Richmond had been entirely overlooked and omitted in arriving at the result of the vote cast in the Sixth Senatorial District. They appeared by counsel and opposed the application to correct the error, which was apparent on the face of the returns; but the court at General Term ordered the correction to be made; and in pursuance of the mandamus the correction was made and the certificates were issued to the sitting members here to-night. When we received our certifi-

cates we felt in duty bound to come here, be sworn in and participate in the deliberations of this council; and, as to the manner in which we have participated in the duties appertaining to us in this body, I will leave it for the consideration of the Convention to determine.

Mr. President, it is a source of sincere gratification to me to know that I have met with so many sincere friends in this Convention; to know that my associates have endeared themselves to many in this Convention. It is gratifying to all of us; and, on behalf of my associates and myself, I desire here to-night to extend our heartfelt thanks for the many marks of regard and esteem which have been shown toward us; and in particular, Mr. President, I desire to acknowledge most fervently the uniform kindness and courtesy which has been extended to us by the President of this Convention and by every officer belonging to the same.

Mr. President, I listened with a great deal of interest to the remarks of the member of the committee in making his report to-night; but I have not arisen in my place to argue this case on the merits. I am not here to-night for the purpose of creating factional feeling; I am not here to-night for the purpose of injecting political spleen and ill-will into the affairs of this body, which, I believe, in the language used by yourself, Mr. President, in the opening of this body, "should be above party sentiment and feeling as a body," and I fully believe that it is. But, Mr. President, on behalf of my associates and myself, I desire to say — and I say it with the utmost regret and the utmost respect — that we, the sitting members from the Sixth Senatorial District, cannot concur in the conclusion arrived at by the committee in this matter. We feel that the case is one in which inferences have been drawn by them, and that from those inferences they have arrived at conclusions of law instead of arriving at the conclusion of law from the facts of the case. But, nevertheless, Mr. President, there has been a unanimous report of this committee. I feel, and my colleagues feel, that we are blameless in this matter; that, if any wrong has been done, we are the victims of circumstances and not participators in any wrong; and we feel, inasmuch as this committee speaks for the whole body of the House, that we will bow to the decision rendered by this committee.

Mr. President, it is quite unnecessary for me to dwell longer upon this subject, but, in conclusion, permit me to say when we leave you to-night, which we, undoubtedly, will, we leave you with the kindest feelings, and with the sincere hope that all your efforts will be successful, and that when you end your days here as a Con-

stitutional Convention, your work will redound to your own honor and to the glory of the State of New York.

And, as to my friends who pledged me on this floor to jump into the arena, buckle on the armor and fight this issue as to whether we should be unseated or not, I release them from their pledge and leave the question to be decided as in the pleasure of the Convention may seem fitting.

Mr. Hirschberg — Were it not for a single purpose, which, it has occurred to me, might be appropriately subserved, I should not occupy any part of the attention of the Convention to-night in discussing the disposition of this report; and it has been so fully discussed by the chairman of the sub-committee on the facts in the case, that in what I have to say I will endeavor to be exceedingly brief.

The committee, in examining this case, have devoted to it considerable time; have listened patiently to every argument that has been advanced, and has made this unanimous report under the sense of duty resting upon them in discharging the responsibility which attaches to a decision that shall affect the right of five persons to seats in this Convention. The general reasons which have caused them to make a unanimous report have already been stated by my associate upon the committee. It is due to the committee, due to the Convention, due to the gentlemen who have been adjudged by the report not entitled to retain their seats here, that it should be said that this decision passes altogether upon the claim — and the decision in favor of that claim — that the fraud complained of was entirely that of the officials in the second election district of Gravesend, and is not at all chargeable to other parties. It is the inspectors of election, Democratic and alleged Republican alike, and to the local judiciary that the charge points, and it is against them, and them only, that any imputation is contained in the decision.

The town of Gravesend was divided into six districts in the spring of 1890. The census of the town was taken in 1892. That the division was correct, territorially, that it was correct, numerically, appears from the fact that while the entire population was found by that census to be 8,418, the population of the divisions into districts was as follows: That of the first district, 1,120; the second district, 1,603; the third district, 1,704; the fourth district, 1,501; the fifth district, 1,002, and the sixth district, 1,488. The Convention will, therefore, see that these districts had, as nearly as could be, the same number of inhabitants, men, women and children, the second district, the one in question, having 1,603 by that census. It has not been seriously contended before the com-

mittee that any growth of the permanent population has occurred since 1892, and there is abundance of evidence to show the contrary. There is, indeed, some evidence in the case that buildings at Coney Island, for the purpose of entertainment and concert halls during the summer, have increased during those years, as they have every year in the past; but that the actual population of the district, of the town, has increased beyond the normal has not seriously been contended or proven by anybody in the case. Now, the vote in the second district during the fall, in 1890, 1891, 1892 and 1893, was as follows: In 1890, 267, the entire vote for all purposes in that district at the general election in that year; in 1891, it was 571; in 1892, it was 1,094, and in 1893, 1,512. It has been stated that the large registry in the second district, 2,465, results from the fact that the old poll-list was copied. Bear in mind, that if the inspectors had copied the old poll-list and put down in 1893 the name of every man who voted the year before, whether dead or alive, they would have put down just 1,094 names. They added last fall in that district alone 1,370 odd names of alleged new voters and created a registry list which would have been equivalent in the city of New York to a registry of over two million voters. In other words, they placed upon the list nearly 900 names in excess of every man, woman and child in the district. Now, in the adjoining district, the fifth, the vote which, in 1890, was 117, was only 227 last fall. In the sixth district the vote was but 255, as against 1,512 in the second; and the difference in the population between the two districts scarcely exceeds 100. Now, reference has been made to the election of last spring, and it has been proven before the committee, by testimony not disputed, that that was an election conducted under circumstances of intense excitement, and that every vote was got out that could be. The witnesses united, those for the contestants and one for the contestee who was examined, in the statement that every vote was got out in the second district that could be got out; and that the election in the spring of 1894 was, indeed, hotly contested, and that the legitimate vote was got out is proven by the fact that in the sixth district, where 255 votes were cast last fall, there were 267 votes cast this spring, an increase of twelve. In the fifth district, where 227 votes were cast last fall, there were 212 votes cast this spring; where 370 votes were cast in the fourth district last fall, there were 358 votes cast this spring, but in the second district, where 1,512 votes were alleged to have been cast last fall, there were but 423 votes cast this spring. While other districts had either increased or at least kept up to the same vote that was cast at that time, this district in question has fallen

off about 1,100 votes. Now, Mr. President, I call attention to those few facts for the purpose of showing the Convention that even outside of the registry list and the poll-list, which the General Term in the Second Department last week said bore inherent and internal evidence of fabrication — if there were nothing before the committee, or before the Convention, but the population of the district and its vote during the past four years, the conclusion would be inevitable that the return was a return intended to falsify the fact, and that the voters could not have been there to cast the votes returned.

Now, Mr. President, the conflict between those who desired to inspect the election methods in Gravesend, and those who have been convicted of the fraud which is charged here, is too recent to require that any attention should be given to it again. It is a part of the political history of the State. Every well-informed man is familiar with its features. The public press every day devoted a large part of its columns to a statement of attempts that were made by scores of men going to Gravesend to endeavor to get a sight of these registry lists; that these attempts were made day after day; that they were frustrated by the officials; that men were hired to pretend to copy the lists; that an entire week went by, and that when election morn dawned all these persistent efforts had been rendered abortive — is too well known to require additional comment now; and that when resort was had to the law, its mandate was disregarded, and those who went to Gravesend under the sanction and protection of the process of the court were brutally assaulted and thrown in jail. In other words, fraud was assisted by violence and brutality, and so it chanced that this fraud was perpetrated, that it was enabled to be carried out, and that these seats of the five contestants in this Convention were taken from them.

There is one point that has been made here that I would desire to call attention to, and then I am through with any remarks upon the merits of the case, and that is the point that has been presented on the plea that, recognizing the fact that all the inspectors of election have pleaded guilty, recognizing the fact that Newton has been convicted, and Sutherland and McKane, that a conspiracy may have existed, that what they plead guilty to having done may have been done, yet the election itself may have been honest. Now, there is force in that suggestion. We can, perhaps, imagine a case where men, sworn officials, having a public duty to perform, may have formed a conspiracy to violate the law, disregard their oaths and permit false votes to be given and a fraudulent return to be rendered, and, yet, when the time came, not

have carried out the object of the conspiracy. My answer to that suggestion and to that argument is this, that, if but ten Republican votes existed in this district, it would be unlikely that the inspectors of election would have formed a conspiracy to capture them. If there were but ten votes for the one ticket, as against 1,502 for the other, why should the conspiracy have been entered into? The conclusion is irresistible that if there was a conspiracy, as is conceded, the return of the votes shows that the purposes of the conspiracy were carried out. Mr. President, there was but one conclusion for the committee to come to; there is but one conclusion for the Convention to come to. The courts have not been mistaken; the committee is not mistaken; that the conduct of the officials at Gravesend has every indication of a conspiracy and a crime, is borne out the more clearly the more light there is thrown upon the transaction.

Now, Mr. President, one word more. It is stated in the report that nothing in the evidence that was taken before this committee tends to implicate any of the contestees in the commission of any of the frauds referred to in the report. I desire to emphasize that statement with all the force that can be given to simple language. No such suggestion was made, no such evidence has been given, none has ever been heard. These gentlemen, during the time they have been here, have certainly comported themselves with tact and prudence and zeal in the discharge of the duties of their positions, and have borne themselves, under exceptionally trying and embarrassing circumstances, with the utmost circumspection. They have not opposed to the investigations of the committee an unnecessary obstacle; they have not been unduly captious, if at all; they have not made technical objections; they have sought in every way in their power to assist the committee in arriving at a just conclusion. I have no words of bitterness, of hostility, of humiliation — least of all, of partisan triumph — to utter at this hour, but only, with respect to those gentlemen, words of sympathy, of respect, of esteem, of regret. But, sir, I cannot help but feel that the discharge of a duty necessitates that such considerations, such personal considerations, should be disregarded, and that the action to be taken should be entirely limited and confined to a decision upon the single question as to who was or who was not elected. Believing that this report conveys the only honest and honorable conclusion which could be arrived at, I, therefore, second the motion which has been made, that the resolutions adopted by the committee be now adopted.

The President — In conformity with the precedent set in the case of the Erie district, the question will be put separately upon the first and then upon the second resolution.

The President then put the question on the first resolution presented by the Committee on Privileges and Elections, that Messrs. Riggs, Curran, Roderick, Mullen and Fitzgerald are not entitled, as delegates from the Sixth Senatorial District, to the seats now occupied by them in the Convention.

Mr. Alvord — This is the discharge of a high and solemn duty, one of the greatest prerogatives belonging to this body. Under the circumstances which surround it, I deem it my duty to call for the yeas and nays.

The call for the yeas and nays was sustained.

The President — In view of calling for the yeas and nays, shall the question be put upon the two resolutions combined? The Chair will read the second resolution.

"Resolved, That Messrs. Kinkel, Pashly, Deterling, Nostrand and Kurth are duly elected delegates from the Sixth Senatorial District, and are entitled to the seats in this Convention now occupied by the said James W. Riggs, Eugene A. Curran, George W. Roderick, William M. Mullen and Thomas W. Fitzgerald."

Is it the pleasure of the Convention that the vote be taken upon the two resolutions together?

Mr. McDonough — I move that.

The President then put the question upon voting upon the two resolutions combined, and it was determined in the affirmative.

The President then put the question on the adoption of the resolutions reported by the Committee on Privileges and Elections, as stated, and the Secretary proceeded to call the roll.

Mr. Blake — I ask to be excused from voting, and to give my reasons therefor. After having listened, Mr. President, to the very manly address of the gentleman upon my right, and the very touching and sympathetic and frank statement of the chairman of the Committee on Privileges and Elections, I should like to say a word. I think, sir, there is no gentleman in this Convention who does not regret the necessity that compelled this investigation. I think there is no gentleman here who does not believe that the Committee on Privileges and Elections, with great fidelity and zeal, with much of honest and conscientious endeavor, sought to find the very right and the truth of this matter, and the result has been read before us. I do not know in whose mind there may be doubt, but I think we

are all convinced that each member of the Committee on Privileges and Elections is assured, at least, that no other result could be reached than the conclusion arrived at by them. But, sir, I think, nevertheless, that this Convention is to be congratulated, and, most of all, the gentleman who made so admirable and feeling an address, and his colleagues, are to be congratulated at the very happy solution of this difficulty. I think all of us feel deeply pained at the parting at which we have arrived. For three months these gentlement have faithfully and zealously discharged their duties, and we have mingled and associated with them, and we have contracted friendships, which, I trust, will endure to the last breath of life; and now they go from our midst — because I can anticipate the verdict — they go from our midst, Mr. President, to-night with our sincerest regrets and our fondest adieus ringing in their ears; and they will bear back to their homes names untarnished and without stain or reproach, according to the report of this committee, and they will bear back, sir, what is more precious and priceless, the respect and the good-will and the admiration, and, I may add, the affection of every gentleman in this Convention; and, if it be appropriate in conclusion, Mr. President, I am sure I voice the sentiments of every person here to-night in wishing for each one of them the largest possible measure of success and prosperity in life; and, with these remarks, sir, I withdraw my request to be excused from voting, and vote aye.

Mr. Cochran — As the reasons for which I was excused from voting on the question in the case of the Buffalo seats still exist, I ask leave to be excused from voting now.

The President — Mr. Cochran asks to be excused inasmuch as he holds a contested seat.

The President then put the question on the request of Mr. Cochran to be excused, and he was excused.

Mr. Cookinham — Having, during all the session of this Convention, sat by the side of two of the gentlemen whose seats must be vacated, I regretfully, in fulfillment of the high duty which I am compelled to fulfil in voting to unseat these gentlemen, vote aye.

Mr. Towns — I ask to be excused from voting.

The President put the question on excusing Mr. Towns from voting, and he was so excused.

Mr. Van Denbergh — I ask to be excused from voting. Mr. Mullen, as a member of the committee of which I am chairman, has, by the display of great legal ability, by his wide general

intelligence, by his urbanity, by his gentlemanly deportment, by his manliness upon all occasions, greatly endeared himself to that committee, and we regretfully part with him, as it seems we must. In obedience, however, Mr. President, to a sense of duty imposed upon me by law, I must withdraw my request to be excused from voting, and vote aye.

The President — The President desires to be excused from voting, for the purpose of bearing his testimony to the uniform fidelity with which the gentlemen about to be removed from the Convention by this vote have discharged the duties of the office that they have held until now. As Mr. Mullen has well said, they are the innocent victims of the great crimes that were committed at Gravesend. At the same time the evidence presented by the committee is so overwhelming and complete that it is impossible to disregard it. I, therefore, withdraw my request to be excused from voting, and vote aye.

The report of the committee was agreed to by the following vote:

Ayes — Messrs. Abbott, Acker, Ackerly, Allaben, Alvord, Arnold, Baker, Banks, Barhite, Barnum, Barrow, Blake, Bowers, Brown, E. A., Burr, Campbell, Carter, Cassidy, Chipp, Jr., Clark, G. W., Clark, H. A., Coleman, Cookinham, Cornwell, Crimmins, Crosby, Davenport, Davies, Davis, Deady, Dean, Deyo, Dickey, Doty, Durfee, Emmet, Faber, Fields, Floyd, Forbes, Frank, Andrew, Fraser, Fuller, C. A., Fuller, O. A., Galinger, Gibney, Giegerich, Gilleran, Goeller, Green, A. H., Hawley, Hecker, Hedges, Herzberg, Hill, Hirschberg, Holls, Hottenroth, Jacobs, Johnson, I. Sam, Johnson, J., Johnston, Kellogg, Lester, Lewis, M. E., Lincoln, Lyon, Mantanye, McClure, McCurdy, McDonough, McLaughlin, C. B., Mereness, Moore, O'Brien, Osborn, Peck, Phipps, Platzek, Pool, Powell, Pratt, Putnam, Redman, Springweiler, Steele, A. B., Steele, W. H., Sullivan, T. A., Sullivan, W., Tekulsky, Titus, Tucker, Turner, Vedder, Veeder, Vogt, Wellington, Whitmyer, Wiggins, Woodward, President — 101.

Noes — Messrs. Green, J. I., McLaughlin, J. W., Speer — 3.

Mr. Alvord — Mr. President, I desire to offer a somewhat privileged resolution, and, with the consent of the Convention, I will precede it by a few remarks. I desire to indorse fully and heartily the expressions which have been given by various speakers upon the question of being excused from voting, including the honorable, the President of this Convention. I do, sir, regret that it has been necessary for this Convention at this stage of its proceedings, after most of us have begun almost to love those whom we are about

to part with, to be compelled to do what we have done to-night; but it is in the discharge of a high prerogative; it is in the discharge of a great duty which we owe to those in this State, and in this Convention — and I hope they are all good and true men in this Convention — who desire to see the ballot-box kept now and forever free and inaccessible to those who desire to destroy its influence. With these remarks, sir, hastily given, I desire to read in my place the resolution which I am about to offer:

R. 162.—" Resolved, That while the evidence contained in the unanimous report of the Committee on Privileges and Elections has compelled the Convention to conclude that Messrs. Riggs, Mullen, Curran, Roderick and Fitzgerald are not entitled to retain their seats in the Convention, we desire to put on record our convictions of the pure character of those gentlemen and of their faithful conduct as members of this Convention, and our personal regret at parting with them."

The President put the question on the resolution offered by Mr. Alvord, which was determined in the affirmative by a unanimous rising vote.

Mr. Hirschberg — Mr. President, in accordance with the expressions of good wishes which have been delivered by the several members, and in recognition of the fact that the gentlemen have occupied seats in this Convention during two-thirds of its stated time, I offer the following:

R. 163.— Resolved, That the privileges of the floor be extended to the gentlemen named in the last resolution by the Convention during the remainder of the session.

The President put the question on the motion of Mr. Hirschberg, which was determined in the affirmative.

The President — Are any of the gentlemen who have now been declared entitled to seats in the Convention, Messrs. Kinkel, Pashly, Deterling, Nostrand and Kurth, present with us? If so, they will come forward and be sworn.

Messrs. Pashly, Deterling and Kurth then came forward and were duly sworn.

The President announced the appointment of Joseph L. McEntee as correspondent for the " United Press."

Mr. H. A. Clark — I move that the Convention do now adjourn.

The President — The Secretary has a notice to announce before the motion to adjourn is put.

The Secretary announced that the Committee on Civil Service

would meet in the Senate Chamber at 9.30 o'clock to-morrow (Friday) morning.

The President then put the question on the motion to adjourn, which was determined in the affirmative.

Friday Morning, August 3, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber at the Capitol, Albany, N. Y., Friday morning, August 3, 1894.

President Choate called the Convention to order at ten o'clock.

The Rev. John Giffen offered prayer.

The reading of the Journal of yesterday was dispensed with.

The President — Members who were yesterday declared entitled to their seats are assigned to standing committees as follows:

Mr. Deterling, Charities, Banking and Insurance.

Mr. Pashly, Railroads and Contingent Expenses.

Mr. Kinkel, County, Town and Village Government and the Select Committee on Amendments.

Mr. Nostrand, Legislative Powers and Duties and Indians.

Mr. Kurth, Revision and Industrial Interests.

Memorials and petitions are in order.

The Chair has received a communication from citizens of Staten Island and New York, in respect to the protection of life, liberty and the pursuit of happiness.

Referred to the Committee on Preamble.

Are the other members whose right to seats were declared last night present to take the oath of office, or either of them?

Mr. Deyo is appointed on the Select Committee on Land Titles, in place of Mr. Riggs.

Notices, motions and resolutions are in order. The Secretary will call the districts.

Mr. Gibney — Mr. President, proposed amendment, printed No. 250, which at present is in the Committee on County, Town and Village Government should be referred to the Committee on County, Town and Village Officers, as it refers to the compensation of those parties. This amendment is introduced by myself, and I request that it be referred to the Committee on County, Town and Village Officers.

The President — Proposed amendment, printed No. 250, is, at the request of the gentleman who introduced it, referred to the Committee on County, Town and Village Officers.

Mr. I. Sam Johnson offered the following resolution:

Resolved, That the Sergeant-at-Arms be required to place all proposed amendments ordered to a third reading, when printed, on the files marked "Convention Resolutions."

Mr. Johnson — Mr. President, I make this suggestion because the files which are marked "Convention Resolutions" have not been used, and, probably, will not be used, and it will be much more convenient to have these proposed amendments, which have been ordered to a third reading, by themselves.

The President put the question on Mr. Johnson's resolution, and it was determined in the affirmative.

Mr. Doty — Mr. President, I observe that the proposition submitted by Mr. Gibney, printed No. 250, has just been referred to the Committee on County, Town and Village Officers.

The President — At his request it was so referred.

Mr. Doty — That submission raises, perhaps, a question of propriety. The amendment was originally submitted to the Committee on County, Town and Village Government, which had it under consideration and gave it very careful consideration and finally determined to report the proposition adversely, if reported at all. This change of reference seems to be an evasion of the rule which prevails in this Convention. After an amendment has been referred to one committee and considered by that committee, in effect, the opposition of that committee is sought to be evaded by reference to another committee. I do not know what suggestions to make, in reference to this, but it seems to me, Mr. President, that the effect of it is to impair the action of the committees to which the several propositions are referred.

The President — The question having been raised, it will have to be decided by the Convention. Proposed constitutional amendment No. 250 was referred originally to the Committee on County, Town and Village Government. Mr. Gibney, who introduced it, applied to the Chair this morning to refer it also to the Committee on County, Town and Village Officers. It now appears, from the statement of the Committee on County, Town and Village Government that have been considering it for a considerable time, and had, although not having so voted, been on the point of concluding

to report upon it adversely, and it has raised a question, which the Convention should decide, whether, under those circumstances, it could now be referred, at the suggestion of the gentleman who introduced it, to another committee, the Committee on County, Town and Village Officers. The Chair does not feel that it is the right of the President to make a reference of it under those circumstances, without a vote of the Convention.

Mr. C. B. McLaughlin — Mr. President, do I understand that such a motion has been made?

The President — Mr. Gibney has made such a request, and the Chair, not knowing of the difficulty, supposed there would be no objection to its going to the other committee.

Mr. C. B. McLaughlin — Mr. President, I sincerely hope that this request will not be granted. The proposed constitutional amendment referred to has been before the Committee on County, Town and Village Government. Mr. Gibney has had an opportunity to be fully heard upon that proposition. We have given it the most careful consideration. Every person who has desired to be heard upon it has been afforded an opportunity, and the committee have unanimously, I think — I am quite sure that the vote was unanimous — voted to reject it, and the vote was taken that if it was reported at all, it should be reported adversely. Mr. Gibney has made no request to that committee that it should be reported adversely, and to ask that this proposition should be referred to another committee is, to put it mildly, treating the committee, to which it was originally referred, discourteously. If that is to be the mode of procedure in this Convention, when will we ever succeed in reaching a conclusion upon any proposition? If he desires that the proposition should be presented to this body and discussed, why not ask the committee to report it adversely and meet the question squarely, instead of seeking to get it before another committee, upon which he knows, perhaps, that there are some members who are in favor of it. I sincerely hope that the Convention will vote down this motion.

Mr. Alvord — Mr. President, I desire to protest, and that most earnestly, against any such motion. The result inevitably will be that the President will be beset for that purpose. Each gentleman, who has an adverse report to any communication of his in any committee, will rise in his place and move it to another committee until he has run the gauntlet of the entire Convention. The duty of the committee is clearly defined in the rules, which require, upon the request of the party interested, that an adverse report shall

come before the Convention. All the remedy that he seeks in the premises can be obtained upon the floor of the House. Under all these circumstances, I do honestly move that this motion lie upon the table.

The President — The Chair will hope that the reference he made a few moments ago to another committee will not stand, but that it will come before the House. Mr. Alvord now moves that the motion to refer this amendment to the Committee on County, Town and Villages Officers lie upon the table.

Mr. C. B. McLaughlin — Mr. President, I would like to have Mr. Alvord withdraw that motion.

The President — Will Mr. Alvord withdraw the motion?

Mr. Alvord — I will not.

The President put the question on the motion of Mr. Alvord, and it was determined in the negative.

Mr. Gibney — Mr. President and gentlemen of the Convention, the reason why I made this request is very brief. I will first state that if you will look at page 26, in reference to committees and their duties, it says: "On counties, towns and villages, their organization, government and powers to consist of seventeen members," and then it follows on: "On county, town and village officers, other than judicial, their election or appointment, tenure of office, compensation, powers and duties, to consist of seventeen members." It seems when this proposition was first introduced, the President of this Convention referred it to the first committee. My proposition relates more specifically to the compensation of county officers. The matter of compensation is not in the jurisdiction at all of the committee to which it was referred, and, as a result, I was invited to appear before this second committee, and then was informed that it was before the other committee, and no later than last week, after appearing before this committee, as Mr. McLaughlin says I did, and was heard, I was invited to appear before the other committee again on this very same proposition. They said it was within their jurisdiction, and, if gentlemen will read this proposed amendment, they will see that it relates to the powers of boards of supervisors, amending section 23 of article 3 of the Constitution, and among their powers is this power of fixing the compensation of county, town and village officers. You will see, gentlemen, then, that I am right in proffering this request that my amendment should be referred to this committee, so as to enable me to go before that committee, which has entire jurisdiction of amendments fixing the compensation of county officers. The committee of which Mr.

McLaughlin is chairman has no jurisdiction at all when the matter of compensation is concerned.

Another consideration is that several of the gentlemen of the committee to which I ask that it be now referred wish it to go to that committee, in order to determine some part of it which refers to their committee, namely, the amending of section 23 of article 3 of the Constitution, the section I desire to amend, because I have incorporated in my amendment the very identical section of the Constitution as it now stands, with the additional provision that they may fix the compensation of town and county officers. You will see, Mr. President, that I have acted in good faith in this matter. I appeared before both of the committees on two different occasions, but was only allowed to address one of them. I know nothing about this adverse report. I have had no notice of it. I do not know how the committee stands, but I do know that, looking at the rules here, that the proposition belongs to the committee I wish to have it referred to and where there is no question that the jurisdiction of that committee includes this matter referred to in my amendment. Several members of that committee wish me to appear before it, as they think it pertains to their powers and duties.

Mr. Mereness — Mr. President, this amendment is one that proposes to confer upon boards of supervisors of counties full power, in reference to fixing the salary of all officers in the county. Mr. Gibney appeared before the Committee on County, Town and Village Government and made his argument, and it would seem as though that was a waiver of any right, which he thinks he now has, to have the matter considered by some other committee. The matter was thoroughly discussed in the Committee on County, Town and Village Government, and I think the chairman will remember that the proposition was amended in committee, and then, by a vote of seven in favor and nine opposed, the committee agreed to report the proposition, if at all, adversely, so that the matter was put in a proper shape to be passed upon. I think Mr. Gibney's remedy is sufficient to ask that the adverse report be presented to the Convention, and thus the whole matter comes before the Convention and may be sent to the Committee of the Whole. It seems to me that it is trifling with the business of this Convention that a matter can be acted upon in one committee in one way, and then that the mover can come in and ask that it be sent around to the various committees of the body. For that reason I think the proposition to send it to the other committee should be voted down. I now move the previous question.

Mr. C. B. McLaughlin — Will the gentleman withdraw his motion just a moment?

Mr. Mereness — I withdraw it for Mr. McLaughlin.

Mr. C. B. McLaughlin — Mr. President, I want to add to what I said a moment ago that this proposition in no view could possibly go to the Committee on County, Town and Village Officers. It relates simply to the power of the board of supervisors to fix compensation, not the compensation itself, but the power of the board of supervisors, and the only proper place for that amendment is in the committee to which it was originally referred, and I sincerely hope, as I said before, that the proposition to snake it out of this committee and put it in another committee, simply because the committee has voted on it in an adverse way, will be voted down. If Mr. Gibney wants to, he can have his amendment considered in Committee of the Whole.

Mr. Gibney — Mr. President, I call the gentleman to order in using the word "sneak."

Mr. C. B. McLaughlin — I want to correct the gentleman. I did not use the word "sneak." I said "snake."

Mr. Gibney — Either one is objectionable; it doesn't make any difference.

Mr. C. B. McLaughlin — The gentleman can have his choice, if he wants to.

Mr. Bowers — I would like to inquire when the vote was taken upon it in the committee?

Mr. C. B. McLaughlin — Something like ten days ago. We took a vote upon that and decided, if we reported it at all, to report it adversely.

Mr. Bowers — Was the introducer notified of the fact?

Mr. Gibney — No, sir; I was not.

Mr. Mereness — If I may be permitted to answer the question, I would state that I informed Mr. Gibney a week ago that the committee had acted upon the proposition adversely and that his remedy was to bring it before the Committee of the Whole.

Mr. Gibney — Mr. President, this matter is so mixed up that I thought it was only right that I should be granted this request, and, therefore, I made it as I did this morning.

Mr. Mantanye — Mr. President, in this matter, it seems to me, there is something more to be considered than its reference. There should be proper action by the Convention and by the proper

committee. Now, I do not see that it is any discourtesy to the committee to which it has been referred and which has partially acted upon it, or concluded to act upon it, to take it from that committee and refer it also to some other committee. There are several of these proposed amendments, some portions of which relate to the duties of one committee and other portions to the duties of other committees. Now, as to this proposition, which I have read carefully, it seems to me that it relates not only to the compensation of the county and town officers, either elected or appointed, but provides also that the compensation shall not be increased or diminished. It relates entirely to compensation by boards of supervisors. Now, I will say this: That the Committee on County, Town and Village Officers know nothing about this particular matter, except as they have seen it on their files. We have, however, before us other propositions for constitutional amendment which bear upon the same question as provided in this proposed constitutional amendment, and, in order to give us full power over these matters and a fair consideration of all of them, it seems to me that this proposed amendment should also be referred to that committee. We found, upon looking over the files, that there were two other amendments there which had been referred to the Committee on County and Town Organization, and which provide as to who shall be county officers, and, in some respects, provided for their compensation. They came exactly in line with other proposed amendments which had been referred to the Committee on County, Town and Village Officers. We have passed a resolution — I do not know whether it has been introduced yet or not — asking that they also be referred to our Committee on County, Town and Village Officers, to enable us to act on them. Under these rules the Committee on County, Town and Village Government should only consider matters pertaining to their organization and powers, whereas the other committee, the Committee on County, Town and Village Officers, is to consider matters relating to their election or appointment, tenure of office, compensation, powers and duties. The description is somewhat similar, but any proposition that applies to who shall be the county or town officers, or compensation of them, seems to me to belong to the Committee on County, Town and Village Officers; or, at least, they have the right to consider them, even if they were referred to other committees. Now, we have several propositions which we do not consider properly before us, and we have asked to have them considered by other committees. We did not consider that we were shirking our duty. We did not consider that we were insulted in

any way. I can't see any harm in their being referred to some other committee, if the gentlemen who introduce them, or if the committees, wish it.

Mr. Dean — Mr. President, I think we have had sufficient information upon this question to know how to vote on it, and I, therefore, move the previous question.

The President put the question whether the main question should be put, and it was determined in the affirmative.

The President — This amendment was properly referred to the Committee on County, Town and Village Government, because it provides only in respect to the powers of boards of supervisors, and contains a provision that the Legislature shall enact by general laws, from time to time, what further powers of local legislation and administration the said boards of supervisors shall exercise and possess.

The President put the question on the motion of Mr. Gibney, to refer proposed amendment No. 250 to the Committee on County, Town and Village Officers, and it was determined in the negative.

The President — The Convention will understand that hereafter any application for further reference of any amendment must be made on the floor, to be acted upon by the Convention, either on the application of the introducer or on the application of some committee. Reports of standing committees are in order. The Secretary will call the list of committees.

The Secretary proceeded with the call of committees.

Mr. Vedder, from the Committee on Legislative Powers and Duties, to which was referred the amendment introduced by Mr. Titus (introductory No. 276), entitled "Proposed constitutional amendment, to amend the Constitution by providing for local option in the sale of spirituous, malt or intoxicating liquors or beverages, making a new section," reported adversely thereo, which report is made to the Convention by request of Mr. Titus.

Mr. Titus — Mr. President, I would ask the Secretary to read the amendment.

The Secretary read the amendment.

Mr. Titus — Mr. President, in introducing this amendment I did so at the request of different parties from all parts of the State, not alone of people who are engaged in the sale of liquors, but also of temperance people throughout the State. They thought this amendment would give each and every city and neighborhood the right to judge for itself what it wanted, that every year they

would not be annoyed by the Legislature passing different acts and changing them again the next year, and have a man in Buffalo regulating the palate of the man in New York, or a man in New York regulating the palate of the man in Buffalo. This amendment, I consider, is fully within the principle of home rule for cities. This Convention has said so much about and claimed to do so much for home rule in cities, and I think there is no measure that affects cities more than the one that is presented here to-day. Mr. President, I will leave it to the gentlemen of the Convention to pass upon it, and I call for the ayes and noes.

Mr. Maybee — Mr. President, in order that the members of the Convention may understand the purport of this proposed amendment, I simply desire to state that one effect will be, in the city of New York, if they desire there to keep every saloon open all day Sunday and during the entire hours of the night, they would have the liberty under this proposed amendment. I am opposed to such a proposition and I hope the adverse report will be agreed to.

Mr. Cassidy — Mr. President, I move the previous question.

The President put the question as to whether the main question shall now be put, and it was determined in the affirmative.

Mr. Titus's call for the ayes and noes was supported.

The Secretary proceeded with the roll call.

Mr. Becker — Mr. President, I ask to be excused from voting, and will briefly state my reasons. I have always believed that the liquor traffic was a matter for local regulation and that the portions of the State which pay taxes for the support of local institutions which are necessitated, in part at least by that traffic, should have sole voice in regulating the traffic. Nearly ten years ago I assisted in preparing a resolution which contained this principle and which was brought before a State convention of a political party, and it was known as the Brodsky resolution, to be incorporated in the platform adopted at that convention. I have never, from that day to this, failed to entertain the same views. I, therefore, wish to withdraw my request to be excused, and vote in the negative.

Mr. Forbes — Mr. President, I wish to ask what the effect will be of voting no; whether it will send this matter to the Committee of the Whole or not?

The President — If the report of this committee, adverse to the amendment, is disagreed to, it goes to the Committee of the Whole.

Mr. Forbes — I vote no.

Mr. I. Sam Johnson — Mr. President, I ask to be excused from voting, and will briefly state my reasons. I am not in favor of the proposition as presented by the mover, Mr. Titus, but I am in favor, and decidedly in favor, of local option substantially in the form which it now exists in this State. I believe that every community should have an opportunity of determining the question in some way, whether liquor should be sold in a particular locality, and it is because I think this matter may be so changed in the Committee of the Whole that it will embody these views, that I withdraw my request to be excused from voting, and vote no.

Mr. Smith — Mr. President, I ask to be excused from voting, and will state my reasons. I believe the right of self-government to be a natural right. (Applause and laughter.) That, as respects the individual, it means the right to control his own conduct in all things pertaining to himself and to keep from trespassing upon the rights of others. That, as respects the individual in his relations with the State, it means the right to unite with the other members of the community in making the rules or laws pertaining to the affairs of the State. That, in respect to localities, it means the right to unite with the other members in making the rules affecting the locality. It signifies the right of home rule for cities and counties. I withdraw my request to be excused, and vote no.

Mr. Tekulsky — Mr. President, I desire to be excused from voting, and will briefly state my reasons. I intended to have something to say on this matter, but Mr. Cassidy shut us off a little bit and did not give the members here an opportunity to understand the full meaning of this proposition. It has amused me greatly to see gentlemen voting here to sustain the report of the committee without really knowing what they are doing. I claim that the majority of the gentlemen who have voted aye on agreeing with this report, are, year after year, advocating the very thing that this committee reports against, and that it is that there shall be local option and that every locality shall be the judge of its own affairs. It is used here in this Convention as a home-rule measure. Every year, in the country villages and towns, at every election, they vote upon this very proposition; a great many of them carry the districts in favor and a great many do not. Now, in this amendment, as proposed, every locality has the right to regulate the sale of intoxicating liquors in their own locality, and it will do this. It will get rid of forty or fifty boards of excise in counties where there are no cities, and that is a blessing to those localities, because in those localities, as a rule, when the commissioner of excise is up for election they sacrifice everything else for that com-

missioner of excise. I, therefore, desire to withdraw my excuse from voting, and vote no.

Mr. Vedder — Mr. President, I am astonished that so intelligent a gentleman as Mr. Tekulsky should have read this proposed amendment and not understood it thoroughly. There is not any local option in it nor is there a particle of home rule in it. It does not even give to the board of supervisors, and it does not give to the cities of this State, any power to say whether or not any liquor shall be sold in the county or city. It simply gives them the poor privilege of fixing the price at which it shall be sold. Pass this constitutional provision and there is no power in the State that can prevent the sale of liquor in any locality. It absolutely destroys local option. It absolutely destroys this noble principle that he speaks of, called "home rule." All that the people of these localities can possibly do is to regulate or fix the price first, and, secondly, they may regulate it, as between the hours it can be sold, and that is all. There is no power by which liquor can be prevented from being sold under it. There is no home rule about it or local option about it. It is liquor forced upon us all over the State, whether we want it or not, and it is strange to me that the gentlemen from the great cities of the State who are clamoring, day in and day out, for home rule insist upon home rule for their cities and deny home rule to the country places. I withdraw my request to be excused from voting, and vote aye.

Mr. Bigelow — Mr. President, I voted under an erroneous impression, and I would like to have my vote changed from no to aye.

The President — The Secretary will record Mr. Bigelow in the affirmative.

The President announced that the report had been agreed to by a vote of 86 ayes, 50 noes.

The following is the vote in detail:

Ayes — Messrs. Abbott, Acker, Ackerly, Alvord, Arnold, Baker, Banks, Barhite, Barnum, Barrow, Bigelow, Brown, E. R., Cady, Carter, Cassidy, Chipp, Jr., Church, Clark, G. W., Clark, H. A., Cookinham, Countryman, Crosby, Davies, Davis, Deady, Dean, Deterling, Dickey, Doty, Durfee, Floyd, Foote, Fraser, Fuller, C. A., Fuller, O. A., Gilbert, Hamlin, Hawley, Hedges, Hill, Holls, Jacobs, Kellogg, Kimmey, Kurth, Lester, Lewis, C. H., Lincoln, Lyon, Manley, Mantanye, Marshall, Maybee, McArthur, McCurdy, McDonough, McIntyre, McKinstry, McLaughlin, C. B., Mereness, Moore, Morton, O'Brien, Osborn, Parker, Parkhurst, Parmenter,

Peck, Phipps, Pool, Pratt, Putnam, Rogers, Root, Schumaker, Spencer, Steele, A. B., Steele, W. H., Storm, Sullivan, T. A., Turner, Vedder, Wellington, Whitmyer, Wiggins, Woodward, President — 87.

Noes — Messrs. Becker, Blake, Bowers, Burr, Bush, Campbell, Cochran, Coleman, Danforth, Davenport, Emmet, Forbes, Frank, Andrew, Galinger, Gibney, Giegerich, Gilleran, Goeller, Green, A. H., Green, J. I., Griswold, Hecker, Herzberg, Hottenroth, Johnson, I. Sam, Johnston, Kerwin, Lewis, M. E., Marks, McLaughlin, J. W., Meyenborg, Nicoll, Ohmeis, Peabody, Platzek, Redmond, Sandford, Smith, Speer, Springweiler, Sullivan, W., Tekulsky, Titus, Towns, Truax, C. H., Truax, C. S., Tucker, Veeder, Vogt, Williams — 50.

Mr. Griswold — Mr. President, I wish to change my vote from no to aye. I voted under a wrong impression.

Mr. A. H. Green — Mr. President, I wish also to change my vote from the negative to the affirmative.

The President — The Chair is of the opinion that after the vote has been announced it is too late, although the gentlemen's request may be noted upon the Record.

Mr. Vedder, from the Committee on Legislative Powers and Duties, to which was referred the proposed constitutional amendment introduced by Mr. McKinstry (introductory No. 90), entitled "Proposed constitutional amendment to amend article 3 of the Constitution, in regard to taking saloons out of politics," reports in favor of the passage of the same, with some amendments.

The Secretary read the amendments.

The President — Referred to the Committee of the Whole.

Mr. Vedder, from the same committee, to which was referred the proposed constitutional amendment introduced by Mr. McMillan (introductory No. 2), entitled "Proposed constitutional amendment to amend section 16 of article 3 of the Constitution of the State of New York, relative to legislation," reports in favor of the passage of the same, with some amendments.

The Secretary read the amendments.

Mr. Vedder — Mr. President, as read by the Secretary, that is not the bill that we agreed to report. I ask that it be returned to the committee to correct the phraseology.

The President — At the request of the chairman of the committee, this amendment is referred back to the committee for correction.

Mr. Vedder, from the same committee, to which was referred the proposed constitutional amendment introduced by Mr. J. Johnson (introductory No. 212), entitled "Proposed constitutional amendment to amend the Constitution in relation to the title of bills," reports in favor of the passage of the same, with some amendments.

The Secretary read the amendments.

The President — Referred to the Committee of the Whole.

Mr. Vedder, from the same committee, to which was referred the amendment introduced by Mr. Barhite (introductory No. 120), entitled "Proposed constitutional amendment to amend section 6 of article 1 of the Constitution, giving the Legislature power to pass certain laws," reports in favor of the passage of the same, with some amendments.

The Secretary read the amendments.

The President — Referred to the Committee of the Whole.

Mr. Vedder, from the same committee, to which was referred the proposed constitutional amendment introduced by Mr. Roche (introductory No. 146), entitled "Proposed constitutional amendment to amend section 13 of article 3 of the Constitution, as to the passage of bills by the Legislature," reports in favor of the passage of the same, with some amendments.

The Secretary read the amendments.

Mr. Vedder — I respectfully dissent from the report of the committee upon the last proposed amendment, and desire that my dissent shall be entered upon the Journal.

The President — Referred to the Committee of the Whole.

Mr. Vedder, from the same committee, to which was referred the proposed constitutional amendment introduced by Mr. Becker (introductory No. 215), entitled "Proposed constitutional amendment to amend the Constitution in relation to grants," reports in favor of the passage of the same, with some amendments.

The Secretary read the amendments.

The President — Referred to the Committee of the Whole.

Mr. Acker, from the Committee on Finance and Taxation, to which was referred the resolution, No. 161, introduced by Mr. I. S. Johnson, entitled "a resolution requesting the commissioner of taxes and assessments of the city of New York to furnish a statement of the condition of the several trust companies of that city, showing the gross assets," etc., reports in favor of the passage of the same, with some amendments.

The Secretary read the amendments.

Mr. Acker — I move the adoption of the report.

The President put the question on the motion to adopt the report, and it was adopted.

Mr. Acker, from the same committee, to which was referred the resolution (No. 158) introduced by Mr. I. S. Johnson, entitled "a resolution requiring the Superintendent of Banks to furnish information concerning the condition of trust companies, their capital, surplus, resources, amount of profit and dividends," reports in favor of the passage of the same, with some amendments, and moves its adoption.

The Secretary read the amendments.

The President put the motion to adopt the report, and it was adopted.

Mr. Hawley, from the Committee on Corporations, reported as follows:

To the Convention:

Your Committee on Corporations, having had under consideration proposed constitutional amendment No. 322 (introductory No. 314), introduced by Mr. Tucker, entitled "Proposed constitutional amendment to amend section 2 of article 8 of the Constitution, to require payment of wages weekly to employes of corporations, and better to secure the same," and having reached a determination adverse thereto; and, your committee having thereafter been requested, in writing, by Mr. Tucker, to report its adverse determination, does, in obedience to such request, now report adversely thereto.

CHARLES A. HAWLEY,
Chairman Committee on Corporations.

Dated *August 2*, 1894.

The Secretary read the amendment.

Mr. Cochran — I see that Mr. Tucker is absent from his seat, and I, therefore, move that that report lie upon the table until he has an opportunity to be heard.

The President put the motion and it was carried.

Mr. Hawley, from the Committee on Corporations, to which was referred the proposed constitutional amendment introduced by Mr. Tucker (introductory No. 360), reports adversely thereto. The report is accompanied by a report from Mr. E. R. Brown, from the Select Committee on Further Amendments, to which was referred

the proposed constitutional amendment by Mr. Ticker (introductory No. 360), entitled "Proposed amendment to provide for the construction, etc., by the State of public works," hereby transmits the same, in accordance with rule 73, to the Committee on Railroads, for its information, the said amendments having been found to relate to subjects already under consideration by the Committee on Railroads, and it was referred also to the Committee on Corporations.

Mr. Hawley — I do not think Mr. Tucker desires to be heard upon this —

The President — Mr. Tucker has just come in. Mr. Tucker, have you anything to say on this subject?

Mr. Tucker — No, sir.

The President put the question on the adoption of this report of the Committee on Corporations, and it was adopted.

The President — As Mr. Tucker is now present, may we not have the other report, which was laid on the table, taken up?

Mr. Tucker — I move to take from the table the report, introductory No. 314.

The Presirent put the motion, and the report referred to was taken from the table.

The President — The question is now upon agreeing to the adverse report of the committee on that amendment.

The President put the question, and the report of the committee was adopted.

Mr. McDonough, from the Committee on State Prisons, etc., to which was referred the proposed constitutional amendment introduced by Mr. McDonough (introductory No. 117), entitled "Proposed constitutional amendment to amend article 3 of the Constitution, by adding a section to provide for the occupation and employment of prisoners in State prisons," etc., reports in favor of the passage of the same, with some amendments.

The Secretary read the amendments.

The President — Referred to the Committee of the Whole.

Mr. McDonough, from the same committee, to which was referred the proposed constitutional amendment introduced by Mr. Blake (introductory No. 201), entitled "Proposed constitutional amendment to amend section 5 of article 1 of the Constitution, providing for the abolition of the death penalty," reports adversely thereto.

Mr. Blake — Mr. President, I move that the Convention disagree

with the report of the committee, and I respectfully request that the hearing on the same be postponed until next Wednesday morning.

The President put the question on this motion, and it was carried.

Mr. McDonough, from the same committee, to which was referred the proposed constitutional amendment introduced by Mr. Tucker, (introductory No. 264), entitled "Proposed constitutional amendment to amend the Constitution by adding to the first article thereof a new section relating to the punishment of inmates of prisons," etc., reports adversely thereto.

The President put the question on the adverse report of the committee, and it was adopted.

Mr. Dean — I move to reconsider the vote, Mr. President, by which the adverse report of the Committee on Suffrage, on proposition No. 21, was agreed to. My object in doing this is simply that there are some matters contained in that proposition which I may desire at a future time to call up, and this will leave it within the control of the Convention, and I, therefore, move to lay this motion on the table.

Mr. Cookinham — Mr. President, I hope that motion will not prevail.

Mr. Dean — Mr. President, my motion is not debatable.

The President — The motion to lay on the table is not debatable. We may as well dispose of that now.

The President put the question on the motion to lay on the table, and it was lost.

The President — The question is now upon the motion to reconsider.

Mr. Cookinham — As was stated by the chairman of this committee, by an agreement, certain of these proposed amendments were to be presented to the Convention. They were presented, according to that agreement. An arrangement was made that the argument should take place upon certain other amendments. Speaking now for the committee, I say that no arrangement would have been made with the other side, if it had not been supposed that when they came into the Convention the agreement would be kept in good faith and the discussion should be entirely upon the two propositions which now are before the Convention for the purpose of discussion.

And this is the reason. This committee has heard from forty to sixty speeches upon this subject. I think the committee is well prepared to say that if each one of these amendments is to be

presented to this Convention, and a discussion shall be had upon each one of them, we shall be here until snow flies before this subject is disposed of. I have been requested to vote to reconsider other amendments that are in the same condition as Mr. Dean's, and should this motion prevail, immediately, in my judgment, some other delegate, who desires to have his amendment discussed in Committee of the Whole, will also rise and make a similar motion. I, therefore, hope the motion of the gentleman will not prevail.

Mr. Dean — Mr. President, there is no effort at anything like discrediting this committee in this matter. There is no agreement, so far as I know, between the committee and anybody who pretends to represent "the other side," as he terms people; but the question is simply to save out some proposed amendments in addition to the question of women's suffrage.

Mr. Alvord — Mr. President, I desire to say to the gentleman who has made this motion that there is no difficulty in getting at the matter which he desires by way of amendment to the propositions which are ordered to the Committee of the Whole. There is no need of making it a separate and distinct matter, and I, therefore, hope his motion to reconsider will not prevail.

Mr. Lincoln — Mr. President, as I understand the situation there is nothing sent to the Committee of the Whole. The committee's adverse report upon Mr. Tucker's amendment is a special order for Wednesday evening. Now, I suppose that in the discussion of the question, on agreeing or disagreeing to that report, no amendment can be suggested.

The President — Nothing has been sent to the Committee of the Whole. The subject has simply been made a special order for next Wednesday evening.

Mr. Lincoln — I labored under a misapprehension yesterday when I permitted some amendments of mine to be buried, by agreeing to the adverse report of the committee. They are amendments upon which I have not been invited to be heard before the Committee on Suffrage. I should like to present my views to this Convention, not having had the opportunity to present them to the committee, upon No. 108 and No. 110. If I had not supposed that this whole matter was coming up in such a shape that the whole subject would be presented together, I should have raised that question when these matters were up before. It, therefore, seems to me that under the circumstances this motion of Mr. Dean's ought to prevail.

The President — The gentleman must have heard the very

explicit statement of the chairman of the Committee on Suffrage as to the agreement that was made in regard to those reports.

Mr. Lincoln — I did not hear all he said.

Mr. Platzek — Mr. President, I am very glad to have the opportunity to extend the same courtesy, with which he has favored us so often, to Mr. Dean, and I, therefore, move the previous question.

Mr. Cookinham — The object, Mr. President, is not to stifle debate in the slightest degree. It is not to shut out any amendment. It is not to prevent Mr. Dean or Mr. Lincoln or any other gentleman from talking all they choose, because the Committee on Suffrage will report an amendment to the Constitution covering the subject of suffrage entirely, and at that time that report will be sent to the Committee of the Whole, and in the Committee of the Whole Mr. Dean and Mr. Lincoln may offer their amendments as amendments to our reported amendment, and they may have their entire discussion then. Now, should this motion prevail, we will have a discussion first upon Mr. Dean's amendment. Then he will offer it again in Committee of the Whole, and we will have a second discussion upon it.

Mr. Dean — May I ask the gentleman a question?

Mr. Cookinham — Certainly, sir.

Mr. Dean — I simply desire to know whether this proposed suffrage article is to be reported within a reasonable time?

Mr. Cookinham — I answer the gentleman that, in my judgment, it will be reported within two days.

Mr. Dean — Then I withdraw my motion.

The President — Very well.

Mr. E. R. Brown, from the Select Committee on Further Amendments, to which was referred the proposed constitutional amendment, introduced by Mr. Roche (introductory No. 370), entitled "Proposed amendment to the Constitution for the abolition of tolls and making public roads free," reports that, in his opinion, the same ought to be printed and referred under rule 32.

The President put the question, and the report was agreed to.

Mr. E. R. Brown, from the same committee, to which was referred the proposed constitutional amendment, introduced by Mr. Hedges (introductory No. 371), entitled "Proposed constitutional amendment to amend article 2 of the Constitution, relating to the method of electing public officers," reports that the same has been found to relate to a subject already under consideration by the

Committee on Suffrage, and it has, therefore been transmitted, without printing, directly to said committee for its information, under rule 73.

The President — I do not think this report requires any action by the Convention.

Mr. E. R. Brown, from the same committee, to which was referred the proposed constitutional amendment, introduced by Mr. Forbes, (introductory No. 373), entitled "Proposed constitutional amendment to amend article 3 by adding a new section," reports that the same has been found to relate to subjects under consideration by the Committee on Charities, and it has gone to that committee under the operation of rule 73.

The President — Will the chairman of the Select Committee aid the Chair in deciding how this report on the proposed amendment for the abolition of tolls and making public roads free, shall be referred?

Mr. E. R. Brown — As that was not a matter for the consideration of our committee, and inasmuch as we directed it to be printed, we left it to the discretion of the Chair.

The President — It is referred to the Committee on Legislative Powers and Duties.

Mr. E. R. Brown, from the same committee, to which was referred the proposed constitutional amendment introduced by Mr. A. H. Green (introductory No. 372), to provide a State insurance fund for the aged, reports that that relates to a subject under consideration by the Committee on Banking and Insurance, and that it has been transmitted to that committee under the operation of rule 73.

The President — That requires no action on the part of the Convention.

Mr. Gilbert, from the Select Committee on Civil Service, to which was referred the proposed constitutional amendment, introduced by Mr. H. A. Clark (introductory No. 206), entitled "Proposed amendment to amend the Constitution, relative to the civil service, State and city," reports in favor of the passage of the same, with some amendments.

The Secretary read the amendments.

The President — Referred to the Committee of the Whole.

Mr. Platzek — Mr. President, I ask unanimous consent, on behalf of Mr. Deyo, that he be excused from attendance to-day on account of a necessary engagement.

The President put the question, and the request was granted.

Leave of absence was also asked for the day on behalf of Mr. Lauterbach, and it was granted.

Mr. C. H. Truax asked and obtained leave of absence for next week.

Mr. Herzberg asked and was granted leave of absence for Tuesday and Wednesday of next week.

Mr. Danforth asked and was granted leave of absence for Tuesday and Wednesday of next week.

Mr. Deady asked and was granted leave of absence for Tuesday and Wednesday of next week.

Mr. Hamlin asked and was granted leave of absence for Tuesday and Wednesday of next week.

Mr. Cady — Mr. President, I move that the Convention do now adjourn.

The President put the question, and the motion was carried.

The Convention thereupon adjourned to Tuesday, August 7, 1894, at 10 A. M.

Tuesday, August 7, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber in the Capitol at Albany, N. Y., August 7, 1894, at 10 o'clock in the morning.

President Choate called the Convention to order.

The Rev. Lyman Edwin Davis offered prayer.

Messrs. Kinkle and Nostrand, delegates from the second district, took the oath of office.

Mr. O'Brien moved that the reading of the Journal of Friday, August 3, 1894, be dispensed with.

The President put the question on the motion of Mr. O'Brien, and it was determined in the affirmative.

Mr. A. B. Steele — Mr. President, it is my painful duty to announce that, since the last session of this Convention, one of my colleagues from the Twentieth Senatorial District, the Hon. Walter L. Van Denbergh, has died. I, therefore, now move that a committee of three be appointed by the Chair, to draft suitable resolutions for presentment to this Convention at the present session.

The President put the question on the motion of Mr. Steele, and it was determined in the affirmative.

The President appointed as such committee, Mr. A. B. Steele, Mr. Francis and Mr. Hawley.

Mr. Holls — Mr. President, I have just received a telegram from Mr. Towns, stating that he is detained on imperative business, and asking to be excused from attendance on the Convention to-day. I move that he be so excused.

The President put the question on the request of Mr. Towns to be excused from attendance, and he was so excused.

Mr. C. B. McLaughlin — Mr. President, I have received a telegram from Mr. McArthur, saying that sickness in his family will prevent his being here to-day and to-morrow, and asking to be excused for that time.

The President put the question on the request of Mr. McArthur to be excused from attendance, and he was so excused.

The President stated that a dispatch had been received from Mr. Holcomb, of New York, asking to be excused from attendance to-day in order to attend the funeral of a near friend.

The President put the question on the request of Mr. Holcomb to be excused from attendance, and he was so excused.

The President stated that a letter had been received from Mr. A. H. Green, of New York, expressing doubt whether he would be able to attend the Convention to-day by reason of the state of his health, and asking to be excused.

The President put the question on the request of Mr. Green to be excused from attendance, and he was so excused.

Mr. Goeller — Mr. President, I beg to be excused from attendance to-morrow and Thursday, owing to an urgent engagement.

The President put the question on the request of Mr. Goeller to be excused from attendance, and he was so excused.

Mr. McIntyre — Mr. President, I ask that Mr. Whitmyer be excused from attendance to-day.

The President put the question on the request of Mr. Whitmyer to be excused from attendance, and he was so excused.

Mr. Arnold — Mr. President, I ask to be excused from the evening session to-day.

The President put the question on the request of Mr. Arnold to be excused from attendance, and he was so excused.

Mr. Storm — Mr. President, with a great deal of regret on my part, I must ask to be excused from attendance on Thursday and Friday next.

The President put the question on the request of Mr. Storm to be excused from attendance, and he was so excused.

Mr. Cookinham — Mr. President, I ask that Mr. Gilbert be excused from attendance to-day. He is detained by important business.

The President put the question on the request of Mr. Gilbert to be excused from attendance, and he was so excused.

Mr. Vedder — Mr. President, I am compelled by reason of business at home to-morrow and next day, to ask to be excused for those two days.

The President put the question on the request of Mr. Vedder to be excused from attendance, and he was so excused.

The President announced the order of general orders.

The Secretary called general order No. 6, introduced by Mr. Alvord, to amend section 7 of article 7, relating to salt springs.

General order No. 7 was not moved.

The Secretary called general order No. 5, being the report of the Special Committee on Transfer of Land Titles.

General order No. 5 was not moved.

The Secretary called general order No. 7, introduced by Mr. Holls.

Mr. Holls — Mr. President, by request of a number of gentlemen, who wish a little more time for preparation to speak upon this question, and also by reason of notice of the Committee on Cities that they desire this morning's session, I have concluded not to move general order No. 7 this morning; but I would beg leave to state further that if gentlemen who propose to speak against the proposed amendment would communicate with me, I would try to move it at a time that is most convenient to all concerned.

General order No. 7 was not moved.

The Secretary called general order No. 14, to amend article 3 of the Constitution, relating to public officers, introduced by Mr. Mereness.

General order No. 14 was not moved.

The Secretary called general order No. 16, to amend article 3, section 10, introduced by Mr. Vedder.

General order No. 16 was not moved.

The Secretary called general order No. 8, introduced by Mr. Lauterbach, to amend article 2 of the Constitution, relative to suffrage.

General order No. 8 was not moved.

The Secretary called general order No. 13, relating to home rule for cities.

Mr. J. Johnson — Mr. President, I move you, sir, that the Convention go into Committee of the Whole on general order No. 13.

The President put the question on the motion of Mr. Johnson, and it was determined in the affirmative, whereupon the Convention resolved itself into Committee of the Whole, and Mr. I. S. Johnson took the chair.

The Chairman — The Convention is now in Committee of the Whole on general order No. 13, relating to home rule for cities, and the Secretary will read the amendment by sections.

The Secretary read section 1 of the proposed amendment as follows:

Section 1. The Legislature shall pass general laws for incorporating new cities. Every city shall have a mayor, who shall be its chief executive, with such power as may be provided by law; his term of office shall be two years. Every city shall have a common council, which shall consist of one or two bodies, to be elected with or without cumulative voting, or proportionate or minority representation, and with such legislative powers as may be provided by law.

Mr. Johnson — Mr. Chairman, since this article was reported, there have been two or three suggestions brought to the attention of the committee which will relieve the article from possible ambiguity. I, therefore, offer an amendment merely to correct the article.

The Secretary read the amendment as follows:

On page 1, line 8, after the word "such" and before the word "legislative," insert the word "municipal," so that it will read "such municipal legislative powers," etc.

The Chairman put the question on the adoption of the amendment proposed by Mr. Johnson, and it was determined in the affirmative.

Mr. Veeder — Mr. Chairman, it occurs to me that the word "new" in line 3 is unnecessary. An article incorporating cities must necessarily apply to cities which are unincorporated.

Mr. Johnson — Mr. Chairman, I believe there are other amendments which have been offered and which are before the House at the present time.

The Chairman — The committee is acting only upon section 1 of the proposed amendment.

Mr. Veeder — Mr. Chairman, there is only one amendment offered, and that is adopted. I move to strike out the word "new" in line 3, preceding the word "cities."

Mr. Johnson — Mr. Chairman, I object to that on the ground that it is out of order. My objection is this, that the entire article is now before the Committee of the Whole; amendments have been offered to two different sections, and are now before the House, only one having been acted upon, and that until those amendments are acted on no other amendment is in order. I would say, Mr. Chairman, that it is the wish of the Committee on Cities, and they believe that it will greatly aid the discussion, to discuss the entire article, and not discuss it by sections.

Mr. Veeder — Mr. Chairman, I understood that we were still upon section 1.

The Chairman — The Chair holds that section 1 must first be disposed of.

Mr. Veeder — Mr. Chairman, are we not still considering section 1?

The Chairman — The committee are still considering section 1. After the several sections have been acted upon, then the entire proposed amendment will be considered.

Mr. Veeder — I do not understand how the gentleman's point of order can be put if we are still under section 1, and considering section 1.

The Chairman — The Chair does not sustain the point of order. The Chair decides that the point of order is not well taken.

Mr. Choate — Mr. Chairman, I move that the entire amendment, as proposed by the Committee on Cities, be read through, in accordance with rule 27 which provides that the entire amendment shall be first read through if the committee so direct. It appears to me to be impossible that any one section shall be considered intelligently unless the whole be under consideration by the committee; and I, therefore, move that the entire amendment be read through.

The Chairman put the question on the motion of Mr. Choate, and it was determined in the affirmative.

The Secretary read the entire proposed amendment as follows:

Proposed constitutional amendment to provide home rule for cities.

The Delegates of the People of the State of New York, in Convention assembled, do propose as follows:

ARTICLE —.

SECTION 1. The Legislature shall pass general laws for incorporating new cities. Every city shall have a mayor, who shall be its chief executive, with such powers as may be provided by law; his term of office shall be two years. Every city shall have a common council, which shall consist of one or two bodies, to be elected with or without cumulative voting, or proportionate or minority representation, and with such municipal legislative powers as may be provided by law.

Sec. 2. All elections of city officers in all cities, and of county officers in the counties of New York and Kings, and in all counties whose boundaries are the same as those of a city, except to fill vacancies, shall be on Tuesday succeeding the first Monday in November in an odd numbered year, and the term of every such officer shall expire at the end of some odd numbered year. The terms of office of all such officers elected before the first day of January, one thousand eight hundred and ninety-five, which as now provided, will expire with an even numbered year, or in and before the end of an odd numbered year, are extended to and including the thirty-first day of December following such expiration; those which, as now provided, will expire in an even numbered year, and before the end thereof, are shortened so as to expire at the end of the year preceding such expiration. The term city officers, as used in this section, includes all officers elected for a municipal purpose in any part or division of a city, all supervisors elected in a city or part of a city, and all judicial officers of inferior jurisdiction.

Sec. 3. All cities of the State are classified as follows: The first class shall consist of cities of fifty thousand population or upwards, or cities that may hereafter have that population according to the then last State enumeration; the second class shall consist of all other cities. Laws relating to all cities of the same class are general city laws. Except as permitted by section four, the Legislature shall not pass any law relating to cities, except a general law, or a general city law, as to any of the following subjects: 1, streets and highways, but this section shall not apply to bridges or tunnels across the Hudson river below Waterford, or across the East river, or across waters which form a part of the boundary of any city, or to approaches to any such bridge; 2, parks and public places; 3, sewers

and water-works; 4, the character and structure of buildings as to safety and security; city apparatus and force for preventing and extinguishing fires; 5, salaries of city officers and employes; 6, ward boundaries; 7, vacating, reducing or postponing any tax or assessment; 8, membership and constituent parts of the common council; 9, the powers and duties of the common council or any city officer, as to the subjects hereinbefore enumerated. But the Legislature is not prohibited from passing laws affecting the jurisdiction or power of any city as to such subjects, so far as it is to be exercised outside of the boundaries of such city.

Sec. 4. Laws may be passed affecting one or more of the subjects enumerated in the last preceding section, in any city, on the consent of the mayor, or the mayor and common council, given as hereinafter provided. The enacting clause of such acts shall be, "The People of the State of New York, represented in Senate and Assembly, and by and with the consent of the (here insert the words, 'mayor of,' or, 'mayor and common council of,' as is required for the city to be affected, and the name of the city), do enact as follows." After any bill with such an enacting clause has been presented to the Governor, and before he shall act thereon, there shall be twenty days in which, as to any city of five hundred thousand inhabitants or over, according to the then last State enumeration, the mayor of the city named in the title of the bill may consent thereto; and in which, as to any other city, the mayor and common council thereof may consent thereto, but no such consent shall be given until after five days' notice by publication in the newspapers designated to publish city notices, stating the title of the bill in full, and that the city officers here designated for such city are considering the question of consenting thereto. After such consent is given and presented to the governor, he shall have the same power as to such bill and the same time to act thereon as he has as to other bills. The legislature may also pass laws as to any city, affecting one or more of such subjects, to take effect on the consent of a majority of the electors thereof voting thereon, expressed at a general or special election, as may be provided by the Legislature, not less than thirty days after the passage of the act.

Sec. 5. No law shall be passed conferring the power to appoint the head of the police force of any city on any city officer, except the mayor, or the mayor with the consent of the common council. The Governor may remove the commissioners, superintendent or other head of the police force of any city for cause, upon charges preferred before him; a copy of such charges shall be served upon the official sought to be removed, and an opportunity afforded him

to be heard in his defense. Upon such removal the Governor may appoint the successor of the officer or officers so removed, to hold office until the expiration of the term of office of the mayor of such city holding office at the time such charges are preferred.

Sec. 6. For the purpose of securing fair elections, equal majority and minority representation shall be provided in all election boards and officers of cities, and no law shall be passed impairing such equality of representation, so far as it is or at any time may be provided by law. For the purpose of securing such equality, laws may be passed providing for the election of majority and minority State election commissioners equal in number, by a vote of the members of the two branches of the Legislature convened in joint session, each member of the Legislature being allowed to vote for but one-half of such commissioners; and the members of the Legislature of one political party shall, in no case, elect more than half of such commissioners. The Legislature may devolve on such majority and minority commissioners respectively, power to appoint city election commissioners, or other election officers of any city; provided, however, that such majority and minority commissioners shall appoint an equal number, and the persons appointed by the majority and minority shall have, in all respects, equal power, and appoint an equal number of election officers for election districts and otherwise.

Sec. 7. Nothing in this article contained shall limit or affect the power of the Legislature to consolidate contiguous cities, or annex contiguous territory to any city, or to make or provide for making a charter for any city created by such consolidation; but after the charter of any city, created by such consolidation, shall have become a law, such city, and the charter and laws relating thereto, shall be subject to all the provisions of this article.

Except as expressly limited, the power of the Legislature as to cities, their officers and government, and as to any district created by law, and containing a city, or to provide for the removal of the mayor of any city, remains unimpaired; but such removal shall only be for cause and after a hearing.

Mr. J. Johnson — Mr. Chairman, I now renew the two amendments which are unacted upon, which are on the desk of the Secretary. I believe they are now in order.

The Chairman — The Secretary will read the second amendment.

The Secretary read the amendment as follows:

Line 1, page 2, after the word "class" insert "and laws relating to all cities of one class and one or more cities of the other class." In line 23, page 2, strike out the words "a general law or."

Mr. Johnson — Mr. Chairman, I believe that is all of the amendment. The reasons for that amendment I will briefly state. The restriction on the Legislature to the passage of general city laws or general laws as made by the committee was intended to be quite broad. It was suggested, and I think there is much force in the suggestion, that as it now stands the entire purpose of the amendment might be defeated by laws that were general in phrase, but special in application — for instance, a law relating to cities of over a million and a half of population. Therefore, the purpose of the amendment is to allow a general city law, which refers to cities of one entire class, to include one or more cities of another class; so that a general city law, while it must embrace all the cities of one class, may be yet broader and take in one or more cities of another class. That being done, giving a larger definition to the term "general city law" — a definition which, we believe, it is impossible to evade — the provision as to passing general laws, which has been most liberally construed by the courts, we ask may be stricken out. We ask this, Mr. Chairman, to perfect the thought of the committee. If unwise, we think it will fully appear at a later discussion.

The Chairman put the question on the adoption of the amendment proposed by Mr. J. Johnson, and it was determined in the affirmative.

The Chairman — The amendment is adopted, and the Secretary will read the next amendment.

The Secretary read the amendment as follows:

In line 18, page 3, strike out all of line 18 after word "Assembly." Strike out all of lines 19 and 20 and the word "city" in line 21, and insert in lieu thereof "for the city of." Here insert the name of the city to be affected, so that the sentence shall read "the enacting clause of such acts shall be: 'The People of the State of New York, represented in Senate and Assembly for the cities of'" here insert the name of the city to be affected — "do enact as follows."

Mr. J. Johnson — Mr. Chairman, the effect of that is merely to change and shorten the wording of the proposed new enacting clause. It does not change it in any respect whatever except to shorten it, and to strike out the provision as to the consent of the cities, which is perhaps not proper in an enacting clause.

The Chairman put the question on the adoption of the amendment, and it was determined in the affirmative.

Mr. Johnson — Mr. Chairman, I now desire to present to the Convention a few thoughts of the Committee on Cities in relation

to this entire article. By reference to rule 27, the entire article is now before the committee.

The Chairman — Mr. Veeder offered an amendment if it is insisted upon.

Mr. Veeder — I withdraw it. I do not want to do anything not in harmony with the gentleman at all and I withdraw the amendment.

Mr. J. Johnson — I am, of course, greatly indebted to the gentleman from Brooklyn (Mr. Veeder).

Mr. Hotchkiss — Mr. Chairman, I have no desire to throw any discord into the proceedings which have been suggested by the Chairman, but would it be impertinent for me to ask in what manner the gentleman is addressing the House. There are certain parliamentary forms which have been adopted by this body, none of which I believe have been so far observed.

Mr. Johnson — Mr. Chairman, I understand the article is before the committee for consideration. If it it not, I will resort to the parliamentary expedient of moving to strike out the enacting clause of the first section. I do not deem, however, that to be necessary.

Mr. Mulqueen — On that I move the previous question.

Mr. Johnson — I insist I am in order without that motion. If it is deemed otherwise I shall make the motion.

Mr. Bowers — We do no understand the ruling of the Chair. Does Mr. Johnson move to strike out the enacting clause?

The Chairman — Mr. Johnson moves to strike out the enacting clause.

Mr. Bowers — Is there any objection to his motion prevailing?

Mr. Johnson — Mr. Chairman, I believe I have the floor.

The Chairman — Mr. Johnson has the floor and will proceed.

Mr. Johnson — The question that is presented by this proposed article on cities is of such importance, that it seems very proper that the Committee on Cities should present to the Convention the views of the committee under which it was framed. But before entering particularly on that, I desire to call the attention of the Convention to the form of the two reports which have been made. The article before you is the report of the majority of a committee. It covers a very important branch of the business which comes before this Convention. The minority making objections failed to present any other article or any other proposition whatever. The result is that

this is not a question, at least for the present, between any one, or two or three matters now presented to this committee, but it is a question as to whether the article presented is better than the present Constitution. The committee in presenting their article presented a full report of the views which had impressed them in framing the article. That report is before the committee as Document No. 33, and also the objections of the minority report of the committee. We ask, and I think the entire committee would be pleased, if the statement of reasons which were then presented may be fully read and considered and made a part of the thought of this Convention in passing upon this important subject. The outstanding fact, which impressed the committee, was the great and growing populations of our cities. With the dominant fact that sixty-one per cent of the population of the State is in cities, with the other great fact that nearly one-third of the population of the State is in a single city, with the further fact that, under legislation now proposed for the Greater New York, populations actually contiguous and in every way related may be joined in a municipality under a single administration, embracing three millions of people, with every promise and expectation of growth, with the further fact that one-half the population of the State is in the city lines and the surrounding urban territories which lie south of the northerly portion of Yonkers, your committee approached this subject with the belief not only of the great importance, but of the very considerable difficulty of framing any satisfactory proposition. We must not forget that we stand here legislating, in theory at least, for twenty years to come. In those twenty years the great aggregation of people in cities, which is the marvel of the century, under the further growth and further impulsion from economic causes, will acquire a still larger preponderance, and will present tests of our system of popular representative government, for the aid of which the best, the most considerate thoughts and the highest patriotism are imperatively required. At the outset was presented the question which seems to be in the minds of many — in the press, in the literature of the day — the question of "home rule" as to cities. Before approaching that it is altogether necessary that a definition of that word should be given. What mean we by "home rule," speaking in a Convention that enacts supreme law and sits not again for twenty years? Obviously, we mean constitutional home rule, so far as it is given; home rule guaranteed by the supreme and unchangeable law of the State. We must not forget that under the present system, under the present Constitution, enacted in 1847, there is the possibility, the potentiality of conferring on cities the entire conduct of

their home affairs. Legislative home rule is within the power of the present Constitution in all its entirety, and with all the possibilities that could be put into the Constitution; that is home rule by the will of the Legislature, the action of sovereignty of the State. But realizing that with that power and possibility it is not accomplished, either actually or within the hope and wish of people; when we approach it from the side of the Constitution we then are impressed with the thought that so far as any degree of home rule is guaranteed to the cities, it is guaranteed as against the power of the Legislature. Let us never forget that. The problem which is presented, is the problem of giving some degree of municipal independence to the magnificent and growing cities that are the diadem of our State, without dismembering the sovereignty of the State. Whatever we give here we give to remain, as firmly vested in the city, as is the sovereignty of the State in the State. We must not go too far; nor, in the judgment of the committee, may we halt until something has been done in that direction. The only proposition, other than the one now presented before you, which came from any member of this committee, and is printed in the overtures or propositions for amendment, was the proposition offered by the gentleman from Albany, that no private or local law should be passed as to the affairs of any city, and that every law was to be a private or local law unless it affected alike every city. In the judgment of some members of your committee, at least, that would have been in some degree dismemberment of the sovereignty of the State.

Having then stated briefly as I am able, the definition of constitutional home rule, I proceed to the necessity for it, I shall not here repeat what has been said on that subject by our committee in Document 33. The controlling factors of the situation are these, that the cities can no longer look to the government of the State for government, for not only do they dominate the State and the Legislature, and dominate the election of the executive, but one of the cities elects nearly one-third of the Legislature, and if the Greater New York is established, that city alone will have nearly one-half the Legislature. It is impossible when cities dominate the State in population, when they are the greater portion of the State, to provide or to imagine any method for preserving better government, for ennobling citizenship, for obtaining the best results that should be had in this great State without the direct, the positive, the permanent appeal and demand to the patriotism, the intelligence, the civic virtue of the citizens of these great cities.

Face to face we stand to-day with the proposition that the good government of the State of New York, whether you come to Albany or go to the cities themselves is dependent very largely in the result of government in those cities.

With that preliminary statement, I will now refer to the second article we propose. It is the article which was first discussed in the report which I have referred to. That article, in brief, in part provides that elections in cities shall be separated from elections on State and national matters. I am permitted by Senator McMillan, chairman of the Committee on State Officers, to say, that that committee will report a provision making the terms of State officers such that they may be elected on the even years. I understand that there are many — I do not know precisely how the committee stand on legislative organization — who believe that a similar provision can be made as to the election of Senators and Assemblymen. That being done, the federal elections being already in the even years, the odd-numbered years are mainly clear in cities, and altogether in cities that have the same boundaries as counties, which include the two largest. The cities then are cleared in the odd-numbered years from all questions for determination at the polls in November, except the question as to who shall govern the municipality.

Mr. Chairman, it hardly seems necessary to say much on this subject. The minority of the committee, in the report which they present, make no objection whatever to that proposition; and that proposition, I think, in another form, has been endorsed repeatedly by the unanimous vote of the Committee on Cities. So, that the proposition to give the cities the odd years for elections, so far as the Committee on Cities can act, comes before you with unanimous approval. But it is perhaps not improper to say a single word in support of the general proposition, why that is wise. We separate into parties on questions of policies which we can state, and on which minds may well and fairly do differ. They are questions of policy of government and foreign policy, questions of tariff and of the great affairs of the nation on which people do differ and always have differed. But when you approach the affairs of cities, Mr. Chairman, the question is not of policy in the main; it is a question of right and due administration. It is a question of efficient, honest and capable administration. There is no question of policy considered between the parties. I doubt whether it would be possible in all the municipal contests that have arisen in the last five years in cities, to write a definition of the differences in what they claim. It is a question there not of measures, but of men and men to execute, and men to administer and men to perform the great trusts imposed.

What magnitude do these questions assume? The revenues of New York are thirty-six millions per annum. The revenues of Brooklyn with those of New York would approach fifty millions per annum. The revenues of the government of the United States prior to 1860, the entire nation with its army and its navy and its pension list, the nation that furnished the combatants on both sides for the gigantic war of 1860, were but sixty millions. So, that we have questions of the administration, and disbursements of sums of money, approaching the revenue of the nation when it had reached the noon prime of 1860, and out-numbering many times its revenues of but a few years before. Your committee have thought that, if you are to devolve upon cities the great question of who shall best administer those trusts, it is necessary, it certainly is proper, that you should leave it to the cities to determine, unembarrassed by other questions, and at a time when the issue of tariff or financial policy, or of domestic or foreign questions is not before the people. Therefore, the committee have unanimously agreed upon that article.

I then desire to refer to section 6 which is on a cognate subject. The purpose of that amendment I do not think is altogether understood. It is stated in objection that the purpose of the amendment is to have a State commission as to elections and in some way to have a supervision by State officials which has not existed before. That is not the purpose, but it is an incident of the proposition. The purpose, the fundamental purpose, of that proposition is to have at every poll at election, whenever a vote is registered, whenever a vote is cast, whenever a vote is counted and whenever a vote is certified, to have there representatives of the two parties in actual antagonism to each other. That is the purpose. The thought of the Committee on Cities is this: that there is no way, at least in these times, of being sure that the vote is properly counted unless it is that persons, equal in power, representing the opposed elements at the election count it. That is the pivotal thought. It is asking no more for elections than is asked for every trial of skill, for every proposition of any kind in the affairs of life, that the deciding power shall be neutral. As it is impossible to secure a neutral power the only other way is that the power shall be equally divided between the parties in opposition.

Mr. McDonough — I would like to ask the gentleman a question.

Mr. Johnson — I would be very glad to answer it.

Mr. McDonough — How long do these commissioners hold position?

Mr. Johnson — That is not deemed a constitutional matter, and it is not intended to make any provision as to that.

Mr. McDonough — Why not have the Legislature fix the term?

Mr. Johnson — The Legislature will fix the term. It is a power that will devolve upon the Legislature. The further proposition we make is this, that these election officers, representing the parties in opposition, must hold their place by an appointment derived from those parties themselves. I have no confidence in a proposition which says that the vote shall be counted by one Democrat and one Republican, or two Democrats and two Republicans, if they are all appointed by the same side and by the same political party. There is nothing better established than that it is a decoy, a false light, to say that your election officers shall be divided between the parties, unless they are appointed from or by some one in sympathy with the respective parties. To say that in all the great cities, or either of our great cities, there is no one bad enough in either the Democratic or Republican side, to accept an appointment from the opposite party, intending to sell our his own party, is simply absurd.

The counters at Gravesend were Republican and Democratic in theory and name. They were traitors, alike and equally to honest election and to the cause of the people. I need not go further. I think you will find that wherever any great fraud has been perpetrated at elections, it is because, in some way or other, the check which comes from opposing elements had utterly failed. And, so we say that we want, not what I would call bi-partisan boards of election. That name does not give the entire significance. I would want double boards of election, emanating from independent appointing power. There, I believe, you will find safety; safety not only for the votes of the parties from which they come, but for the votes of all parties cast, because, so long as they are in honest opposition, combination is impossible, and every vote, whoever for, must be counted. Now, sir, I am not aware, and, perhaps, I shall do my friends on the committee who did not sign this report, injustice to suggest that on the principle of having the two parties represented at the court by their own appointees, they are in opposition. I understand by the minority report that some portion, at least, of their objection is based on the theory that it should go beyond cities. Whether that is so or not is not for this time or for the committee that presented the report. The proposition of a fair count by opposed parties I think every member of this Convention will stand upon.

Now, gentlemen of the Convention, if we have agreed on that proposition, if we stand together on that platform, I have but this to say, that the Committee on Cities diligently and earnestly sought, to find an appointing power in which it was certain that the minority would always be adequately represented. We could find it nowhere but in the Legislature. If gentlemen of the minority, if any one here will suggest any other point in the whole fabric of government, from the lowest round of officialism in the cities to the highest round in the Capitol, where it is certain that you will always find such a power resident, that the minority can be represented, our difference, then, is a matter of detail and not of principle. But, if you accept our principle until you can find some other way to carry it out, we insist that you must accept the detail of the proposition. We thought to leave it to the minority candidate. At the very early days of the Convention a proposition was introduced looking to have minority election commissioners. There are difficulties about that which seem insurmountable in making a Constitution; minority candidates may die. It might happen that the Governor would go out of office and the Lieutenant-Governor take his place and the acting Governor and the minority candidate for Governor would be from the same party, and there the principle would fail. We thought of going into the cities, to the minority candidates for mayor. There is the same difficulty, and we gain nothing. We thought of going to the common council. That would entirely reject the principle for which we seek. I believe that the common council of New York is almost unanimously of one party. Last year the common council of Brooklyn stood fifteen to four in the relation of party. This year it stands fifteen to four exactly the other way. And, so, if you allow the appointment by common council, the majority this year could unite and have all the election officers emanate from Republican sources, as last year they might have united and had all the election officers emanate from Democratic sources. There you sacrifice your principle instantly. But, looking at the Legislature, we have its well-known history, that hardly ever, I think never for a generation, never within my knowledge, has it happened that the majority and minority parties were so unequally divided that an election, each voting for one-half, would not give the minority absolute protection and absolute representation. The proposition of the committee is not that there must be State election commissioners. The proposition of the committee is that there must be minority and majority counters appointed by the majority and minority. If you can get them in the city outside the State,

get them there; if you can secure them by election at the polls, get them there. If you can get them anywhere, get them, but the mandate of the proposed Constitution is that you must secure it for the voters of cities, and it makes a way, which, probably, was not constitutional before, an added way by which it may be certainly accomplished.

Mr. Chairman, I would add another word to the thought which I was presenting. Take the city of Brooklyn; I use it as an illustration. Many years ago a law was passed devolving on the mayor, comptroller and auditor the power to appoint the election commissioners, and the provision was that any one of the minority party could appoint one-half of the commissioners, and that worked well for many years. That carried out the spirit of the law for many years, until finally all those offices became of one party.

Now, the condition has returned, and an appointment in that way would give full and adequate minority representation under the appointment of the minority; and a law of that kind, as to Brooklyn, there being more than one party in control of the government, would not only be adequate, but would carry out the provision of the proposed Constitution in its entirety. In New York, I apprehend, it could not be done by the action of any public official, although I am not fully advised. But, whether it can or not, we point out a way to which resort may be had.

The suggestion is made that it may be in the minds of some to leave the Governor to make these appointments. That becomes partisan, and partisan in the source of power. If you leave it to the Governor, you must leave it to the minority candidate for Governor. If you are with us in the proposition that it is right to have elections protected in that way, go with us with the lantern of your thoughts and find a place where else, than as the article proposes, you can secure this great result.

Mr. Chairman, the view of the Committee on Cities is this, that, if something salutary, something permanent, something that will give absolute confidence to the voters can be carried into the election; if the great truth can be told from this body, that city affairs are not State affairs, and that their votes shall be counted, you have advanced very far on the road which we all may tread together towards solving the problem of lifting the cities to a higher and a more perfect function in the business of the State.

Mr. Chairman, having discussed those two propositions, I will refer to the provision as to police.

Mr. Choate — Mr. Chairman, before Mr. Johnson leaves that subject, as this seems to me to be one that we should all be informed

about on every point, I would like to ask him a question, which, if he is prepared, he may answer, and that is, why, if it is regarded as an absolute conclusion that this power must be lodged in the Legislature alone, and that the passage of laws for the purpose of securing this equality of representation is an absolute necessity, why the committee leave it optional with the Legislature to pass such laws or not, as they please, and why they do not make it mandatory upon the Legislature, if it is such a necessity as they consider? I observe that the language is studiously used in the sixth line at page four, and in the tenth line of the same page, making it only permissive with the Legislature to carry this scheme into effect.

Mr. Johnson — Mr. Chairman, I am very much obliged to our honored President for the suggestion which brings my thought to that point, and I wish to say here now that in the breadth of courtesy of this discussion, which, I am sure, will not be abused, I shall be glad to be interrupted by any delegate at seasonable times by suggestions or questions as to any matter to which I may allude.

The question asked by the President reveals to me that I have not quite fully conveyed the thought that I intended to convey in this presentation. The first thought that I intended to convey is in the first sentence at the top of page five of this article, "for the purpose of securing fair elections, equal majority and minority representations shall be provided in all election boards and officers of cities." That is mandatory; you shall have equal representation. Then comes the provision that where you have taken a step in that direction anything which puts that step backward, so that you are not as far advanced as before, is unconstitutional. The mandatory part is that you shall have it in some way or other, and, if you have ever secured it, you may change the form, but, if you take away that which secures it without providing something else, your legislation is unconstitutional, because you impair the principle.

Now, following along, speaking for illustration in relation to Brooklyn, a law that the mayor should appoint one part of the commissioners, the half which is of one party, and that the comptroller and auditor should appoint the other part, would comply with the mandate of this law at the present time, because it would now secure it, these officials being of different parties. A provision in Brooklyn that the election commissioners for the city should be elected on ballot, each party voting for but one-half, would secure it, because the majority party is not double the minority. A provision that they could be elected in certain election districts of the city would not secure it, because the majority party

would be quite able to split their vote and yet have both sets of candidates outrun the minority. That would not accomplish it. We understand that that was one of the difficulties that existed in the Thirteenth Ward in Troy, where the disturbance took place and the crime occurred at the spring election. One thing may accomplish it here and another there. It is made the duty of the Legislature to accomplish it, leaving them to say how it shall be done. But, says the Constitution, with this mandate we give you one new power, one new source of power, one added way, and, we say, that if you go to the Legislature and have a law passed, and leave it to the Legislature to elect two or more State commissioners, each member of the Legislature voting for only one-half, that they shall then stand as the representatives for this purpose of the majority and the minority; and that being done wherever it cannot otherwise be done, or in every case, as the Legislature may direct, they can then devolve upon these State officers the power of appointing election commissioners for any city. It is entirely a necessary provision, because without it, it is probable that that power would not exist in the Legislature, for two reasons: First, there is a question as to minority voting under the present Constitution, and, second, as to the power of the Legislature to appoint State officers who can exercise municipal functions. It is a necessary provision to provide a way recognized by the Constitution that will always be adequate.

Now, it is said, or at least it may be said, that this is the State interfering in elections. I shall discuss a little later the question of the State in the matter; but, if the burden of interference from the State is so just, so equitable, so fair, that all that is accomplished is that the same degree of fairness and security, which all men say should exist in every contest, from a baseball match to a yacht race, if the burden of the State is nothing more, then that burden is light and easy to bear.

Now, Mr. Chairman, there is another question that occurs to my mind. Some people say, why not say the majority and minority party, as represented on the vote for Governor? I do not think that is wise, and I will state why. The purpose of this act is not to distribute patronage. It is to make fair counting. And, if these cities divided into municipal parties, aside from State parties for the elections in the odd years, I can see that this would be carried out, were it divided between the majority and minority municipal parties. At any rate, it is not desirable, unless necessary to bring into the Constitution the question of parties.

Mr. Chairman, I will now pass to the question of police, referred to in section 5. The majority of the committee do not understand that the minority of the committee make or signify in their report any objection to this section. This part of the article has been much discussed and much debated, and we do not understand that in the schedule of objections they have said anything against this section.

The first thought suggested by the proposition is this: It is already secured by the Constitution that the appointment of the officers of police shall emanate from the cities, and the first provision is that the Legislature shall never again pass an act, such as was passed, in reference to Buffalo, taking from the mayor, who was elected to make the appointments of police commissioners, the power so to do, and conferring it upon subordinate officers who had obtained office without any thought of that. Such an appointment, sir, while it may bear the name of home rule and may be within the catalogue or definition of being done by the city, we think is a false token which should be expunged from the possibilities of legislation, and I assume that there is no difference upon that point. We then come to the single other provision, the power of the Governor to suspend the police commissioner and to appoint his successor. Assuming that the gentlemen of the committee have read the report of the Committee on Cities, we simply say that it follows the analogy as to sheriffs, the great peace officers of the State, at the time of the Convention of 1846. It simply finds another office or class of officials that have grown up and supplanted, in great measure, the sheriffs, and we say the rule that applies to sheriffs should apply to police officers. To show the committee how fully it is the fact that the power of the police officers was practically hardly fully known, hardly a matter of general and common thought in 1846, I purpose to call the attention of the committee to chapter 315 of the Laws of 1844. Of course, it is within the minds of all that New York was an old city, founded at the settlement of the colonies, and that its growth had been very large from the beginning. In the census preceding the Convention of 1846, it had a population, if I mistake not, of 371,000, much greater in proportion to other cities, relatively, I think, than it is now, and this is the law which was enacted in 1844. I will read the first section:

"An act for the appointment and regulation of the police of the city of New York." I cannot find, sir, in the index to the statutes the word "police," except as applying to police justices, at an earlier date than this.

I read from the act of 1844:

"Section 1. The watch department, as at present organized, is hereby abolished, together with the offices of marshals, street inspectors, health-wardens, fire-wardens, dock masters, lamp lighters, bell ringers, day police officers, Sunday officers, inspectors of pawn brokers," etc. "In lieu of the watch department and the various officers mentioned in the foregoing section there shall be established a day and night police."

I read that act to show that in New York, up to one year before the election of those delegates, the police was not known as an independent power, as it exists to-day, and I have searched, with considerable diligence, in the statutes relating to other cities, and have not been able to find that, in any other city, prior to the Constitution of 1846, there was a police force, so called. The charter, under which Brooklyn was organized, provided for a night watch, or a night and fire watch, and, I am told by citizens of Albany, that they remember well when the police was organized here, long since 1846. The sheriffs of the State were the police officers of the whole State and of the cities of the State in 1846, except of New York city; and in New York city, while power had been conferred on a police newly organized, in common thought and understanding, the office of sheriff retained its significance as the great peace officer of the State. In 1845 there was an act passed conferring very large powers on sheriffs as police officers. But the authorities all agree that the power of a sheriff to preserve the peace is inherent, original, and has, I think, always existed in the office under the common law. And so, when the Constitution said that the sheriff, the peace officer of the State, might be removed, they established a great principle and riveted it in the forefront of our supreme law. There was an omission, an exception, the police officer; the exception has grown with the growth of cities for forty-eight years, until the exception has seemed to supplant the principle. But the principle remains. It was accepted by the Governor, and all honor to him for it, when he removed the sheriff of Erie county, since we have been sitting in Convention, for wrong as a peace officer. Will the gentlemen recommend that when our seats here are vacant, and another body gathers here and in the other chamber, and they pass a law forbidding crime, making home and hearth and life safer, will gentlemen say that they may pass it, and print it in our books and pay for it, and then when the justice of the State is thus formulated, that the law "Thou shalt not kill," "Thou shalt not bear false witness," "Thou shalt not burn or maim"— will they say that the supreme mandate of the State halts on the border of

any county? Will they say that it is with any locality, whether it will respect that law or not?

Martin I. Townsend, forty-eight years ago — and you will find it in the fourth volume of the Convention Debates — spoke upon this subject grandly and well. He said: "I owe the State allegiance. The State owes me protection." Have we no rights here in Albany? We are here in a beautiful city, with all that courtesy and kindness and good government, so far as I know, can do to make it comfortable and attractive to this Convention. But, supposing it were otherwise. Have we no quarrel with the State, if we are here as sojourners, if life or property were insecure? Are not the words of Martin I. Townsend correct, that the State owes us protection? Unquestionably so. And so it was written in the Constitution of the State that the power to prosecute crimes is central, is in the Attorney-General, if the Legislature says so. Again, it is central, in that the Governor is given the power to remove district attorneys. I honor the Governor of the State in this, that practically under his power of removal, by the pressure of that power, he appointed the assistant district attorney that prosecuted and convicted the murderer in Troy who had defiled the election and added a martyr to the cause of good government. That was central power exercised, for what? To punish crime, you say. But why punish crime? Is it for revenge? "Vengeance is mine, saith the Lord." It is agreed among all, I think, that we punish the criminal, not to give him his deserts, not to adequately reckon with him, but in order that we may deter and prevent crime. That is why the power of prosecution is central, to prevent crime, to make life safe, to make the humanities of life possible. And, if the power to prevent crime by prosecution is central in the district attorney and the Attorney-General, shall it be said that there is anything wrong in the proposition that in great emergency the peace officer of cities may be removed, as have been the peace officers, the sheriffs, since the present Constitution; or that the same rule that applies to the elected district attorney shall not apply to an appointed police officer?

Mr. Chairman, the Committee on Cities deemed this of surpassing importance, and I will attempt to tell you why. We have in the State the stealthy crime, the thief who steals in the night or waylays us in the dark. That we shall always have; and, to my mind, that represents the ordinary fraudulent vote cast at the elections; to be deprecated, to be prevented, to be crushed out and punished, but of a character that will never subvert the foundation of the State. The secret, stealthy crime will never do it. But when

wrong comes in the guise of organization, of marching men, whether they come from a foreign country, or from wherever they come, then it becomes war, and war may subvert the State. And analogous to that is this, that when the wrong on the ballot-box grows from the stealthy crime to the open seizure and plunder of the franchise of the people,. then it becomes dangerous and may subvert the State.

Now, gentlemen of the committee, I see that many are incredulous concerning this. Perhaps it is not so. Perhaps it is safe when the guardians of the peace become the consorts of the ballot-box stuffer; but we have such cases, and I will enter not at all on anything that I may deem debatable or partisan in this proposition, when I say that the police have organized to defraud the ballot-box, and so organized in Coney Island, driving out the watchers, and, with their clubs and pistols, allowed no one to look in there, except the conspirators. I say it freely. I say it to every member of this Convention, because the splendid work that was done there in overcoming frauds drew men from no one party, but from the best citizenship of the county, that which is of the noblest citizenship of the State; strong men from both the great parties arose to crush out the wrong and to give its definition and its history.

Now, we have the fact conceded that the police there became the allies of the ballot-box stuffer and the thug, and that through that alliance there was a certificate given which gave members seats here during one-half of the session. How difficult it is to overthrow it, even after it has had the searchlight of indictment and criminal investigation. We have it that that was done there. I read from Martin I. Townsend, and it is, to my mind, one of the most patriotic and one of the strongest efforts that I ever read. It is at page 2950 of Volume IV of the Debates of 1867, as well as page 2987, and I find that Martin I. Townsend there states — you have the word of Martin I. Townsend, and he is with us yet — that before that Convention it had happened that one party secured all the inspectors in Troy, in certain districts, the same as Gravesend, and that, with that done, thugs and ballot-box stuffers were brought from New York to stuff those ballot-boxes and the police were allies with them. My venerable friend who serves with me on the committee heard those words, and did me the kindness to bring my attention to what was stated by Mr. Townsend, as well as by himself, my honored associate from the city of Troy. That was stated in the heat of debate and reiterated. Mr. Brooks, of Staten Island, and Mr. Murphy, of Brooklyn, men able to controvert it, if it were not true, were here and did not deny it, and it stands

admitted. And it stands admitted that that police, infuriated by their triumph, in the city of Troy, turned out to sack and burn, and when young men gathered arms from the armory and came to protect the venerable citizen who was thus attacked, the local authorities for the first time heard that there was war and came out and sent the young men home, leaving the felons of disorder and crime undisturbed.

Mr. Chairman, these things are possible. Have they occurred in later years? Have we passed that danger? We have the knowledge that they occurred in Buffalo; knowledge given to us officially. We have the information that they occurred in Troy. The possibility of the police and the ballot-box stuffers making union possible and controlling this State is something the State must look after; and so we present these provisions.

Mr. Chairman, having discussed the provisions which we think will give better government to the cities of New York State, which will bring municipal questions home, which will enlighten and strengthen citizenship, we hesitate not to say that if that were all, if they were adopted, this Convention would have done well. It would have taken a long march up the height and towards the sunlight; and, if I have read aright the objections presented by the minority, we should be marching pretty nearly in solid columns.

Mr. Choate — Mr. Chairman, may I ask the gentleman another question about article 5 before he passes to the next subject, and that is: What is the reason which actuated the committee in giving the Governor the power of removal and specifying that his power of reappointment shall extend to the end of the term of the mayor in office, rather than to the end of the term of the officer removed, which would seem to be the natural course?

Mr. Johnson — Mr. Chairman, I am very glad for the thought in the question. The provision as to district attorneys, as to sheriffs, as to county clerks, is that the Governor may remove; and power is given without question, I am not quite certain whether, by the Legislature, under the clause contained in the Constitution or by the Constitution direct, to appoint the successor until the next election. Our thought is that this provision exactly harmonizes with that. If the Governor removes a sheriff or a district attorney, he appoints his successor until a successor is elected at a general election. Now, take the position of police commissioner. There can be no election, and, certainly, there should be none, until the odd-numbered year, and then, if a commissioner is elected, he will be elected at the same time with the mayor. So that when we say that he shall hold office until the election

for mayor, when we say that the appointee shall hold office until the mayor is elected, we, in effect, say that he shall hold office until the earliest time that a police commissioner can be elected; or, if he is an appointed officer, we then say that he shall hold office until the successor of the appointing power is elected. We will assume that the necessity of removing a police commissioner will never come up to the Capital of the State until the mayor has been derelict, both in power of appointment and power of discipline; and to simply have the power of removal without the concurrent power which is given, as to district attorneys and sheriffs, would simply say that you change the name, but not the pain. I will refer to a single case now. We have the Lexow Committee, and I am not saying that it makes any case to remove anybody. I am saying that it is a matter of great and grave interest. As the matter now stands, unless a metropolitan police district was formed, which would bring in other cities in no way connected, there is no power now resident in the sovereignty of the State, Senate, Assembly, Governor altogether, to appoint a successor of these police officers. In other words, they could dismember the police and make them private citizens. But, if they reorganized the police or have a police at all, they must practically give it to the party, vest the appointing power in the persons, who appointed the present police force. I am not suggesting it should or should not be done. I am suggesting that a condition of the Constitution, which has allowed such an investigation as that and yet allows that which is so far short of remedy, should be provided against.

Mr. Chairman, having referred to that, I will pass to the question of what comes more particularly under the definition of home rule for cities. Do we want home rule? The majority say they want this provision. The minority say they want home rule, but they do not want this. What they do want they have not informed the Convention. I have stated early in the hearing that we have home rule already, the potentiality of it in the Legislature. The power of home rule, as beautiful, as full as any Constitutional Convention could suggest, is in the Legislature already. If I were a member of the Legislature, I would go much further in the direction of home rule than now, because, if I went too far, I could take it back the next year or the next day. If I went too far, there would be a remedy. Any instant of time the sovereignty of the State could take it all back. But, if we go too far here, there is no way of taking it back, and here we must not err.

What is the first requisite of home rule guaranteed by the Constitution? Its provisions are necessarily prohibitory, not enabling.

The Legislature has the power now. It must be something which is, in some degree, a check. Starting with that thought, what shall we do? If it must be something which checks, the first thing to do is to put a check down. We must first put some check on the power of the Legislature. Where shall we put it? My answer is, on matters which are entirely in the cities. I desire to call the attention of my friends to this — my friends of the minority — this general idea of what matters are of the city and what are of the sovereignty of the State, was very fully presented by ex-Mayor Low before the Committee on Cities. It was in writing, and the Committee on Cities had it printed, and, more than that, it had a copy of it mailed to the mayor of every city in this State, asking whether he did or did not think that the separation into powers municipal and powers of the State was drawn on the proper line. I have heard no suggestion that it was not. So that our simple proposition here is, that we should give a certain degree of municipal independence, as to matters purely of the city, as to that which does not interest the community outside. I will state the distinction a little further. Earlier I have referred to the facts of election as being a State function. I think it is the duty of the State to see that the votes are counted. As was said in our report, if the citizens of the city of Buffalo desire to lose their money by bad administration, the citizens of Rochester are not prejudiced. But, if the citizens of Buffalo count one vote illegally, it is a wrong to every citizen of the State. The question of election, the question of education, the question of health, the question of police, it seems, certainly, are matters as to which the vital concern is in the State. I am interested, so are all of you, as to all of these matters in the city of Albany. Provisions as to health cannot be confined by the boundaries of counties. All of those matters your committee leave undisturbed; and as to the other matter, they say that the State may pass laws which affect all the cities of a class; full power to pass laws as to cities of a class is permitted. Nothing is taken away as to that.

But, in order to prevent the injustice of special legislation, and the danger which constantly occurs when the entire structure of city government is open to the attack of the Legislature, in order to provide against that, the committee say the Legislature should not pass special laws, unless the city asks it or consents to it. Is that right or is it wrong? I say, gentlemen of the minority, have we gone too far? If we have, then no degree of home rule is possible. Will you reject it because we have not gone far enough? If so, remember this, and remember we have gone farther than the Legis-

lature that could have done all this. They never attempted it. We have, at least, moved out of the moss-covered trenches of the past. We have gone farther than the Legislature of 1893; we have gone farther than the Legislature of 1892; we have attempted that, in some degree, which neither political party has attempted by legislation as to the great cities in the last twenty years. Each has had an equal opportunity to do it. If we have done better than those before, it is worthy of acceptation, because it is something. That is the thought. Then back of it is the other thought, that the first thing you can do in this matter is to do something in the way of prohibition. Dive down and find an anchoring place. Find something of certainty and validity in municipal government. But what else should follow; what should we next do? I think it would be quite proper, could it be done, to develop some of the powers of local boards, the common council. But where will you get your common council? Will a statute create a common council? Will that which the Legislature of twenty years has not found, be produced by a constitutional enactment? The statute will not produce an army, nor will a statute make those who have not borne armor able to carry the armor and the weight of battle. The common council, a local legislative board, must grow, and so all that is here attempted, as to the cities, is to so provide that there is power to create a legislative board; and here comes in the principle of home rule, that when it is once created that power cannot be taken away without the consent of the city, except by general law. So that there is here prohibition, some degree of solidity; and the frame work on which there may be developed local legislative boards, competent and able and helpful to comprehend and solve the great problems of civic government. It is said, I believe, in the report of the minority, that the principle of the referendum is in some way violated. That is very easy to say. Nothing that has yet been reported from the other side has violated that principle, because they have reported nothing. So that I am not able to say that what they would suggest would not violate the principle. When it is suggested we will discuss it further. It is the thought of the committee that it is altogether wise to leave it so, that the Legislature may submit the great question of municipal concern to the city. It is the thought which was carried out in law as to the Greater New York. It is the thought which comes from particular and special responsibility, and we believe that it is altogether wise.

Now, Mr. Chairman, I will go back to the first section. Perhaps it will be quite wise to rearrange the sections of this article. Our thoughts sometimes lead onward a little, day after day. The first

proposition is: The Legislature shall pass general laws for incorporating new cities. Precisely what is meant by that I do not think is altogether appreciated, as the committee suppose its effect is. The thought of some is that cities should be assimilated in government, in charters. Your committee do not believe that it is any more possible to say that these great communities, with their millions or hundreds of thousands of population, can any more be brought to a uniform system of charter government, than that men can be all brought to wear the same shoes, or the same coat; and it would be as useless if it were done as that. We would leave the cities as the tree is formed, with its natural luxuriance; with its natural irregularity; and not as though painted from a stencil on a wall. We would leave them as they are, but we say that when new cities come and knock at the door of the State and ask for incorporation, the State will then pass a general law under which they may come in without special enactment. We do not suppose that this provision forbids special acts incorporating cities. We do not suppose there is any difficulty in any of the large villages, having special necessities or special requirement, coming here and obtaining a charter adequate to their needs. We suppose it would, in fact, not be done, unless there was a strong and controlling public sentiment back of it. But we simply demand that there shall be a general act under which cities can be organized, and under which invitation the inducement and the probability of entering will be; and that in the new cities that grow up, there shall be in the beginning, and in the formative process, a full degree of uniformity.

As to the suggestions for striking out the word "new," so as to say the Legislature shall pass general laws for incorporating cities, I see no need of it. If gentlemen wish to go further, I would suggest to leave in the word "new" for incorporating cities already organized and those hereafter to be organized have a further provision; but we do not deem this to be wise.

Now, we come to the question of the common council and here, doubtless, we approach a question that is somewhat new; that is a question of organizing a legislature in cities. Bear with me thoughtfully for a moment on that question, gentlemen of the Convention. Study the charters of our great cities. Find how little legislative power there is, almost none in some of them, and how very little in others.

New York is practically governed by a commission appointed for six years, by a magistrate elected for two. See how little power of local legislation there is. Take up the statute and see how much legislation under the present regime is had here in Albany,

and very often necessary legislation. Having done that, take a few moments with the Committee on Cities and contemplate the proposition of trying to build up legislative rule as to municipal matters in cities, so that the cities may decide and determine what they shall do, as the counties do now under the county law, or the towns under the town law. Stand with us a moment at the threshold of the proposition, and, having stood there, let me say to you this, that there are many very thoughtful, very earnest, very patriotic men who have studied this problem long and well. They represent a great body of citizens throughout this State who come to us and say: "To build up the common councils of cities you must have the provision of cumulative, or proportionate, voting and minority representation." Why do they say it? They say that all the elements will be there; those who are for the State and those who are careless, and, if there be any, those who are against the State and would rob it; and they say, that, all being there, there will be a least one who will raise his voice as an alarm and a protest against any wrong there contemplated. They say minority representation will, at least, give an independent minority that can protest and ring the alarm-bell in the night, and citizens can, at least, have an opportunity to rally before the wrong is done. That is their thought. So far do they go in that thought that those gentlemen would have it made mandatory; would have said that must be done in the larger cities.

Stand, stand again with the Committee on Cities, gentlemen, with the problem of city government weighing heavily on conscience and on thought, and tell me whether, while not agreeing with these gentlemen, that that should be mandatory, or, knowing whether it is wise, whether or not you would say that you will not allow it to be possible. A friend of mine says it is an experiment. I have here — but I will leave it for another to present — a statement respecting the instance in which minority representation has been tried in this State, tried in other States, and recommended by State executives and others. "But," you say, "still it is an experiment." Granted. Will you never adopt it until it has ceased to be an experiment? If you will never allow it to be adopted in any degree until it has ceased to be an experiment, then you will insist that it shall never be adopted; for, while it is merely an untried experiment, you say that experiment shall never be tried. The proposition that minority representation may be given in cities, is, we think, a proper concession, a necessary provision.

I will state to you what impresses the committee as the reasons for this. I do not stand on the proposition that we should give it

because it is recommended by such a body of citizens; we should try it; but, I believe, there is a reason for it, and, stating that reason, I shall not longer weary the patience of the Convention.

Mr. Choate — We all want to understand the views of the Committee on Cities on this whole subject. My excuse for asking the questions that I do, is that I feel in full sympathy with their general object and want to understand the provisions. My question is this, whether the committee have fully considered this predicament? As I understand the scheme, it prohibits the Legislature, from the time of the passage of the constitutional amendment, from interfering with what may be called the internal municipal affairs of each city without the consent of that city, and it proposes to confer that whole branch of legislation upon a municipal legislature; but the municipal legislature cannot be created and vested with enlarged powers until the assent of that city has been received. Now, for instance, take the city of New York, which, in the experience of the last twenty-five years, has found — and the people of the State have concurred with it — that it was dangerous, impossible, to trust these enlarged powers to a municipal legislature; and, yet, as Mr. Johnson has said, they do require constant, annual legislation. Now, what is to be done in the meantime? Take the city of New York, for instance. Assume that the city of New York has not consented to the erection of a municipal legislature, with these enlarged powers to legislate upon these internal subjects, and the hands of the Legislature in the meantime are tied from interfering with them. Have the committee considered how, in that interval of time, which may be a year and may be forever, how those matters requiring constant legislation are to be taken care of?

Mr. Johnson — I am very much obliged to my friend for the suggestion. Of course, gentlemen of the committee will quite agree with me — those that have given considerable thought to this subject — that we are not quite able to appreciate what should be said and what should not be said in explanation of this question, and, therefore, these suggestions are very helpful to your committee in making this presentation. The difficulty presented by the President of the Convention is radical; it stands on the outside of the whole problem. It is how you shall pass from one method to another; how you shall pass from legislative power, exercised at Albany, to legislative power exercised at home. Where shall the power reside meantime? The wrong is, that this problem should be presented to the Constitutional Convention at all; the wrong is, that the Legislature should never have attempted to solve this question by enabling acts from year to year. They have not solved it.

The question stands here in all its difficulty and all its importance. I will tell you how we believe this article has solved the problem. The Constitution must take effect on the first of January. As I have said, the taking effect will not create a common council. I believe that no law could create a common council. It must be a growth, a development, from the better thought, the enlightened and educated patriotism of those dealing with the question. But what meantime? The cities where the common council is least regarded have come, practically, to look to their mayors for government. All the government you have in the city of New York — I think I do not exaggerate — nearly all, in one way or another, flows from your mayor. In Brooklyn it is so very largely. You have practically elected him to run your city in connection with the Legislature. That is what you started out to do. When this constitutional amendment takes effect and you want legislation for New York next year, to carry it on just as is done now — the Legislature and the mayor doing it together — the mayor will apply for such and such laws, and the Legislature, under this co-operation with the mayor, will pass them, and, practically, the system will continue as it is now, until the development of the legislative power in the city takes place. I will say right at this point that I met the other day, in a business may, Senator Edmunds, of New Jersey, a man who has been corporation counsel of Jersey City, and a man I think of as much experience and as good an insight into such problems as any person that could be named. They amended their Constitution a few years ago and put in it the provision that nothing but general laws should be passed as to cities. He said, "I hope you have not put in this provision." I showed him what we had. He said, "That is right; we cannot exist in New Jersey without special laws; and so the whole problem seems to be to evade the Constitution by making laws which are in form general, but are in effect special; you solve it exactly by allowing special laws with the consent of the city." He said, "It is the unwritten law of New Jersey; no Governor would think of violating it or ever has violated it, that a special law could not be passed as to any city in New Jersey without the consent of the city." That is the unwritten law, he tells me, of New Jersey. I say that it ought to have been the unwritten law of this State, and that we ought to make it the written law. It is pretty nearly the unwritten law of this State. My friend who has represented the law department of Brooklyn will, I think, agree with me that it is very rarely, indeed, the case that a Democratic Governor signs a bill as to purely municipal matters — what are made muni-

cipal in this article — against the protest of the mayor. I do not think he did it once last winter, against a Republican mayor. I do not believe that in the case of the city of Brooklyn — and if I am in error I will ask Mr. Jenks to suggest the exceptions — a bill has been signed by the executive of the State against such protest as to matters that we make home rule there.

Mr. Schumaker — I will answer that question. In the organization of the metropolitan police board, in 1857, the mayors of both cities, New York and Brooklyn, objected to the passage of that bill, and the Governor signed it. There is an answer.

Mr. Johnson — I am very much obliged for the answer — very much. I speak advisedly. It shows that there is no other answer. I have a right to say, have I not, that that is the only exception? That was a police provision as to which this home rule provision does not apply —

Mr. Schumaker — It does. Your party afterwards almost unanimously repealed it.

The Chairman here called the speaker to order.

Mr. Schumaker — He asked for some information from the gentleman who had been corporation counsel of Brooklyn, and I have been one, in stormy, stormy times; and I have answered the question.

Mr. Johnson — The proposition which I made was this: That as to those matters respecting which this article provides, an act should not be passed without the consent of the mayor. Such an act had been passed in the last twenty years without the consent of the mayor. The instance stated occurred about forty years ago —

Mr. Schumaker — Oh, no.

Mr. Johnson — We will make it thirty if he says so — and did not relate to matters which I was discussing, and shows that the proposition which I stated is correct — that as to sewers, that as to waterworks, that as to parks, that as to streets and highways, it was almost the unwritten law of this State that, except in case of prodigious emergency, no bill should be signed by the Governor without the consent of the mayor. I say it is very nearly the unwritten law. My friend from Rochester tells me that it would not be thought of that such an act should be passed without the consent of the city of Rochester. We know that it was done in Buffalo two years ago — that escaped observation in the reply of my friend, but that was a law respecting the police —

Mr. Becker — I beg to correct the gentleman. It was not done in Buffalo with reference to the matters as to which home rule is preserved by this provision —

Mr. Johnson — I had so stated —

Mr. Becker — I did not so understand it. It was done as to the police; it was not done as to municipal matters.

Mr. Johnson — Now, Mr. Chairman, having answered, as I trust, this question, or, at least shown that I understood the question of the President, as I trust I have — to the effect that matters can go on very much as they now are with this system of independence injected, and having shown as to this proposition that you can erect common councils, and when you have erected them that you cannot take away their power — there is the germ, the possibility, of home rule. We had this proposition printed two weeks before it was presented here, in order to invite criticism, and we know of hardly a suggestion as to how we could properly go farther to-day in constitutional enactment as to home rule.

Mr. Alvord — Will the gentleman give way for a moment?

Mr. Johnson — I should be very glad to give way to my friend from Onondaga.

Mr. Alvord — I ask permission to move that the committee rise and report progress, because we have an important and solemn duty to perform which will require all of the ordinary time of this Convention. If the gentleman will consent, I move that the committee rise and report progress and ask leave to sit again.

Mr. Johnson — I am quite willing, Mr. Chairman. I think the committee has been very patient, and I am quite willing that the committee shall rise. I should like to proceed, however, as early as may be, this evening if there is no objection.

Mr. Alvord — I think we should honor the memory of the dead by adjourning until to-morrow morning.

The question was then put on Mr. Alvord's motion that the committee rise, which was determined in the affirmative.

The President resumed the chair.

Mr. I. Sam Johnson — Mr. President, the Committee of the Whole has had under consideration the proposed constitutional amendment, printed No. 376, entitled "proposed constitutional amendment to provide home rule for cities," have made some progress in the same, but not having gone through therewith, have instructed the chairman to report the fact to the Convention and ask leave to sit again.

The President put the question on agreeing to the report of the Committee of the Whole, which was determined in the affirmative.

Mr. Vedder — Mr. President, there have been some important amendments made, I believe, to this proposition this morning, and I would suggest that those amendments which have been adopted should be printed in italics, so that we may know what they are. No one knows what they are over on this side.

Mr. Johnson — Mr. President, I would second that motion.

Mr. Kerwin — Mr. President, a question of information. I would like to know if all amendments are not to be printed in italics. I would like to know if this whole report is not to be printed. I do not know that it is necessary for this Convention to instruct our printer further. I think that we already have rules that call for it.

President Choate — The President understands that there is no present rule which requires the printing of these amendments at all, unless it is so ordered.

Mr. Kerwin — Mr. President, I may be wholly out of order, but I believe that the report of the Committee on Cities, which is offered as an amendment to our Constitution, is an amendment, and our rules call for the printing of all amendments in italics.

Mr. Hotchkiss — Mr President, the report of the Committee on Cities is not in the present Constitution. It is an amendment, and our rules call for the printing of each amendment in italics.

Mr. Bowers — Mr. President, I make the point of order that the motion of Mr. Vedder simply calls for the printing of some amendments to an amendment which have been offered here to-day. The rules have nothing to do with it, and the proposition of Mr. Kerwin has no application to Mr. Vedder's present motion.

The President — The Chair is of the opinion that the motion is a proper one and is required by the rules, because there is no rule for the printing of these amendments offered in the Committee of the Whole.

Mr. J. Johnson — I would like to make an amendment. It was suggested to me this morning that the editions of the article and of the report were exhausted, and a gentleman asked me if I would not move that a thousand extra copies of each be printed. I would ask the gentleman from Cattaraugus to amend his motion, and move that the article be printed as now amended, and also that a thousand copies of that and a thousand copies of the report be printed.

Mr. Vedder — Except as to the thousand copies, that was my motion — that it be reprinted, and the amendments that were inserted in the last Committee of the Whole be printed in italics.

Mr. Johnson — Then, Mr. President, the provision for a thousand copies of the matter is all the addition to the gentleman's motion.

Mr. Vedder — Mr. President, I accept the amendment.

Mr. Bowers — I shall oppose that resolution, for I have no doubt that when this matter is adopted in the Committee of the Whole some gentlemen other than the chairman of the Committee on Cities will offer a large number of amendments, and I think it will be quite time enough to reprint this article when all the amendments are considered.

Mr. Hotchkiss — Mr. President, I would like to ask the chairman of the Committee on Cities if the amendments which he proposed this morning to the amendment introduced to the House by the Committee on Cities, are anything more than verbal.

Mr. Johnson — No, sir; it only gives a better definition to the word "general."

Mr. Hotchkiss — Mr. President, my own impression is that they are not substantial enough to justify their being printed, and I am of the opinion that such substantial amendments will be made to the whole proposed amendment as to require it to be reprinted and resubmitted at a future time.

Mr. Johnson — Mr. President, I have no desire to have the matter printed except that I was asked this morning to move that there be some more copies printed, and I thought if some more copies were to be printed they should be printed as amended.

Mr. Hotchkiss — Mr. President, I have no objection to that. I simply refer to the printing of the amendments themselves as distinguished from the matter alluded to.

Mr. Johnson — The motion of Mr. Vedder will accomplish our object, and I presume impose very little expense additional.

Mr. Green — I think it would be better to let this discussion proceed further, as it undoubtedly will bring out numerous amendments. I have some amendments myself to offer; and the result of printing now will be that we shall have to print and reprint. If the discussion is continued it will develop amendments undoubtedly that perhaps will meet with the approval of the mover of the scheme. I hope the motion to print now will not prevail.

Mr. Dean — Mr. President, I rise to a point of order. Under rule 51, all matters referring to an extra number of printed documents must be referred to the committee, as of course.

The President — The point is well taken. It is referred to the Committee on Printing.

The President — Mr. Tekulsky asks to be excused on account of illness.

The President put the question on excusing Mr. Tekulsky, and he was excused.

The President — Mr. Hirschberg asks to have his excuse, which was given last week, continued during to-day.

The question was put on excusing Mr. Hirschberg, as requested, and he was so excused.

Mr. O'Brien — Mr. Durfee has been unable to return up to this time, and he desired to be excused for this session.

The question was put on excusing Mr. Durfee, as requested, and he was so excused.

Mr. A. B. Steele — Mr. President, the committee upon resolution on the death of Mr. Van Denberg, appointed this forenoon, beg leave to submit the following:

The President — The Secretary will read the resolutions prepared by the Special Committee.

The Secretary read the resolution as follows:

Whereas, Since the last session of this Convention, one of the oldest and most respected delegates, the Hon. Walter L. Van Denbergh, has departed this life, and this Convention having come to recognize in the deceased the earnestness of a faithful and conscientious member, the ability of a good lawyer, a wise counselor, the purposes of an honest citizen and the character of a good man, it is, therefore.

Resolved, That in the decease of Mr. Van Denberg, we acknowledge with sincere sorrow the irreparable loss which this Convention has sustained, and being reminded by it not only of the uncertainty of life, but of our own duties and obligations to the people of the State, we hereby, in the shadow of this bereavement, consecrate ourselves anew to perform worthily, conscientiously and faithfully the work entrusted to us as we have been given life to perceive it, and be it further

Resolved, That the President of this Convention appoint a committee of fifteen delegates to attend the funeral of the deceased, and that after the appointment of such committee, as a mark of esteem

and respect for the deceased, that this Convention be declared adjourned.

A. B. STEELE.
JOHN M. FRANCIS.
CHARLES A. HAWLEY.

The President — The question is on the adoption of the resolution.

Mr. A. B. Steele — Mr. President, while I had not the honor of the personal acquaintance of the deceased until the day before the organization of this Convention, I did have, however, the honor of hearing him spoken of by his neighbors. Living some forty, fifty miles or further away, and although not being in the same judicial district with Mr. Van Denbergh, I had occasion to hear his name mentioned, not only in connection with cases, but in other respects, and the name as attested by all his neighbors and by all persons who knew him, was that he was one of the most honorable counsel that was known. In referring to him the people of his county would speak with pride of Mr. Van Denbergh, the quiet but honorable counselor, in whom all people, regardless of political faith or anything else, had implicit confidence. This much I learned of him before I had the pleasure of his acquaintance. I know the fact also, that those of his family have passed away before him, and he alone of the family remained. He did not, Mr. President, personally seek to come to this Convention, but when it was suggested to him, he felt that it was a great honor, and wished, although in failing health, that he might be of some use not alone to the people of his own county, but to the people of the State. Hence he was named as one of the delegates and came here in that poor health, and although his health continued poor, and, were he like most men would have prevented him entirely from work, yet we all know, in that enfeebled condition, and at the risk, the hazard of a fatal result, he continued with us, laboring faithfully, honestly, earnestly and conscientiously, I think, until last Wednesday, only three days before the fatal end came.

Mr. Francis — Mr. President, the memory of our friend and colleague who has just passed away will be very precious to those who know him, especially those who knew him best. My personal acquaintance with the deceased began with the opening of the Convention in May. He came to me after his appointment as one of our committee, the Committee on Preamble and Bill of Rights, saying that though his health was feeble he hoped to have strength to render some service in the work that was before us. Faithful, able

and valuable that service has been, as we who were associated with him in committee conferences and discussions can all testify. His expositions of subjects under consideration were luminous; his arguments logical; his learning always manifest and impressive. There was the spirit of grandness, the inspiration of conscientious belief, with the forces of splendid judgment as a foundation in his interpretation of law and in his statements of fact. And so, with health very frail, our friend was a most effective worker. To the last, less than a week ago, he was with us in council, and contributed to our instruction. Daily as we came to know him better, noble manhood, intellectual strength, moral force, appeared more and more clearly as reflected by example and the spirit of the man. Our friend and colleague is at rest. His life's work finished, and it may be said "well done."

"There's nothing terrible in death;
'Tis but to cast our robes away,
And sleep at night without a breath
To break repose till dawn of day."

Mr. Lester — Mr. President, coming, as I do from the same Senatorial district as that from which the honored gentleman whose death we now deplore came, I cannot refrain from saying a few words, however unsatisfactory and inadequate they may be, upon the question of the adoption of the resolutions which have been reported by the committee. Mr. Van Denbergh had passed the age of three score and ten, the allotted period of human life, and the infirmities of advancing age and disease oppressed him; but, sir, intellectually he retained the vigor of his earlier years; he retained his positive and clear views upon subjects, his strong opinions which those who did not sympathize with them and endorse must have accepted with respect, and I know that the members of this Convention, although sometimes differing from him in opinion, must have respected the honesty and integrity of the man. It was not my honor to enjoy an intimate personal acquaintance with Mr. Van Denbergh. Although for the past twenty years, during which we have practiced law in the same judicial district, I have had the pleasure of knowing him and occasionally meeting him, and I know his general reputation throughout the judicial district was the reputation of a capable and upright lawyer. I have known Mr. Van Denbergh as the other members of the Convention have known him, as a quiet, unassuming man, laborious and painstaking in all the duties which were imposed upon him and deeply interested at all times in the work of the Convention. Although he was a man, practical, plain and having matter-of-fact ideas upon gen-

eral questions, and, although nothing could be further from his own mind, yet it seems to me that the picture which he presented here, striving faithfully with a conscientious realization of his duties to accomplish his work as a member of the Convention, had something pathetic about it, and, sir, there is in his record here a suggestion of heroism as he stood battling with the encroachments of age and disease which must ever shed a halo about his memory. Mr. President, I heartily concur in the resolutions just presented and hope that they will be unanimously adopted.

Mr. Spencer — Mr. President, as the nearest neighbor of our deceased friend and associate, I ask the Convention to bear with me a few moments while I pay my feeble tribute to his memory. I formed the acquaintance of Mr. Van Denbergh a few weeks after my admission to the bar and at that time and for several years thereafter my business called me to his village at stated intervals of two weeks, and I seldom left his town without paying a visit to him in his office for the purpose of a social chat. My acquaintance soon ripened into a warm friendship, which, I believe, was somewhat unusual, or is somewhat unusual between persons with so much disparity in their ages. There was one quality which Mr. Van Denbergh possessed that those of you who only knew him as he appeared on the floor of this Convention would never have dreamed of, and that was the rich and racy humor which he possessed. When I first knew him he was apparently in the prime of life. He had a large fund of humorous anecdotes which he loved to relate in his own peculiar fashion to his intimate friends, and I have spent many an hour in his society and enjoyed that humor and pleasantry with which his conversation then abounded. He was especially rich in reminiscences of the dead and gone worthies of our profession in the Mohawk valley, and I can recall many hours of pleasant conversation with him in which he has related the incidents, chiefly humorous, that would sometimes move him, of the many men who have adorned the bar of this State and have resided in the Mohawk valley between Albany and Utica. The last reminiscence that he related to me was upon the train as we were going home from this Convention the day that the Convention voted to disagree with the report of the Judiciary Committee upon a proposition to change the method of selecting jurors. That matter was uppermost in his mind and he recalled an incident from the life of a former judge of Schenectady county, which I will give simply to illustrate the manner in which he remembered these events. He said he was present in court at the conclusion of a tedious and unnecessarily protracted trial of a brace of forgers, and,

speaking of the influence which judges exerted, he said his honor opened the charge with these words: "Gentlemen of the jury, I congratulate you that you have at last got these notorious criminals in your grasp." Mr. Van Denbergh said he well remembered the vise-like emphasis with which his honor brought out the last word of that sentence, and I leave you, said he, to imagine the influence and conclusion of a charge which opened after that fashion. Mr. Van Denbergh was also a learned and diligent lawyer, faithful to his clients, and one that his opposing counsel might well stand in fear of. In spite of his modesty, his quiet demeanor, he understood his cases well, and he always tried them for all they were worth. Whoever engaged him as counsel secured valuable and faithful service. But the thing in Mr. Van Denbergh's character that attracted me most was the stern principle of integrity which possessed him. Ever true to his conscience, his sense of duty, he was faithful in every place in life that he occupied. Gentlemen, in losing him as a member of this Convention, we lose a man who was sound in mind, tender in heart, courageous in spirit and stainless in character.

Mr. Barrow — Mr. President, I rise to second the adoption of the resolutions which have been offered. For the past three months at nearly every session of this Convention, it has been my pleasure and my good fortune to sit at the right hand of Mr. Van Denbergh. On each morning of our meeting here I heard his cordial greeting and felt the friendly pressure of his hand. Within that time I came to look upon him, not only as a friend, but as a pleasant gentleman and companion. Thrown together in this way, we had frequent consultations and exchanges of opinion in regard to different proposed amendments to the Constitution, and I speedily discovered (so far as I am entitled to express an opinion upon that subject) that Mr. Van Denbergh was a sound lawyer, and that he possessed a quick and active mind. Unfortunately, his strength of body had been greatly undermined, while his hearing was impaired. These afflictions had prevented that participation in the debates and business of the Convention, which, otherwise, might have engaged him, although, I think, he possessed a modesty which made him shrink from making speeches, for his own sake. He was here, if any delegate is here, not to serve himself, not to make a reputation for himself, but to serve and benefit the State. He was, in no sense, a negative man. He had opinions of his own, and in those opinions he was positive and firm. He was very desirous of performing fully and completely all his duties as a delegate in the Convention. His conscientiousness was acute. With full

knowledge of the impairment of his health, he faithfully attended our sessions. This desire to perform his part cost him, in my judgment, his life. It had been a severe tax upon his strength to attend our morning sessions, but he not only attended those, but he came from his home to attend one or more of the evening sessions. My recollection is that he attended a session held on Wednesday evening last. The next day he attended the morning session, but complained of extreme feebleness and I observed that his color was bad, and his lips white. I earnestly advised him to attend no more evening sessions. He replied that he knew he was not able to do so, but that he felt a great interest and wished to be present whenever it was possible. My recollection is that I did not see him afterwards. The task had been too heavy, the pace too great. The threatened and impending bolt, which his faithfulness to duty had invited, fell. He died with his harness on, laboring for the State, not for himself, because in the consideration of his years he could hardly have hoped for any of the personal benefits of his labors.

He presented to me the characteristics of Abraham Davenport, who, upon the occasion of that dark day which occurred in the history of Connecticut, when the whole people thought it was the day of judgment, and when, in their Convention, the frightened delegates called for an adjournment, said: "God will do His work, let us attend to ours," and who thereupon, without figure of speech, spoke straight to the subject then under consideration. In this way Mr. Van Denbergh, realizing that he stood in the very shadow of death, attended to his duties and did his work.

It is fitting, sir, that this Convention should pause in its labors and pay its last sad tribute to the memory of such a man. It will rekindle in us, I trust, the purpose of doing our duty, as, in the language of the resolutions, "we have been given light to perceive it."

Mr. Hawley — Mr. President, it has been deemed appropriate, inasmuch as Mr. Van Denbergh was a member of the committee of which I have the honor to be chairman, that I should second, in some brief way, the resolutions which have been proposed. I have had occasion from the very fact that Mr. Van Denbergh's health was so frail, that he was unable to perform all the duties that were cast upon him here, to come to know him well and, indeed, I may say intimately. He has never been able to meet with my committee, except, I think, upon a single occasion, but he has been so solicitous about the duties that he was unable to perform, so grieved that he was not able to bear all the burdens that were

imposed upon him here, that daily he sought me out, asked as to the state of business, giving me his views as to questions pending before us and before the Convention, until I have found him to be a wise and discreet counselor and a thoroughly upright and honest man, a man with convictions and with the courage of them. It needs not, Mr. President, that remarks of this character should be prolonged by me. I have heard that in the fastnesses of Switzerland they are wont to bury those whom the State delights to honor at the crossings of their mountain paths and then to mark the place with a pile of stone. In after years, as passers-by, citizens and strangers, go by the spot each casts upon the pile a stone, and so in the lapse of years there grows an impressive and enduring and ever-growing memorial in honor of the departed person. And so, Mr. President, I have felt it my duty under the circumstances, to add these few brief words to the monument which we begin to rear to-day to the memory of the honored dead.

Mr. Alvord — Mr. President, in a long legislative career it has been my misfortune to be present upon many similar occasions. All I have to say at present, sir, is that from the intimate relations of a committeeman with the gentleman who is deceased, I learned to love him. I found him to be a man of integrity, high order of talent, sound judgment and logical mind, and I have this to say, in contrast with the position taken by my friend from Seneca, that in our continuous sessions each and every day when this body was in session, he was present and at the post of duty. Sir, we will not lose many better men than Mr. Van Denbergh. Let him rest in peace.

Mr. Schumaker — Mr. President, it is with sadness and pain that I raise my voice in this Convention to speak of the death of Mr. Van Denbergh, who was my relative and friend. My earliest life was with him, as a boy. A more exemplary boy, a more noble boy never lived than Walter Livingston Van Denbergh. When he grew up it was with the same stamp upon his character. He was a very noble young man, a very able, brilliant, talented man, and it was not until he was forty years of age that he undertook the profession of which he and I were both members. But he craved for it. In the forwarding business with his father and his relatives, Mr. Cornelius Gordonier, who was once Canal Commissioner of the State of New York, who was his partner, he yearned and craved for the law. He then told me, in the old familiar words of our boyhood, "John, I am going to be a lawyer. It will come some time." And it did, and he was a lawyer; and he wanted nothing else but high standing in his profession. He sought no office. He

sought nothing but to attain the highest knowledge of law, and that he did so everyone who knows him will maintain. When I met him in this Convention and he shook me by the hand, he said: "I have no business here and I do not think you have. The latter part of our lives we should have to ourselves; but they insisted upon my coming here, John, and I think it will kill me." And it did.

But I cheered him up and told him not to think of his weakness, to think of his health and the good old Dutch adage: "*Gesundheit uber alles.*" "Well," he said, "get me excused from this evening's session." I said: "Certainly." There was an evening session, in which he felt interested. After a little refreshment he considered that he was well enough to come up here, and he came to the evening session, a week ago to-night.

He was a most extraordinary man. He came up by himself, he educated himself, and his thoughts were pure and good and noble, and he could not be convinced that anything was wrong or improper. He would stand for the right to his death. In his business he was a forwarder. Into his life came an old friend of mine and of the President's, Henry Smith, whom Mr. Depew christened "The poor boy of the Mohawk." All that there was of Henry Smith was gotten out of him by Walter L. Van Denbergh. He took him from the tow-path of the canal, he made him a steersman, he made him a captain, and he made him their agent, Gordonier & Van Denbergh's agent, in the city of New York. From there he went to the Assembly, and then became police commissioner; and, as my good friend, Mr. Tucker, said, when he died half the streets of New York were swept by the procession which followed him to his grave. There were a great many others who received Mr. Van Denbergh's kindness. Hundreds of others that I can name received assistance from our colleague. He did it ungrudgingly. He did it with a nobleness of heart which a great many would not think he was capable of having. Wherever he found a good cause his hands was as deep in his pocket, and oftentimes deeper than he could afford to put it, to assist the cause of charity. The latter part of his life was a sad one. He went with his wife to Washington. He was childless. They had had but one child, and that died in its youth, and the first day the poor man was at Washington his wife was taken with pneumonia, and in three days she was brought home a corpse. That almost killed him. It wrecked his life. He has been a sad, sad man ever since. He lived the life of a conscientious, good Christian gentleman. In the good old town of Amsterdam everyone knew him to respect him. He had a kind

word for everyone, and no one ever said an unkind word of him. And it is with sorrow and sadness that I stand here and say that I have lost a friend and relative and that this Convention has lost a very able member.

The President — Is the Convention ready for the question on the adoption of the resolution?

Mr. Dean — I ask that the question be taken by a rising vote.

The President put the question, and, by a rising vote, it was unanimously determined in the affirmative.

The President — The Secretary will read the names of the committee appointed to attend the funeral of Mr. Van Denbergh.

The Secretary read the names of the committee as follows:

Mr. Alvord, Mr. A. B. Steele, Mr. Lester, Mr. Whitmyer, Mr. E. A. Brown, Mr. Spencer, Mr. Francis, Mr. Augustus Frank, Mr. Woodard, Mr. Parker, Mr. Bigelow, Mr. A. H. Green, Mr. Tucker, Mr. Schumaker and Mr. Veeder.

The President — Under the resolution as adopted the Convention stands adjourned until to-morrow morning at ten o'clock.

Wednesday, August 8, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber at the Capitol, Albany, N. Y., Wednesday, August 8, 1894, at ten A. M.

President Choate called the Convention to order.

The Rev. Martin Flipse offered prayer.

Mr. O'Brien moved that the reading of the Journal of August 7 be dispensed with.

The President put the question on the motion of Mr. O'Brien, and it was determined in the affirmative.

The President announced the order of introduction of memorials and petitions.

Mr. Storm — Mr. President, I have the honor of presenting a memorial of the Flushing Village Association, which relates to pool selling. This comes from a very reputable and representative source. This will be appreciated by the Convention when I mention that it is composed largely of lawyers. This was sent me by a committee of five, with the request that it be read before the Convention. I expressed to them my doubt of this being done on account of the limit of our time, but they urged the matter so

strenuously that I promised to make the attempt. Before doing so I had the matter read for the purpose of ascertaining how much time would be consumed thereby and I found that it would easily come within five minutes. I, therefore, trust that this time will be given for the reading of the petition.

The President — No objection being made, it will be read by the Secretary.

The Secretary read the petition, and it was referred to the Committee on Preamble and Bill of Rights.

Mr. Alvord — Mr. President, I have the honor to offer two separate letters from General George J. Magee, who desires that they shall be referred to the appropriate committee. The first is on the subject of taxation, which I desire to have referred to the Committee on Finance and Taxation.

The President — It will be so referred.

Mr. Alvord — The other, Mr. President, is on the question of compulsory voting, which I desire to have referred to the Committee of the Whole.

The President — It is so referred.

Mr. Moore — Mr. President, I desire to present several petitions, one of them a letter from the president of the Equal Suffrage Club, of Euston, for the political equality of women; second, a petition of the New York State Grange, and, third, a petition of citizens of Round Lake, for the full enfranchisement of women.

Referred to the Committee on Suffrage.

The President — A petition has been received from G. W. Grant asking for a provision in the Constitution that for all future amendments to the Constitution a majority of all actual voters shall be required.

Referred to the Committee on Amendments to the Constitution.

The President announced the order of notices, motions and resolutions, and the Secretary called the districts.

Mr. Storm — Mr. President, Mr. Phipps is detained away from the Convention on account of sickness, and asks to be excused from attendance until his recovery.

The President put the question upon the request of Mr. Phipps to be excused from attendance, and he was so excused.

Mr. Powell — Mr. President, I ask that Mr. Cady be excused from the session of to-day. He has been suddenly called away on important business.

The President put the question on the request of Mr. Cady to be excused from attendance, and he was so excused.

Mr. Smith — Mr. President, if it is in order, I would be glad to be excused for non-attendance yesterday. I was in the hands of my dentist, and arrived here in time for the evening session, which I found had been dispensed with.

The President put the question on the request of Mr. Smith to be excused from non-attendance at yesterday's session, and he was so excused.

Mr. Hottenroth — Mr. President, if it is in order, I would ask unanimous consent to call attention to a typographical error in the Debates. On page 300, in the second column, line seven, the word "registry" should be "canvass."

The President — Gentlemen will make a note of the correction.

Mr. Wiggins — Mr. President, I ask to be excused from attendance upon the Convention on Tuesday of next week.

The President put the question on the request of Mr. Wiggins to be excused from attendance, and he was so excused.

Mr. Maybee — Mr. President, I desire to be excused from attendance upon the Convention Thursday and Friday of next week.

The President put the question upon the request of Mr. Maybee to be excused from attendance, and he was so excused.

Mr. Goodelle — Mr. President, I move that introductory bill No. 194, introduced by Mr. Tucker, and made a special order for this evening, be recommitted to the Committee on Suffrage, retaining its place as a special order for this evening.

The President — The Chair understands that is is for the purpose of some formal amendment.

The President put the question upon the motion of Mr. Goodelle, and it was determined in the affirmative.

Mr. Redman — Mr. President, I desire to be excused from attendance to-morrow and next day, on account of an important meeting of a board of supervisors.

The President put the question on the request of Mr. Redman to be excused from attendance, and he was so excused.

Mr. Becker — Mr. President, if it is not out of order, I desire to present two memorials, one of George T. Chester and others, and the other of J. L. Larned and others in favor of a civil service reform amendment to the Constitution.

Referred to the Select Committee.

Mr. A. H. Green — Mr. President, I ask leave to introduce a constitutional amendment, and to have this, with a very brief one on the subject of pensions to aged persons, printed.

The President put the question on granting the request of Mr. Green, and it was determined in the affirmative.

O. 374.— Introduced by Mr. A. H. Green, proposed constitutional amendment, to amend article 8 of the Constitution, in relation to reports of public officers.

Referred to the Special Committee on Proposed Amendments.

The President announced the order of reports of standing committees, and the Secretary called the list of committees.

Mr. Hawley, from the Committee on Corporations, reported favorably from said committee an original proposed constitutional amendment, which was read by the Secretary the first and second time.

O. 375.— Proposed constitutional amendment, as to trusts or combinations.

Referred to the Committee of the Whole.

Mr. Barhite — Mr. President, in the absence of the chairman of the Committee on Powers and Duties of the Legislature, and at his request, I desire to make some reports from that committee. That committee is of the opinion that proposed constitutional amendment, introductory No. 2, should be referred to the Committee on Education. I, therefore, move that the Committee on Powers and Duties of the Legislature be discharged from further consideration of that measure, and that it be referred to the Committee on Education.

The President put the question on the motion of Mr. Barhite, and it was determined in the affirmative.

Mr. Barhite — Mr. President, I also move, in reference to introductory No. 24, that the Committee on Powers and Duties of the Legislature be discharged from further consideration of that measure, and that it be referred to the Committee on State Finance and Taxation.

The President put the question on the motion of Mr. Barhite, and it was determined in the affirmative.

Mr. Barhite — Mr. President, I move you that the Committee on Powers and Duties of the Legislature be discharged from further consideration of introductory No. 134, and that it be referred to the Committee on Governor and State Officers.

The President put the question on the motion of Mr. Barhite, and it was determined in the affirmative.

The Secretary read the following reports:

Mr. Vedder, from the Committee on Powers and Duties of the Legislature, to which was referred the proposed constitutional amendment introduced by Mr. McDonough (introductory No. 286), entitled "Proposed constitutional amendment, to amend article 3 of the Constitution, relating to the passage of laws," reported in favor of the passage of the same, with some amendments.

The Secretary read the proposed amendment, as amended, by the committee.

Referred to the Committee of the Whole.

Mr. Barhite — I am requested by Mr. Dean of that committee, Mr. President, to state that he dissents from the report of the committee upon that measure.

Mr. Vedder, from the Committee on Powers and Duties of the Legislature, to which was referred proposed constitutional amendment, introduced by Mr. Dean (introductory No. 23), entitled "Proposed constitutional amendment to abolish all commissions, except those constituted of elective officers, and to inhibit the power of creating permanent commissions," reported in favor of the passage of the same, with some amendments.

The Secretary read the proposed amendment as amended by the committee.

Referred to the Committee of the Whole.

Mr. Vedder, from the same committee, to which was referred proposed constitutional amendment, introduced by Mr. H. A. Clark, (introductory No. 351), entitled "Proposed constitutional amendment, as to the powers and duties of the Legislature in forming and dividing counties, and to add a new section to article 3 of the Constitution," reported in favor of the passage of the same.

Referred to the Committee of the Whole.

Mr. Barhite — Mr. President, I am requested by the committee to state that the report on the measure just read was not unanimous, there being six in favor and five against.

Mr. Goodelle, from the Committee on Suffrage, to which was recommitted proposed constitutional amendment, introduced by Mr. Tucker (introductory No. 194), entitled "Proposed constitutional amendment, to amend article 2 of the Constitution, so as to separately submit to the electors of the State the question of woman suffrage," reported the same, as amended, adversely.

Mr. Goodelle — Mr. President, I will state, to avoid misunderstanding, that this is the report which is made a special order for this evening.

The President — It may as well be stated that the change in the amendment, which was shown to me by the chairman before the beginning of the session, is that the election to determine the matter would be held in November of next year instead of November of this year.

Mr. Goodelle, from the same committee, to which was referred proposed constitutional amendment, introduced by Mr. O'Brien, (introductory No. 119), entitled "Proposed constitutional amendment, to amend section 3 of article 2 of the Constitution, as to suffrage," reported in favor of the passage of the same, with some amendments.

The Secretary read the proposed amendment as amended by the committee.

Referred to the Committee of the Whole.

Mr. Goodelle, from the same committee, to which was referred the proposed amendment, introduced by Mr. Roche (introductory No. 100), entitled "Proposed constitutional amendment, to amend section 1 of article 2, prescribing the period of citizenship as a prerequisite to the right to vote," reported in favor of the passage of the same, with some amendments.

The Secretary read the proposed amendment as amended by the committee.

Referred to the Committee of the Whole.

Mr. Goodelle, from the same committee, to which was referred the proposed amendment, introduced by Mr. Gilbert (introductory No. 8), entitled "Proposed constitutional amendment, to amend article 2 of the Constitution, in relation to the qualification of voters," reported in favor of the passage of the same, with some amendments.

The Secretary read the proposed amendment as amended by the committee.

Referred to the Committee of the Whole.

Mr. Tucker — Mr. President, as a member of the minority of that committee, I desire time to make a minority adverse report.

The President — The rules allow the minority the right to bring in a minority report at any time before the matter is finally disposed of.

Mr. Goodelle, from the same committee, to which was referred the proposed amendment, introduced by Mr. Nichols (introductory No. 253), entitled "Proposed constitutional amendment, to amend section 4 of article 2 of the Constitution, relating to registration of voters," reported in favor of the passage of the same, with some amendments.

The Secretary read the proposed amendment as amended by the committee.

Referred to the Committee of the Whole.

The President announced the order of reports from select and special committees.

The Secretary announced appointments on committees to fill vacancies occasioned by the death of Mr. Van Denbergh, as follows:

On Preamble and Bill of Rights, Mr. W. H. Steele.

On Corporations, Mr. Lester.

The President — The special order for this morning is the adverse report of the Committee on State Prisons on proposed constitutional amendment, to amend section 5 of article 1 of the Constitution, relating to the abolition of the death penalty, and the question is upon agreeing to such adverse report. The Secretary will please read the proposed amendment of which this report is the subject.

The Secretary read the proposed amendment as follows:

Proposed constitutional amendment, to amend section five of article one of the Constitution, providing for the abolition of the death penalty as follows:

The Delegates of the People of the State of New York, in Convention assembled, do propose as follows:

Section five of article one of the Constitution is hereby amended so as to read as follows:

ARTICLE I.

Sec. 5. Excessive bail shall not be required, nor excessive fines imposed, nor shall cruel or unusual punishment be inflicted, nor shall witnesses be unreasonably detained.

The death penalty, as a punishment for crime, is hereby abolished and any person convicted of murder in its first degree shall be punished by imprisonment during his or her natural life in a state prison at hard labor. But such person shall have the right to apply at any time during his term of imprisonment for a new trial on newly-discovered evidence to the judge who presided at the trial of the person so convicted, or to the successor of said judge, or to any

court in the county in which said conviction was had having jurisdiction to try a like offense.

Mr. Blake — Mr. President, I will ask the attention of the gentlemen of the Convention briefly, and I will endeavor not to weary them with too long a speech; and, preliminarily, I desire to ask them to consider this pending amendment carefully, and, especially, in the light of the fact that there is pending before a committee of this body another amendment, which is No. 204 (introductory No. 202), and which I had the honor to introduce in connection with the amendment now pending. That is still before the committee. I appeared before that committee, of which Mr. McMillan is chairman, and requested the committee to postpone consideration upon that amendment until the pending amendment might be disposed of. The committee has kindly consented to do that.

That provides that in cases of conviction of murder in the first degree, the pardoning power shall be also abolished. If the amendment now pending, Mr. President, shall be favorably decided by this Convention, which is my hope and trust, of course, I will press that amendment, to which I have alluded, before this Convention for adoption.

I cannot believe, sir, that this Convention has yet passed judgment upon the principle of this amendment. It is true that this question was up a week or two ago, upon the amendment of Mr. Tucker, and the Convention agreed with the adverse report of the committee. I have reason to believe that very many gentlemen who voted to concur in the committee's report, did so, not because they were in favor of capital punishment, but, I believe, largely because they did not agree with the form and some of the features of that amendment. I trust the pending amendment will be found less objectionable in that respect; and, if there be any objection — if, indeed, this Convention is in favor of the principle — the Convention will find no difficulty, I apprehend, in making the amendment to conform to its views.

I ought to say, also, sir, that this is not a unanimous report, and I have the authority of the committee and of the chairman to say to this Convention that, of the nine gentlemen who were present when this report was agreed to, five of the nine were opposed to capital punishment. I trust the same proportion against it may be found in this Convention.

Now, Mr. President, I am well aware that when an institution or a law or a custom comes down to us through many centuries, and during all that time has received the sanction and support of civil-

ized society, that it ultimately comes to be regarded by the majority of mankind with profound reverence. Like the giant oak of the forest, it seems to take deeper root with the passing years; and so, too, as the vine and the ivy, according to the laws of nature, will twine about and cling with the tenacity of their kind to their powerful protector, so will the prejudices and even affections of mankind cling to the institution or the law that comes down through the centuries, venerable and hoary with age. There is a natural indisposition on the part of mankind to disturb or discard this heirloom of the past. With most men, to attempt to do so is little less than sacrilege. They will tell you that it is the product of the wisdom of parliaments, of jurists, of philosophers and statesmen; and so it comes to be regarded as a sacred legacy. We almost forget, sir, so anxious are we to cling to this relic of the past, that the author of this law, whether parliament or jurist, whether statesman or sage, dealt with society as he found it; that what would be good for one age would not necessarily best serve another; that what is needful to one citizen might be injurious and even repugnant to another. Plato was wise in his generation, doubtless, and Solon not less so in his time; but it would be supremely absurd to say that the same rigor of law and the same severity of punishment that were required in a barbarous age, or a semi-civilization, is to be justified in an age of the highest civilization and refinement. In our progress upward to higher planes during the last century, the human race, in spite of prejudice for ancient laws and custom, has given strong evidence of its appreciation of this truth. It was not so many years ago when burglary and arson, and larceny, and many other crimes were visited with the penalty of death.

The world has advanced, gentlemen of the Convention, and is it the worse for having abolished capital punishment in these cases? Who is the gentleman here to-day who would reimpose that punishment for such offenses? It may have been necessary in one stage of the world's history, or, at least, deemed so to be, but we all agree that it is not necessary in our day, and the imposition of that punishment in our time would, I think, shock the conscience of mankind.

All of you, gentlemen, will recall, in your reading of medieval history, what is known as the "truce of God." The duel was the common remedy for every wrong or grievance, whether real or imaginary; that common crime against the laws of God and humanity whereby so much innocent blood dyed the fields of honor because of its universality, if I may so speak, could not be at once abolished, because, by the majority of mankind, it was regarded

as the supreme test of guilt or innocence. There was no law and there was no human power that could at once abolish it. Little could be done with the war lords and the powerful barons and knights of old and gentlemen, so-called, but religion stepped in and by its beneficence and restraining influence succeeded in obtaining sanction to the proposition that upon certain days in each week duels should be refrained from.

And so by degrees it was sought to abolish this great evil, until finally, by the combined influence of religion and education and civilization, dueling was abolished and held in almost universal reprobation. And to-day, in almost every civilized land, it is made a crime against civilization and human laws and visited with severe penalties.

Sir, we have advanced to a higher plane. Our race has cast off the swaddling clothes of centuries, and, despite the faint-heartedness of some and the prejudice of others against this change and wholesome reform, our race is grandly and bravely climbing up the mount of hope and promise, and each century and each year it is coming nearer and nearer to the summit whereon eternal light and truth and righteousness reign and abide. There are those who will not try to attain the desired good. It must be dropped into their laps; there are some others, like the man riding backward in the train, who never sees anything until it is past. There are others still who, like the finger sign-board, always point the way, but never make the journey themselves. I prefer the pioneer, the reformer, who, for the betterment of his kind, not only points the way, but himself advances in the van of progress. It is not, Mr. President, the man, who, like the hooting owl that haunts the dismantled and untenanted castle, gropes around amidst the ancient ruins of past civilization, fondles to his breast the relics of by-gone days, and pleads to be left alone with his idols; it is not he who lifts up his race and brings blessings upon his kind. It is the man with stout heart and soul to dare, with noble and lofty thought, who advances in the van, or, at least, stands in the very front rank of human progress. We have advanced during the last century. We have penetrated the unknown and explored and conquered new worlds in every art and science. We have accomplished marvelous achievements in this, the nineteenth century. But, let me call your attention to this fact, that up to the very moment of success, in almost every instance, the majority of mankind were ready to exclaim: "Impossible; it cannot be done; it will not succeed." Why, sir, a learned Englishman once wrote a treatise to prove that the steamship could never cross the ocean;

and by some species of irony, I will call it the irony of fate, that pamphlet was brought over to New York city in the first steamship that crossed the Atlantic.

Ben Butler was eloquently urging before a congressional committee that it was impossible to capture Fort Fisher by sea; and whilst he was yet eloquently pleading, the chairman read a telegram announcing its capture.

Millions of people there were who believed that slave labor was necessary to the South; that free labor could not live there, and lo! the shackles fall from the limbs of the slave, and he stands forth in the sunlight of freedom, taking on a new life, a very giant in his new-found strength. The laws of Draco, because of their severity, were said to have been written in blood; but, sir, in this golden age in which it is our proud privilege to live, when religion and education and civilization hold almost universal sway over the hearts and minds of men, it were far better that our laws were written in the milk of human kindness and justice and God-like mercy. Every honest and just reform for which good men strive and pray will come some time. They will come in God's good time. He knows the day and the hour. Ignorance and prejudice and the fear of change may retard their coming; they may postpone the welcome day; but, sir, they will come. Just so sure as the night follows the day; so sure as justice and truth and right shall endure, they will come. You cannot, sir, keep truth forever down; you cannot always defeat the right, because it is in the hands of a higher power; and, if not to-day, if not now, it will triumph some day; for so has it been in our march down through the ages.

"Truth crushed to earth, will rise again,
For the eternal years of God are hers;
But Error, wounded, writhes in pain
And dies amid her worshippers."

I challenge any man here or elsewhere to find any warrant for the imposition of the death penalty by society. You cannot find it in the Divine law, nor in the natural law, nor in the moral law. You cannot justify it by the law of justice, or by the law of necessity; and, if it cannot be found justified or excused in these authorities, or under these laws, then, sir, I hold that organized society has no right to shed human blood or to take human life.

Pardon me, sir, there is one law I had almost forgotten. There is one law that seems to sanction it. It is the *lex talionis*, the law of revenge. But what is the law of revenge, and where does it take its life? To what shall we trace its source and spring? I will tell you, sir, to the brutal instincts

and passions of men, to the depraved and wicked impulses of the human heart, which is the well of hatred, and malice and vindictiveness, alas! sir, the home of all uncharitableness. The law of revenge is the law of devils, the supreme law of hell, from which there is no appeal. It first stirred in the breast of Lucifer. It took on life in the heart of Satan, at the moment of his overthrow and banishment from Heaven, and since then this has remained his sole and inexorable law and that of his deluded followers. As it was devilish in its origin, so will it be devilish throughout all the ages of eternity. I know, sir, it is the fashion of people who distrust everything new, who turn their faces to the past and never to the future, to justify this inhuman practice by the misconstruction and distortion of holy writ. It was Madame Roland, who, on the way to the guillotine, exclaimed: "Oh, Liberty, what crimes are committed in thy name!" What crimes, sir, are committed in the name of the Scriptures that we all reverence and love! Can you find any warrant for it in the Scriptures? I know that the apostles of this doctrine base their arguments upon the passage: "Whoso sheds man's blood, by man his blood shall be shed," and "An eye for an eye and a tooth for a tooth." Are these passages to be interpreted literally? Why, it would be monstrous. There are times when man is justified in shedding his brother's blood — justified before God and man. He may do so in a just war; he may do so in self-defense. Is the murderer always detected? Does he not sometimes escape unwhipped of justice? What then becomes of your literal translation of this passage, "Whoso sheds man's blood, by man his blood shall be shed?" and of the myriads of cases in which a man sheds his brother's blood in anger, when provoked, in passions, where there is strong mitigation, and juries even are compelled to convict of manslaughter in one of its degrees, or acquit. What then becomes of that literal translation? Why, sir, is not this passage a command to peace and good-will, an admonition to shun quarrels, not unnecessarily to take human life, lest, perhaps, that we ourselves in turn should be placed in jeopardy, and another do like unto us? Is it not like that injunction of the Saviour on the night of the great agony, when he said to Saint Peter, who had cut off the ear of the servant of the high priest: "Put up thy sword into its scabbard, for they who take the sword shall perish by the sword." Is that to be interpreted literally? Do all who take the sword perish by the sword? No, sir; but it was a salutary inculcation of the lesson that we must avoid unnecessary violence, needless violence, lest in turn we may perish by violence. "An eye for an eye and a tooth for a tooth." Do we

then take "an eye for an eye and a tooth for a tooth?" Why, sir, it was a figure of speech. A good and merciful God could not give to His creatures a law so inhuman and so cruel and yet remain God, with all His divine perfections, His attributes of mercy and goodness and wisdom. It is not commanded by the Mosaic law nor by the evangel of Christ. Both the one and the other teach the law of mercy and forgiveness and love. These passages have been much abused, and I can say, sir, in the language of Shakespeare, that "the devil does not quote Scripture," and I say it, with all respect to the gentlemen who may differ from me. But the devil does sometimes quote Scripture for his purpose.

Cain slew his brother, Abel. Did the Lord command that Cain should be put to death? Yet the murder was most unprovoked and inexcusable. Abel was just, before the Lord. The murder was the outcome of consuming jealousy. But did the Lord command that he should be put to death? Did He not send him forth with the brand of murder upon his brow, and when Cain protested that men might kill him, did not the Lord say: "Nay, but whosoever kills thee shall be punished seven-fold?" Sir, the Scripture is against this crime by society. The Scripture is against what remains to this day, amongst civilized people, the last remaining relic of barbarism. Why is not the adultress put to death to-day as of old? Why is she not stoned to death as of old? Was it not the Master who said: "Let him who is without sin cast the first stone. Go in peace and sin no more?" Were not thieves executed in olden time? Why not now? Two of them were executed with Christ. It is true that He did not condemn the practice, but that does not help the apostles of this doctrine, because, if it amounts to anything at all, then they should insist upon the execution of thieves. But why did he not condemn it? Because, sir, it was not His mission upon the earth to frame a code of laws and to regulate the affairs of civil government. But, why, in the face of the olden practice, are not thieves put to death to-day? I will tell you why. Because the world has condemned and abolished it. The world has advanced, and it is speeding to-day as never before. Now, the advocates of capital punishment, Mr. President, when hard pressed, run to their last fortress, and there they make a desperate stand, and this is their argument — they say it is necessary to the protection of society, and upon that ground they stand. They admit, then, that the Lord who gave life, with that simple qualification and exception, has the sole and supreme power to take away life, and that when you advance beyond the pale of self-defense, which is the first law of nature, neither society nor the individual has the right

to take human life. Well, sir, I concede that society has the right to enact laws for its maintenance and its perpetuity, the right to make laws for the preservation of its law and order, and also for the proper punishment of crime, for the establishment of penal institutions, always in the line of self-defense, so that those who transgress its laws may be incarcerated for a time and be for a time removed from its midst. But, tell me what is the theory of society, in respect to murder in the first degree? Why, that the man who commits it is a menace to society; that he is a man of depraved and wicked heart; that, if in cold-blooded malice he could take one human life, he may take another, and still another, and so, for its own peace and security, it is necessary to remove him from its midst. But how, Mr. President? By killing him? Yes, if it be necessary to the protection of society. But, if not necessary to that end, no, no, a thousand times no, sir! You have no right to sacrifice human life, unless it be necessary. And let me ask you if the man convicted of murder of the first degree be imprisoned at hard labor, under such conditions and circumstances of punishment as the law prescribes, what fear has society to apprehend? Is society not effectually and absolutely freed from all danger of his presence, and, particularly, if the pardoning power be removed? Let me ask you, gentlemen of the Convention, what apprehension have you now that the man convicted of murder in the second degree, who is sentenced to imprisonment for life at hard labor, will return to your midst, unless by the grace of a pardon? But, by the amendment which I have alluded to, the door to the pardoning power is forever closed to the man convicted of murder in the first degree. The man convicted of murder in the second degree may still, as now, appeal to executive clemency, and he may still cherish the hope, slender though it be, that some day he may be permitted to mingle with his kind. But not so the man convicted of the higher offense. It may well be said, in the language of the damned spirits whom Dante describes: "Abandon hope, all ye who enter here."

Now, they talk of the punishment of death. I confess, sir, that life and liberty are sweet. Death is bitter to all men, howsoever it may come. But why? Because they know not what lies beyond. With the murderer the dread is not so much that it is death that faces him, but that it shuts out all hope of pardon, as the laws are now. And, of course, it is natural for men to strive to obtain some better fate, because whilst there is life there is hope. But cut off the pardoning power; cut that off, and imprison him at hard labor, and let me ask you, will he not fear that sentence as much as he

nows fears death and more, and will he not strive as hard to escape that awful fate?

Now, sir, does capital punishment act as a deterring force and influence? Yes, say its advocates. They are grievously mistaken, sir. There is no land under heaven's blue skies where murder is so common and so rife as in those lands where human life pays the penalty. Facts are stubborn things, gentlemen, and they prove this beyond all cavil. In the State of New York, from 1889 to 1894, there were found 174 indictments for murder in the first degree, and eighteen for murder in the second degree. Of that number, thirty-two were convicted of murder in the first degree, thirty-five of murder in the second degree and four plead guilty to murder in the second degree; making, I think, ninety-one convictions, according to the verdicts of juries, of intentional murder. And how many of those who escaped judgment owed it to the merciful consideration of juries? That is the record of six or seven millions of people.

Think you, sirs, that capital punishment operates as a deterrent force and influence? Why, who does not know that the man who commits murder for the most part commits that act when the demon passion storms in his breast and dominates his will, and he cares little or nothing for the personal consequences of his act; or else he murders in secret, or assassinates in secret, exercising all his ingenuity and cunning to cover up the crime, in the hope of escaping punishment altogether. Why, sir, does the mind advert for a single instant in such a case to the penalty, when the murderous blow is struck? And how is it in other lands and States, more happy than ours? In the little State of Rhode Island it is almost fifty years since a man has been hanged or sentenced to death, and, yet, if you ask any resident of that State, he will tell you that life and property are safe there — aye, far safer than in the State of New York. In the State of Maine capital punishment has been abolished since about 1876, and life and property are safe in Maine. In Michigan, for nearly fifty years, it is the same story; and I will address this question to the judgment and conscience of every man in this Convention; if the abolition of capital punishment had not proven a source of blessing to the people of those States, would not the people of those States at once, as soon as might be and without any unnecessary delay, have remedied the evil and placed the death penalty upon their statute books? I know the answer is in your hearts and minds, for there can be but one answer to that question.

Across the broad Atlantic there is a little land whose people are

industrious and thrifty and peaceful. They are busy with the arts and the trades that bring to them comfort and abundance and prosperity. Belgium, a nation of about 5,000,000 of people, more wise and happy than we, has abolished capital punishment, and murder is scarcely heard of in that land. Why, sir, in no land under heaven's blue sky is life held so cheap as in these United States. In no land throughout the civilized world are there so many executions as in this land, the home of the brave and the free, the home of civilization and enlightenment. What does that prove? It proves that the death penalty never did and never will prevent a single murder. If there be any influence at all, it exists not in the severity of the punishment, but in its certainty. Another has said: "All through the civilized world we are called the hanging nation." In that particular we have no competitors among the nations of the earth. To that bad distinction that dishonors us and is a blot upon our civilization, there are no aspirants among the nations of the earth. And, sir, if capital punishment does not operate as a preventive of crime, then the strongest argument of its apostles falls hopelessly shattered to the ground. They tell you that death is a punishment. No, sir, I will tell you what is a punishment. I would not at once end the suffering and punishment of a man who has wilfully and deliberately taken human life. I would continue them on, and on, and on, until his Maker, who breathed into him the immortal spark of life, should call him hence to judgment. I would make him feel every moment of his life that when he rises in the morning from a felon's cot that it is to face a hard day's toil, without the hope of compensation or reward, to labor on and on unceasingly, without respite or vacation from his weary round of servitude, never more to partake of the joys and pleasures of society, and never more to look into heaven's blue sky or tread the green fields of earth, or taste the sweets of liberty, dearer than even life itself. I would make him know that his life is worse than that of a slave; that he is dead and buried to the world and to his friends, his kindred and his kind. That, sir, is punishment; punishment allowable by the laws of God and justice. And, if, sir, he has committed wilful and deliberate murder, would you not give him time for remorse? Would you not give him a lifetime? Is a lifetime too long to atone for this crime? Would you cut off the days that God Almighty gave him in which to atone for his sins and to do works meet for repentance? Upon what principle is it that a court of justice merely gives him thirty or forty days in which to prepare to meet his Maker. What a farce, what a mockery. If thirty or forty days, why not a lifetime?

And, then, gentlemen, remember how many innocent men suffer this disgraceful death. Every lawyer in this body knows that the books are full of such cases. And, if a man be guilty of a lesser degree of crime, in truth and in the sight of God, and the jury convict him of murder in the first degree, and he suffer this infamous death, what shall society do? How will you repair the wrong? You cannot repair it. You have committed a great crime which cannot be repaired in this world or the next; I say not in the next, for infinite power, even, paradoxical as it may seem, is powerless to blot out a wrong when once consummated. I do not mean to say that Almighty God may not restore to life; do not misunderstand me. I say that wrong, that particular wrong once done, once consummated, even Almighty God may not blot out; and, sir, one drop of innocent blood is of more worth than all the unnecessary hangings that have ever disgraced the pages of our criminal annals. If a man be imprisoned and a terrible mistake has been made, if the spirit yet abides with the flesh and the heart beats warm with life, there is yet time for justice. The wrong may be, in part, repaired. His innocence may be vindicated before the world.

Ah, gentlemen, if in considering this question, you could but shut your eyes to the past to which, unhappily, so many of us are chained and bound; if you could blot from the tablets of your memory the fact that this law is an institution grown venerable through centuries, and, like all such institutions that come down through the centuries, receiving the sanction of generations, almost compels our reverence; if you could dismiss from your minds the fear of change, the most formidable obstacle to human progress and to every honest reform; if you could shake off the prejudices that have accompanied you from your youth up, and that now beset you on every side, and look up to that loftier plane whither our race is fast tending — and some of you gentlemen here to-day, more happy than your fellows, will yet live to see it — could you but do that, you would perform an act pleasing in the sight of God and just men. I appeal to you, gentlemen of culture and refinement and education, you lovers of religion, you men of sturdy purpose and courage, who, deep down in your hearts, each and every one of you, I know strongly loves right and truth, and hates evil; you who are the mighty ambassadors to-day of those great people and are fair samples and representatives of the moral worth and principles of the highest and best civilization of this age of splendid achievement; I appeal to you, men of New York. Rise to the full stature of your manhood. Lift yourselves far above the atmosphere

of prejudice that surrounds you to-day. I beseech you to stand on the side of civilization and human progress, which, if you shall wisely do, humanity will bless you, and generations yet to be will rise and heap benedictions upon your memory.

I thank you, gentlemen, for your attention. (Applause.)

Mr. Hotchkiss — Mr. President, while I am individually heartily in accord with the abolishment of the death sentence and the substitution of something similar to that suggested by my colleague from New York (Mr. Blake), I do not think the time has come when the people of the State of New York wish this penalty to be changed. I am, therefore, in favor of sustaining the action of the committee in its adverse report; but I believe that there should be a record made here to-day of the sentiment of this Convention, and, possibly, for the encouragement in the future of those who may wish to see this penalty abolished, of the opinions of the members of this Convention upon this subject. I, therefore, ask that the roll be called upon sustaining the vote of the committee.

The President put the question upon calling the ayes and noes, and the ayes and noes were ordered.

The Secretary proceeded to call the roll.

Mr. Becker — I ask to be excused from voting, and will briefly state my reasons. I have for many years felt that so long as human nature was weak as it is, the right to take away human life by judicial process was one that should not be permitted to exist in a civilized community. After the life has been taken, a wrong that is committed may never be righted. While I believe this, I agree with my friend, Mr. Hotchkiss, that, probably, the sentiment of the people of this State has not yet been cultivated to such an extent in right thinking upon this question, that so radical a change in our methods of punishment, as is now proposed, could be adopted. At the same time I disagree with him as to the conclusion which he draws from that reasoning. It seems to me that this is peculiarly one of those questions that should be submitted to the people for their judgment; for the right to take human life rests, in its ultimate foundation, upon the doctrine of self-defense, the defense which society offers for its own protection. While on some other questions which are before this Convention, where sex may be arrayed against sex, and where the home might be invaded and its peace and security broken up, I would believe it to be the ultimate duty of this Convention to refuse to submit a question about which the majority of the Convention believed that there was little or no doubt as to what was the right thing to do. This is purely a matter

of reason. It is one as to which a great many of our fellow-citizens in this State cherish opinions like those stated here by the gentleman who made an argument in opposition to the report of this committee, one of the best and ablest arguments, Mr. President, I ever had the pleasure of listening to on the subject. But I believe that where so many of our fellow-citizens have doubts on this question that it is the duty of this Convention to submit it to the people for their decision. Let them determine it, so long as it will not entail bickerings or disputes which prejudice the present safety and security of society. For these reasons, Mr. President, I withdraw my excuse from voting, and vote no.

Mr. E. A. Brown — Mr. President, I ask to be excused from voting, and will briefly state my reasons. It seems to me, sir, that it is eminently proper, in this advanced stage of society and civilization, that this amendment should be adopted. When we view the experiences of the countries of the old world in dealing with the anarchistic element there, for whom death has no terror, for whom conviction is what they desire and execution their fondest hope, when the shores of this great land are threatened with mobs of this kind of anarchistic people, I say that solitary confinement is the only punishment that will be adequate in such cases. I, therefore, desire to withdraw my application to be excused from voting, and vote no.

Mr. Cassidy — Mr. President, I ask to be excused from voting, and will briefly state my reasons. I do not believe that the Constitution of this State should be turned into a penal code, with penalties and fines imposed, because of the neglect or violation of some of its provisions. In the Constitution, as it already exists, we have a provision which is broad enough and plain enough on this subject. "Excessive bail shall not be required, nor excessive fines imposed, nor shall cruel or unusual punishment be inflicted." This leaves the whole subject with the Legislature, and the Legislature is supposed to walk hand in hand with the development of society. If it becomes necessary, as has been said, to throw off the swaddling clothes of the past, and blaze new paths for the future, the Legislature, in touch with the progress of civilization, may make such provision at any time. It seems to me that it would be undignified in a Constitution to say more than we have already said upon this subject. This subject has been the source of more literary pyrotechnics proposed in debating schools than any other subject which will come before us. More men have gone careering among the constellations and scattering star dust in their trails in the discussion of this subject than any other, but I think the provision of the

Constitution is broad enough, humane enough and advanced enough. I, therefore, withdraw my request to be excused, and vote in the affirmative.

Mr. I. Sam Johnson — Mr. President, I ask to be excused from voting, and will briefly state my reasons. I believe that there is no question where intelligent and honest research and looking into the history of the various States, and various countries, which have adopted the one principle or the other, will do so much for the measure as in the present case. I had the pleasure of occupying a position in this chamber in the Assembly in 1890, when it was said that there were only three members who were in favor of the abolition of capital punishment. But under the leadership of that gallant general and able man, General Curtis, the matter was investigated. The effect upon the various States and various countries was considered; it was postponed from time to time and members of the Assembly were asked to investigate the matter for themselves, and the result was that instead of there being three members in the Assembly, there was a majority voting in favor of the abolition of capital punishment. I believe that if a similar examination were made here, if the effect it has had in different places was properly considered, that this body would have no question as to which was right.

If it be, Mr. President, that it is for its example on the public, if it be that it will deter others from the commission of crime, then we ought not to have adopted the rule which has been adopted in this State and in many other States, that the execution shall be in private, and not in public. I think it is true that, whenever in the past executions have been in public they have been followed by a carnival of crime, and that many other murders have been committed which would not have been committed had the execution not been made public. I do not believe, sir, that public executions will deter crime. I believe that when you come to a time when many of these Anarchists cannot pose, as they now pose, as martyrs, that you will take away much of that which induces them to commit the crimes which they have committed in the past, and which they will continue to commit in the future. I believe that if it was understood that those men, when they committed the crimes, were to be punished by imprisonment for life, without the possibility of pardon, that you will find less Anarchists in this country. Mr. President, I withdraw my request to be excused from voting, and vote no.

Mr. Maybee — Mr. President, I ask to be excused from voting, and will briefly state my reasons. When this proposition was before

the Convention the other day, I voted to confirm the report of the committee adversely because that proposition contained some provisions to which I could not give my assent. But I understand the proposition now pending to-day is a clean-cut proposition in favor of the abolition of capital punishment. I do not believe capital punishment to be in conformity with the Christian and humane spirit of this age. I do not believe that the age supposed to be dominated by the sermon on the mount, by the New Testament law of love, ought to retain a system of judicial murder. I, therefore, withdraw my request to be excused from voting, and vote no.

Mr. McClure — Mr. President, I ask to be excused from voting, and will state my reasons very briefly. I am not, as I have intimated here on one or two of the occasions when I have taken the liberty of addressing this Convention, in favor of doing anything but passing positively upon every proposition submitted to this Convention. I am not in favor of submitting to the people any proposition which the judgment, the wisdom, the experience and the discretion of this Convention do not positively and in set terms, by a liberal majority of its members, endorse. With reference to this proposition, I am in favor of the report of the committee. The very eloquent speech of the gentleman from New York (Mr. Blake), full of evidence of research, learning and reading, reminds me of the scene in the British House of Commons, when one of the two great English orators (although they were both Irish), I do not remember whether it was Burke or Sheridan, but when, whichever one it was, concluded his speech, an English member suggested that perhaps the house had better adjourn, as it might act mistakenly under the influence of the eloquence of the speaker. But I have had time to recover from the effects of Mr. Blake's eloquence. I believe there will be no deterrent to the commission of murder in our community unless there is to be swift retribution, and the taking of the life immediately, promptly of the murderer. I believe that that is the only preventive, and it is not much. I do not think that the law ought to be changed. I am prompt to say positively that I am not in favor of submitting the question to the people because I, sent here to represent them in part, do not approve of it, I withdraw my request to be excused from voting, and vote aye.

Mr. McDonough — Mr. President, I ask to be excused from voting, and will state my reasons briefly. I desire to say, Mr. President, that in reporting this amendment adversely the committee do not all favor capital punishment. On the contrary, several members of the committee agree with the gentleman who introduced this proposition, but it was thought by the committee unwise

to tie the Legislature fo twenty years, possibly. They thought it wise to leave this matter to the Legislature, and have it considered there where it properly belongs. The Legislature of the State of New York has acted on a similar proposition before. Many years ago capital punishment was abolished in this State. It was to save an Albany woman, and the Legislature ought to do anything to save an Albany woman.

Mr. Moore — She needed it.

Mr. McDonough — She needed it, otherwise she would have gone to the gallows.

Mr. McClure — As distinguished from the men.

Mr. McDonough — The Albany men are able to save themselves. The very next year, Mr. President, the law was changed again, and the capital penalty was re-enacted. On account of these changes it was thought advisable and thought best to leave this matter to the Legislature. I withdraw my request to be excused from voting, and vote aye.

Mr. Moore — Mr. President, this is the first time that I have deemed it necessary to ask to be excused from voting, and to state my reasons therefor. I feel, Mr. President, that this proposed amendment is in the line of advanced thought and progressive humanity. I do not believe that capital punishment has ever bettered humanity. It certainly has never cured the crime, even if it has killed the criminal. As for speedy retribution, I beg to point my friend from New York (Mr. McClure) to the records of the courts, as to any speedy retribution in these directions. It seems to me, Mr. President, that the Legislature does not walk hand in hand with the advanced thought of the people upon all subjects, and, at least, not upon this. I find, Mr. President, that among the people the demand for more humane punishment indicates the trend of public thought in this direction. I find the fact that the people are against public executions which were formerly quoted as a necessary example to deter criminals from committing crimes. I find the fact that the people demand that these executions shall be in private, that the people think if there must be capital punishment, that it shall be as humane as possible. These ideas indicate the trend of the public mind upon these questions. I withdraw my request to be excused from voting, and vote no, on the question of this adverse report.

Mr. Titus — Mr. President, I ask to be excused from voting, and will briefly state my reasons. Several years ago in this State there was a commission appointed for the purpose of reporting some more

merciful means of death than by hanging. They reported that death by electricity was more merciful, and after trying it on several dogs and horses they found that it did not work successfully. They then added to it the autopsy or post-mortem, and the doctors to-day are to hold that autopsy so as to kill the victim if electricity has not done its work. These gentlemen even went further. They were appointed for the purpose of revising and recommending some more merciful means. They even went into the grave of the victim and said his body must be consumed with quick-lime. Gentlemen, I believe in imprisonment, and life imprisonment in its full term. Every murderer or thief should be taught that it is the privilege of an honest man to work and breathe the free air of Heaven. I withdraw my request to be excused from voting, and vote no.

The report of the committee was agreed to by the following vote:

Ayes — Messrs. Abbott, Acker, Ackerly, Allaben, Alvord, Arnold, Baker, Banks, Barhite, Bowers, Brown, E. R., Bush, Cassidy, Chipp, Jr., Clark, G. W., Clark, H. A., Cochran, Cookingham, Cornwell, Countryman, Crosby, Danforth, Davenport, Davis, Deterling, Deyo, Doty, Emmet, Fields, Floyd, Foote, Fraser, Fuller, C. A., Galinger, Giegerich, Gilbert, Hawley, Hedges, Hill, Hirschberg, Holls, Hottenroth, Jacobs, Johnson, J., Kellogg, Lauterbach, Lewis, C. H., Lincoln, Lyon, Manley, Marks, Marshall, McClure, McCurdy, McDonough, McIntyre, McKinstry, McMillan, Mereness, Nichols, Nicoll, Nostrand, O'Brien, Osborn, Parkhurst, Pashley, Peck, Platzek, Powell, Pratt, Putnam, Redman, Roche, Root, Rowley, Sandford, Steele, W. H., Sullivan, T. A., Tekulsky, Tibbetts, Vogt, Wellington, Wiggins, Williams, President — 85.

Noes — Messrs. Barnum, Barrow, Becker, Blake, Brown, E. A., Burr, Campbell, Carter, Church, Coleman, Crimmins, Davies, Dean, Dickey, Durfee, Durnin, Faber, Farrell, Forbes Fuller, O. A., Gibney, Gilleran, Green, J. I., Hotchkiss, Jenks, Johnson, I. Sam., Kerwin, Kinkle, Kurth, Lewis, M. E., Maybee, McLaughlin, J. W., Meyenborg, Moore, Morton, Ohmeis, Parmenter, Peabody, Pool, Porter, Rogers, Speer, Springweiler, Storm, Sullivan, W., Titus, Towns, Truax, C. S., Tucker, Turner — 50.

The President — The Secretary will call general orders.

Mr. Root — Mr. President, I ask unanimous consent to make a report from the Judiciary Committee.

The President — Unless objected to as out of order the report of the Judiciary Committee will be read.

No objection having been made the Secretary read the report of the Judiciary Committee as follows:

Mr. Root, from the Committee on Judiciary, to which was referred the resolution No. 153, introduced by Mr. McLaughlin, asking for information from the Board of Claims, reports in favor of the passage of the same.

The President — The Secretary will read the resolution.

The Secretary read the resolution as follows (No. 153):

Resolved, That the Attorney-General of this State be requested to furnish forthwith to this Convention a statement of the number of causes actually litigated and tried before the Board of Claims during the last five years, by years, together with the statement of the time when each cause was first put at issue or the claim filed in said court, and the time when such claim was actually tried and disposed of, and the name and post-office address of the attorney for each claimant.

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

Mr. Tucker — I ask unanimous consent to make a minority report from the Committee on Suffrage.

The President — Mr. Tucker presents a minority report from the Committee on Suffrage, which will be read by the Secretary.

The Secretary read the minority report as follows (Document No. 48):

To the Constitutional Convention:

The undersigned, a minority member of the Committee on Suffrage, respectfully, but positively, opposes the adoption by the Convention of the report of the majority of said committee in favor of the amendment (No. 8), introduced by Hon. Mr. Gilbert, imposing as a qualification for the exercise of the right of suffrage, that the voter must be able to read the Constitution in the English language. He believes such a condition, imposed upon the right of voting to be unjust to our adopted citizens of Continental European birth. He will never consent to disfranchise, now or hereafter, any American citizen, and deprive him of his voice and a share in the government, and of the privilege and the protection of voting for those who are to conduct and administer it, because that citizen learned in his childhood to speak in a tongue other than English He submits that the broad and generous spirit of American democracy revolts at distinctions among citizens, founded upon the accident of birth and language. Our fathers abolished such distinctions, and their sons should refuse to restore and sanction them.

The undersigned, therefore, respectfully recommends that the Convention strike out from the first section of the second article, as reported by the committee, the following words:

"Who shall not be able to read the Constitution in the English language, and write his name."

GIDEON J. TUCKER.

August 8, 1894.

Mr. Cochran — Mr. President, as it might appear from that report that Mr. Tucker was the only member who voted against this proposed amendment, I might say that all the Democrats on the Committee on Suffrage voted against it, and we have not joined in any adverse report for the reason that this report was not submitted to us for our consideration.

Mr. Tucker — As a matter of privilege, I desire to say, that there was no co-operation or consultation among the Democratic members of the committee. I was informed, after an absence, that a sanction had been given by a majority of the committee to this remarkable constitutional amendment, and I desire to make this report.

The President — This report will be open for consideration when the majority report is before the Convention.

Mr. Tucker — I ask that it be printed.

The President put the question on ordering the report printed, and it was determined in the affirmative.

The Secretary called general order No. 6, introduced by Mr. Alvord.

No. 6 was not moved.

The Secretary called general order No. 5, introduced by Mr. A. H. Green.

No. 5 was not moved.

The Secretary called general order No. 7, introduced by Mr. Holls.

No. 7 was not moved.

The Secretary called general order No. 14, introduced by Mr. Mereness.

No. 14 was not moved.

The Secretary called general order No. 15, introduced by Mr. Tucker.

No. 15 was not moved.

The Secretary called general order No. 16, introduced by Mr. Vedder.

No. 16 was not moved.

The Secretary called general order No. 8, introduced by Mr. Lauterbach.

No. 8 was not moved.

The Secretary called general order No. 13.

Mr. J. Johnson — Mr. President, I move that we go into Committee of the Whole on No. 13.

The President put the question, and it was determined in the affirmative.

The House resolved itself into a Committee of the Whole on O. 369, printed No. 376, proposed constitutional amendment to provide home rule for cities. Mr. I. S. Johnson in the chair.

The Chairman — Mr. Johnson, of Kings, has the floor.

Mr. J. Johnson — Mr. Chairman, I shall claim your attention but a very few moments to complete that which was in my mind at the adjournment yesterday. Since that time I have been favored with a letter from the Hon. Seth Low, for four years mayor of the second city in population in the State. It entirely endorses the proposition which we present, and fully discussing it, with a wisdom, I think, gathered both from much study and full experience, presents the questions suggested by the amendment. I desire that the Convention should have this document before them. Time is too valuable to tire their patience by reading a paper of this kind. I would, therefore, ask that it be considered as read and printed as a part of my remarks in the debate.

The following is the letter referred to:

NORTH EAST HARBOR, MAINE,
August 3, 1894.

Hon. Jesse Johnson, Chairman of the Committee on Cities, Constitutional Convention, Albany, N. Y.:

MY DEAR MR. JOHNSON — Your letter of July 16th reached me as I was leaving the city. The copy of the proposed amendment, however, did not come to hand until a day or two ago. In the meantime, I have seen in the Evening Post of Saturday, July 28th, a full text of the report of the Committee on Cities to the Convention. As this report differs in several particulars, all of which I think to be improvements, from the proposed amendment sent to me by yourself, I assume that the copy in the newspaper represents the

latest revision of the proposed amendment. Under these circumstances, I accept this as the text for comment.

I am pleased with the amendment as a whole, believing it to be, as the committee claims, a long step in the right direction. Nor do I think it can be seriously faulted for not going further in the direction of granting to the city legislatures at the present time power over municipal affairs. It undoubtedly is the true ideal that the city legislature should have full power in these particulars. On the other hand, it cannot be forgotten that one power after another has been taken away from the common councils of our large cities, because these councils have abused the powers which they once enjoyed. In other words, until such bodies show themselves faithful over a few things, it is not unreasonable to hesitate in granting them full authority over many things. I like the scheme of the amendment, therefore, in recognizing the propriety of the principle of home rule for cities, as to matters purely local, and I am inclined to commend its conservatism, rather than to criticise it, in framing the Constitution of the State, so as to encourage the general development of a common council in our cities that may be trusted with enjoyment of these powers.

I like, again, the attempt in the amendment to define the subjects as to which the city is entitled to home rule. The just rights of the cities have been so frequently abused of late years that the demand for home rule has been urged in many quarters in terms so sweeping as to seem to demand for the locality the right to govern itself without reference to the State at large. The proposed amendment marks a great step, I think, in the direction of correct thinking on the whole subject. A city cannot be sufficient unto itself in the nature of the case. Even on the material side it must obtain its supply of water from outside of the city limits, and it must dispose of its sewage in like manner. The powers of the State must constantly be called into action in its behalf. I have been interested in noticing recently that in Massachusetts it has been found necessary to create a metropolitan sewerage district comprising, besides Boston, seventeen other cities and towns. It is interesting to observe that the cost of the metropolitan sewerage system, thus provided, is met by a loan for which the credit of the Commonwealth is advanced, the interest and sinking fund charges being paid by the various municipalities and towns, under an apportionment according to the benefits received. This action is quite in line with the recent suggestion of Commissioner White, of Brooklyn, that the day is not far distant when the State of New York will be obliged to solve the water problem for its great cities on the

sea board, by bringing the water of the great lakes to their doors under a financial plan similar to that which Massachusetts has adopted in dealing with the sewer question of Boston and its neighborhood. Massachusetts has also created a metropolitan parks district, which includes, besides Boston, thirty-six cities and towns, and the thought is freely expressed that the benefits of this mode of procedure have not been exhausted in dealing with such questions as sewers and parks. As I read your proposed amendment, any such legislation would still be within the power of the Legislature in case of need. It certainly ought to be so. In the meanwhile, in their purely local aspects, it seems to me to be clear that the subjects indicated in section 3 are properly matters for purely local control.

I like the method proposed for dealing with the question of the police. It doubtless will continue to be convenient in the future as it has been in the past, to allow the cities under ordinary conditions to administer their own police force. On the other hand, whether the matter is considered from the point of view of the State, or from the point of view of the individual, it seems to me clear that the State cannot afford to limit itself in relation to its police powers even in cities. The police power in the State is one of the most far-reaching attributes of sovereignty, and I do not think that it should be devolved, without reserve power of control, upon any locality. The individual citizen, again, looks to the State for the protection of his personal rights, and I do not think it would be satisfactory, even to the inhabitant of the cities, to substitute the locality for the Commonwealth as the protector of his person and his property. On the other hand, it does not seem to me a proper limitation on the Legislature to provide that the appointment of the head of the police force in a city should be made only by the mayor of the city, either with or without the consent of the common council. The proposition that the Governor should have the authority to remove sheriffs, seems to me both reasonable and wise.

I cannot close this letter without expressing the hope that the scheme embodied in section 2 of the proposed amendment, providing for city elections in the alternate odd years, will be approved by the Convention. It is customary to point out that the best city government cannot be obtained so long as the voters subordinate the interest of their city to success in State and national contest. It is natural for those of us who live in cities, and who have seen the evil effects upon local government of simultaneous elections for local officers and for officers of the State and nation, to be deeply impressed by this aspect of the matter. It is not so often stated,

however, but it is no less true that this separation of elections is just as important in the interest of the State and national politics as it is in the interest of city government. Those who are concerned most in the success of State or national campaigns ought not to forget that the expression of public sentiment is likely to be importantly changed, so far as the State as a whole is concerned, if the spoils of the cities can be thrown into the balance on one side or the other. While, therefore, the scheme suggested in section 2 of the proposed amendment is of very great importance to the cities, I would like to emphasize the fact that it is of no less importance to all the other parts of the State.

The effort to secure equal majority and minority representation in all the election boards of the cities must commend itself to all citizens, whether or not they approve of the particular scheme suggested in the proposed amendment. I venture to express the hope that whatever policy may be adopted in this matter as to the cities will be made uniform throughout the State. Our interests are identical in that particular, and there does not seem to be any reason why the cities should be differently treated in this respect from the country districts. Thanking you for the opportunity of examining this amendment, I am,

Yours very respectfully,
SETH LOW.

There is a single suggestion in reference to the power of the Legislature. I think I stated yesterday that acts were rarely, if ever, passed against the protest of the executive of the city. I do not desire to be understood in that, that it does not very frequently happen that such acts are passed that are not favored by the executive of cities, that are believed to be in accordance with the best good of the city, but the situation is that every administration is confronted with such an array of proposed legislation, that, singling out that which he deems most pernicious, it seems to be the duty and object of the executive to defeat those; and in this I think he generally succeeds. But the full power to resist such legislation I think should be given him. In what I said yesterday I stated that the situation in our great cities as to the legislative power, referring to the entire absence or almost entire absence of legislative power in the common council of New York city, that the situation was such that the proper demand, for some way to have a new form of common council with minority representation, could not safely be disregarded. I say that whether I believed it was proper or not. I should believe that I did a great wrong did I not leave it, so the

Legislature, in their wisdom and with their opportunity, might provide for the experiment. But I believe there is great merit in the proposition, and I beg of gentlemen, who, perhaps, represent districts differently situated, to consider the situation in the great cities. What would my friends from the northern counties of the State say of electing a Legislature of 128 on a general ticket, so that the party that had the votes should have the entire Legislature? You would say that was wrong. That localities should be represented I agree. But why localities? What is the reason of it? The reason is that different localities represent different interests, different businesses, different pursuits, different thoughts and different classes of citizens of the State, and so by the principle of locality representation you secure representation of the different parts and thoughts of workingmen and citizens of the State. Go with me then to the great cities and ask the question whether locality representation does there effect what it does in the northern or western parts of the State. A man elected from any particular ward of the city of New York or Brooklyn practically does not represent any different interests or different thoughts or any different pursuits, from those elected from any other locality. The reasons which exist for locality representation do not exist in cities, because of the great swarming of populations so close together that the distinction of locality does not exist. How then shall we do something for the city, to give the same kind of representation for all that you do by the locality representation in the country? In no way that I know of, certainly no way so effectively, as by the proposition that people will divide themselves and make their locality according to their thoughts, their interests, their pursuits; that they may divide themselves and ask and obtain representation according to their numbers in the common council. And remember that this is only locally; that this is only the legislative power of the city. Consider, if you please, whether it is not wise to allow the trial to be made; whether or not we are not liable to imperil one of the great supports that are looked to for upbuilding popular government in the cities. I think, Mr. Chairman, I have concluded all that I would present at this time on these articles. I have to thank the gentlemen of the Convention for the patience with which they have listened to me in the time that I have taken. The question seemed to us important; seemed to us not altogether understood, and that is the apology for the time that I have taken. With that, Mr. Chairman, I have to say that I regret the necessity of the parliamentary motion that was made yesterday to strike out the enacting clause, and I withdraw that motion.

Mr. Dean — Mr. Chairman, I have before me the most wonderful concept of civil government since the fair Egyptian sat in the shadow of the pyramids, watching the daylight dying. Aye, were I to carry the period back to our protoplasmic ancestry, I am certain no fact of history would arise to confute me. I have searched the great tomes of the Indian law library, reaching back to the time when Buddah was a boy. I have searched the pages of history from Josephus down through the ages, including the carefully bound State papers of Governor Flower (laughter), but I find no parallel. True, I have found suggestions of men, wise and otherwise, bearing upon some of the lines of thought which are contained in this emanation, but they were vague and fragmentary, like those flood-tides of inspiration which come to us in our sleeping moments, and vanish at the waking. They had in them none of that evidence of mental indigestion, disturbing to the very vitals of the body politic which are so conspicuous in this report of the Committee on Cities, which is now before us.

I shall pass over, Mr. Chairman, the high crimes and misdemeanors committed against the king's English in this remarkable report. These are matters of a pen stroke and of the passing hour. But the ideas — I cannot call them principles — involved in this proposed amendment touch all the coming years, and in my judgment mark the pathway to a tragedy in civil government.

Let me call the attention of the committee to this remarkable document. In the first section we are told that "the Legislature shall pass general laws for the incorporation of new cities." We organize a new city in this State about once in five years, and further comment upon this matter is not necessary. Then we are told that "every city shall have a common council, which shall consist of one or two bodies." A common council of one or two bodies would be in the nature of a physical as well as a literary curiosity, but the essential viciousness of the proposition is contained in the provision that these bodies shall be "elected with or without cumulative voting or proportionate or minority representation." Of all the fallacies in an era full of fads, this idea of curing the ills of popular government by minority or proportional representation is the most foolish. The true theory of democratic government is not in the representation of every crank and every ism in legislative bodies, but in carefully selecting the men and the measures which shall conserve the greatest good for the greatest number. Let us look, for a moment, at the logical result of proportional representation in its effect upon a municipal government. Assume that in a given community the common council is made up on a basis of 100

representatives. We will suppose, for the sake of this argument, that the Republicans are in a majority in sixty of the election districts, and that the Democratic party is in the majority in forty of them. This would, under the American system, give responsible, representative government. This new-fangled proportional representation steps in, however, and in the forty Democratic districts, the Republicans and Populists each succeed in choosing a number proportionate to the number of votes cast, and the Democrats and Populists in the Republican districts do the same thing. The result, we will assume, has been to elect sixty Republicans, twenty-five Democrats, ten Populists and five Socialist-labor men. This has nominally left the Republicans in command of the majority of the voters of the body, but as a matter of fact, a considerable portion of them having been chosen by minorities in Democratic or Populistic districts, they are not responsible representatives of the majority, and they are free to follow out their own inclinations. A portion of all legislative bodies, in the very nature of things, will be weak or vicious, and honest men are bound to disagree on measures of importance, so that it is safe to assume that out of the sixty Republicans elected in this supposed body, five or six would naturally oppose the majority. If we add to this the number who have been chosen by minorities — and they are in no wise responsible for their conduct to the majority — we have a condition where it would be unfair and unreasonable to hold the party responsible for the conduct of affairs. It has been the experience of all representative governments that the minority parties combine against the majority, and the inducement in the case we have supposed would be very strong. Of the twenty-five Democrats, five or six would have been chosen by minorities in Republican districts, and an equal portion of the Populists would owe their choice to substantially the same condition, and so on through the entire list. These would have the double incentive of partisanship and of irresponsibility to constituents for combining against the Republican majority while the party nominally in the majority would be unable to command its full strength from the fact that the members composing the balance of power would owe their election to minorities, and under the pretext of independence would be moved to act as their interests might dictate, rather than from any settled conviction of right and wrong. In other words, proportional representation means an abandonment of responsible, representative government by parties and majorities, and a substitution of government by individuals, chosen by chance. Irresponsible government, Mr. Chairman, is chaos, and chaos is anarchy, and I am opposed to any

system of government for cities, or for any political division of the State, which does not make the official a responsible part of the machinery of government.

Mr. Chairman, I do not share in the modern dread and distrust of partisanship. Devotion to party is obedience to the first dictates of patriotism, and while abuses have occurred in the name of party, they fall into insignificance compared with the greater abuses which are certain to follow the inauguration of a government founded upon the rule of minorities, constituting the balance of power, and owing allegiance only to minorities, and to individual conceptions. I say that any party in its aggregate wisdom, that any party in its devotion to principles, is superior to the individual judgment of any man within its membership, and any system of government which seeks to eliminate the conserving influence of parties is false to the Republic, and it should not be tolerated and encouraged.

This most remarkable proposition then goes on to say that the Legislature shall not pass any laws other than general laws, or general city laws, except as permitted by section four, in any cases affecting cities in respect to parks, streets, water-works, etc. In section four we find that "laws may be passed affecting one or more of the subjects enumerated in the last preceding section, in any city, on the consent of the mayor, or the mayor and common council given as hereinafter provided. The enacting clause of such acts shall be, 'The People of the State of New York, represented in Senate and Assembly, and by and with the consent of the mayor, or the mayor and common council, do enact as follows.'" What a conception of representative government! The creator of a municipal government to enact laws for its government, by and with the consent of its creation. The effect of this provision would be to make the mayor, or the mayor and common council, the legislative authority over the city without being responsible for the enactment. The Legislature would pass all such bills, because it would assume that the law was desirable, or at least that the municipality would hold the authorities responsible for it, but as a matter of fact, the machine in a municipality like New York or Brooklyn could afford to sacrifice its mayor and common council in the work of securing patronage, and the good that was expected would be impossible under this complication of machinery. Every time we depart from the dignified declaration that the "legislative power shall be vested in a Senate and Assembly," and attempt to correct abuses by a complication of machinery, we are drifting away from safe principles, and I trust this Convention will not go before the people upon an issue

which will force many of its individual members to take the position of opposing its passage.

In section six we find a provision commanding the creation of election boards of equal party representation. This violates all principles of majority rule, and is so far an experiment, which the next few years may demonstrate to be vicious, that it cannot be safely engrafted into the Constitution. The great essential to honest elections is honest men, and the sooner we abandon the mechanical morality which has been attempted in dealing with this question, and begin to demand that the ballot shall be placed in the hands and under the control of honest men, rather than corrupt and vicious representatives of political machines, the more likely are we to work out correctly the problem of municipal government. When the community is given to understand that the integrity of its elections must depend upon the courage and the patriotism of its citizenship, rather than the contrivances of mechanical reformers, we shall have approached much nearer the ideal condition than it is possible to attain under the emasculating system which it is proposed to introduce into the fundamental law of the State.

The proposition to make legislatures and municipalities honest by reducing the number of legislative sessions is very much like the old school physicians seeking to make a man well by draining a part of his life, so that he should only be half as sick as he was at the beginning of the operation. The greatest evil of modern legislation is the haste with which bills are allowed to become laws. If we have a session of the Legislature only once in two years the result must be to crowd a greater amount of labor into a shorter space of time, and to augment the evil. The great trouble with these magazine reformers, Mr. Chairman, is the fact that they have not stopped to digest the suggestions which have come to them. They have not applied to them the tests of correct principles, or the knowledge of human nature which should characterize all true reformers. They have accepted, as of course, the vicious and unpatriotic contention that all men are corrupt and dishonest, and they have fondly imagined that out of this chaos of corruption they were going to create a millennium by means of applied mechanics. They started in some years ago by creating a civil service commission, which was to determine everything by the rule of mathematics, and the modern balloting contrivances, including the machine which is seeking recognition in this Convention, is the logical result of that system of reform, which has served no other useful purpose than to increase the civil list, and to allow certain inconsequential individuals to strut their brief day before the

public gaze, clothed in self-satisfaction, and raiment purchased at the expense of the taxpayers of the State. Men will do, Mr. Chairman, about what they are expected to do. If we form our laws upon the theory that those who are to work under them will be thieves we shall have laid the foundation for corruption, while if we recognize the fact that this government must rest upon the integrity of its citizenship, and form a plan which will call for the services of honest men, under conditions permitting of honesty and self-respect, we shall have builded upon a foundation which the ebb-tides of anarchy and discontent cannot overthrow.

In the proposed amendment which I have offered, Mr. Chairman, I have departed from no well-tried principle of popular government. I have sought to give absolute home rule to the people of municipalities, reserving to the Legislature the right to correct evils which time may develop, and I hope that this Convention will give it that consideration which has been denied it by the committee which has seen fit to introduce this monstrosity in the domain of civil government. (Applause.)

I now offer proposed constitutional amendment No. 22, as a substitute for Mr. Johnson's proposition.

Mr. Hotchkiss — Mr. Chairman, the chairman of the Cities Committee reminds me of an adventurous knight who, having undertaken a perilous enterprise for the purpose of establishing his fame, bound himself in honor and chivalry to turn back for no difficulty or hardship and never to shrink or quail whatever enemy he might encounter.

Mr. Alvord — Mr. Chairman, I rise to a point of order.

The Chairman — Mr. Alvord will state his point of order.

Mr. Alvord — Mr. Chairman, my point of order is that the substitute must be read before the gentleman can make any remarks unless the committee dispenses with the reading of the amendment.

The Chairman — The point of order is well taken. The Secretary will read the substitute.

Mr. Mereness — Mr. Chairman, I move that the reading of this substitute be dispensed with.

(Several voices) — Oh, no.

Mr. Mereness — It will take a week to read it.

Mr. Moore — Mr. Chairman, I move to amend the motion of Mr. Mereness that we take it up by sections and that the Clerk shall read it by sections.

Mr. Mereness — The substitute?

Mr. Moore — Yes.

Mr. Mereness — Mr. Chairman, I make the point of order that that motion is not in order; that a substitute must be adopted as a whole or not at all.

The Chairman — The Chair rules that the point of order is well taken.

Mr. Alvord — Mr. Chairman, I make the point of order that the motion of the gentleman at my right (Mr. Mereness) is not in order, because any gentleman has a right to have read from the desk any amendment or substitute which is offered. I call for the reading of the substitute.

The Chairman — The Chair rules that the point of order is well taken, and that any member has the right to demand the reading of a substitute.

Mr. M. E. Lewis — I call for the reading of the substitute.

Mr. Cochran — Mr. Chairman, as a substitute for the motion of Mr. Mereness, I move that section 1 of the substitute be substituted for section 1 of the proposed amendment submitted by the Committee on Cities.

The Chairman — The Chair rules that any member has the right to demand the reading of a substitute, and as a matter of course the reading follows.

The Secretary proceeded with the reading of the substitute.

Mr. Dean — At the request of gentlemen who want to save time, and I am as much in favor of saving time as anyone, I will withdraw my motion and move to substitute simply the first paragraph.

Mr. M. E. Lewis — Mr. Chairman, I object to that. Under the ruling of the Chair, just made, I take it that the demand for the reading of the substitute has been made, and no motion of this kind is in order at this time.

The Chairman — The point of order is well taken.

Mr. E. R. Brown — Mr. Chairman, I would like to inquire if the gentleman does not desire to have it read, will the Convention still insist upon having it read?

The Chairman — The Chair holds that the request for its reading having been made, and the reading having been proceeded with, it is the property of the House and cannot be withdrawn.

Mr. E. R. Brown — I move that leave be granted to withdraw the request.

Mr. M. E. Lewis — Mr. Chairman, I rise to the point of order that that motion is not in order.

The Chairman — The Chair has already ruled on the question. The Secretary will proceed with the reading.

Mr. E. R. Brown — I move that the further reading of the substitute be dispensed with.

Mr. Becker — Mr. Chairman, with regret I rise to the same point of order that Mr. Lewis did, that this must be read as a whole, as it is now before the House. We want to know what this substitute is that is put in here for the report on the Committee on Cities, so that we may know how it bears on the report of that committee. Yesterday the Chair ruled that it could not be printed as a whole.

(Several voices) — It has been printed.

Mr. Becker — If the matter has been printed, I withdraw my point of order.

Mr. E. R. Brown — Mr. Chairman, I desire to make the point of order that under the ruling of the Chair, if the House became engaged in the reading of a document which would take three days, there could be no relief from it.

Mr. Alvord — Mr. Chairman, I rise to a point of order. No motion upon the floor of this committee can be entertained until this matter has been read through at the request of any one member.

The Chairman — The Chair rules that the point of order is well taken and that this matter must be read through, and that ruling will stand unless there is an appeal from the decision of the Chair.

Mr. E. R. Brown — Mr. Chairman, I desire, and do appeal from the decision of the Chair.

Mr. Jesse Johnson — Mr. Chairman, on behalf —

Mr. Hotchkiss — Mr. Chairman, I raise the point of order that an appeal from the decision of the Chair is not debatable.

Mr. Johnson — I merely wished to say that I hope the request of the gentleman will be granted.

Mr. Hotchkiss — Mr. Chairman, I submit that I should have a ruling on my point of order.

The Chairman — The Chair would state that the point of order is well taken. The question is, shall the decision of the Chair stand as the decision of the Convention?

Several members demanded the ayes and noes.

The Chairman — The Chair rules that the ayes and noes cannot be taken in the Committee of the Whole.

The Chairman put the question, shall the decision of the Chair stand as the decision of the House, and it was determined in the affirmative.

The Secretary proceeded with the reading of the substitute.

Mr. Lincoln — Mr. Chairman, I move that the committee now rise and report progress and ask leave to sit again.

Mr. Mereness — I make the point of order that while the substitute is being read no motion is in order to rise and report progress.

The Chairman — The Chair rules that the point of order is not well taken.

The Chairman put the question on the motion of Mr. Lincoln, and it was determined in the negative.

Mr. Cochran — Mr. Chairman, I believe, sir, that we are incurring considerable delay through actions which it is unnecessary for this committee to take. I believe, sir, that any member who has made a motion in this Convention has a right even after it is seconded to withdraw it, provided it is approved by the action of this committee, and I move you, sir, that leave be granted to Mr. Dean to withdraw his substitute.

The Chairman — This requires unanimous consent.

Mr. Cochran — I submit, sir, that it requires only a majority of this committee.

The Chairman — The point of order is not well taken.

Mr. Cochran — I ask that my motion be put.

The Chairman — The Chair has ruled that the motion is not now in order and that the proposition cannot be entertained.

The Secretary proceeded with the reading of the substitute.

Mr. Cochran — I take the liberty of calling the attention of the Chair to rule 46, which provides that "After a motion shall be stated by the President, it shall be deemed in the possession of the Convention, but may be withdrawn at any time before it shall be decided or amended." I move you, sir, that leave be granted to Mr. Dean to withdraw his substitute.

The Chairman — The Chair does not understand that Mr. Dean asks to withdraw his substitute.

Mr. Moore — Mr. Chairman, I rise to a point of order. My point of order is that we are not in Convention; we are in Committee of the Whole.

The Chairman — The Chair rules that the same rules apply in

Committee of the Whole as in Convention, unless especially provided otherwise.

The Secretary proceeded with the reading of the substitute.

Mr. Morton — Mr. Chairman, I believe that the order of the Convention is that this substitute be read through. I hope that it will be observed.

The Secretary proceeded with the reading of the substitute.

Mr. Becker — Mr. Chairman, I think it is now sufficiently apparent how purely legislative this alleged substitute is. It is now half-past twelve. This measure is already in print ready to be examined by the members, and there seems to be enough of it to require examination, in order to prepare for the eloquent and learned discussion that will undoubtedly ensue upon it. I, therefore, move that the committee rise and report progress, and ask leave to sit again.

Mr. Mereness — I would like to inquire, Mr. Chairman, if the reading of the substitute will not have to go on when the committee sits again, if this motion is adopted?

The Chairman — Undoubtedly.

Mr. M. E. Lewis — Unanimous consent may be given to dispense with the further reading of the measure.

Mr. Becker — I ask that unanimous consent be given now. I withdraw my motion and ask that unanimous consent be given to dispense with the further reading of this alleged amendment.

The Chairman — Is there any objection?

Mr. McClure — None if the gentleman will strike out the word "alleged."

Mr. Becker — I strike it out at the request of the gentleman from New York.

The Chairman — If there is no objection such permission will be given.

Mr. Becker — Mr. Chairman, I now move that the committee rise and report progress, and ask leave to sit again.

The Chairman put the question on the motion of Mr. Becker that the committee do now rise, report progress and ask leave to sit again, and it was determined in the negative.

Mr. Cookinham — Mr. Chairman, I offer the following as a substitute for the substitute.

Mr. Hotchkiss — Mr. Chairman, I submit that I had the floor

when I was interrupted. I had already started to address the Chair, and had proceeded with some sentences.

The Chair rules that Mr. Hotchkiss has not the floor, and the substitute may be offered.

Mr. Hotchkiss — May I rise to a question of information. Under what circumstances, and how is it possible for a member of this Convention to retain the floor, when he has been recognized by the Chair and is in the course of addressing the Chair and is interrupted?

The Chairman — By keeping his position and not sitting down.

Mr. Hotchkiss — I cannot stand up and proceed with remarks when the Chairman puts me down and proceeds with another order of business.

The Chairman rules Mr. Hotchkiss out of order.

Mr. Dean — I rise to a point of order, Mr. Chairman, that the substitute to a substitute is not in order.

The Chairman — The Chair rules that it cannot be considered at present.

Mr. Cookinham — Mr. Chairman, I do not intend to have it considered now. I do not intend to address the committee, but simply to present the substitute, and will gladly give way to the gentleman from New York.

Mr. Hotchkiss — Mr. Chairman, the minority in this Convention having saved what there is of this proposed amendment from its friends and enabled it to come before the Convention for discussion, it gives me very great pleasure to invite the consideration of the Convention to some of the pertinent features of the amendment itself and to some of the considerations which have moved me to object to it —

Mr. Moore — Mr. Chairman, I rise to a point of order.

The Chairman — The gentleman will state his point of order.

Mr. Moore — My point of order is that the gentleman is interrupting the Secretary in the reading of this proposed amendment.

The Chairman — The Chair decides the point of order not well taken.

Mr. Hotchkiss — The gentleman ought to read ancient history.

Mr. Chairman, the difficulty attending the administration of municipal affairs, which is pointed out at such length in the report of the majority of the committee, is a difficulty of which this majority is not the discoverer. It is a difficulty which has attended the adminis-

tration of these affairs certainly for the last seventy-five years in this State; ever since our municipalities emerged from a condition akin to that of semi-rural communities and assumed urban characteristics. Substantially the same statistical information, substantially the same arguments, substantially the same words, have been used in former Constitutional Conventions as have been used by the committee in their report. It is a well-known condition. Nor is there anything new in the discovery of home rule, so-called. Prior to about the year 1857, when government by boards or commissions was established, the government of New York city was divided between the city authorities and the board of supervisors. By a series of special acts, beginning in 1857, a large portion of the affairs of the city was taken out of the hands of these representatives of the people and transferred to special commissions appointed by the Governor. But, of course, these commissions were under the direct control of the Legislature, to which resort was had for all necessary legislation. This was the situation of affairs when, in the Constitutional Convention of 1867, the subject of the government of cities was taken up for consideration. In that Convention Judge Ira Harris was chairman of the Committee on Cities, and, on behalf of the majority of that committee, submitted a report, accompanied by an amendment covering a proposed scheme for the government of cities. By this amendment commissions were to be done away with, and "local self-government," as the phrase then went, was in a very limited degree restored to cities, and the power of the Legislature to interfere in local matters was restricted to an extent which is in amusing contrast with the provisions of the amendment before us. Now, it appears that the laws, by which the city had been shorn of the right to regulate its own affairs, had been gradually accumulating on the statute books by force of a sentiment created by the reform element of that day, who were then advocates of the commission theory, and who found in the commission scheme a remedy for all the evils of municipal government as it then existed. In the course of his remarks Judge Harris quoted from a number of New York city newspapers in support of his argument, and against the theory of State control which then maintained and which has been continued in substantial form to this day. In his remarks Judge Harris said as follows: "In New York city," says a leading journal, "we have suffered from the vagaries of a small but impudent and active faction of theorists who succeeded by dint of unparalleled effrontery in obtaining indorsement of their vagaries at Albany. Denying the democratic theory of government and distrusting the efficacy of appeals to

the people, these philosophical politicians have had one sovereign remedy for all disorders — the Brandeth-pills of political economy, certain to cure any disorders which affected communities,— and that was to create commissions under their control. The consequence is that instead of laboring in New York to reform and purify popular sentiment and achieve the desired results at the ballot-box, they have step by step encroached upon the municipality, destroyed its franchise and taken away its rights."

Now, that, mark you, Mr. Chairman, was the attitude toward home rule taken by those who were opposed to the so-called machine politicians of twenty-seven years ago. The reform element in that Convention was led, and of course ably led, by that flower of American citizenship, George William Curtis. Mr. Curtis was an advocate then of the State control-through-commissions' theory. In the course of his remarks, Mr. Curtis speaking, of course, against the measure urged by the chairman of the Cities Committee said in part as follows: "The people of the State should very carefully consider how much of their power shall be unreservedly delegated to the cities. * * * Mr. Chairman, experience proves the necessity of this hesitation. What is the lesson of experience? It will soon be forty years since the system of electing the mayor in the city of New York was introduced. Up to that time the delegation of power was made by the sovereignty of the State by appointing the mayor, but the system was changed and what was the result? Why, sir, after thirty years of the experiment of complete local government in that community, the experiment was discovered to be a failure."

Speaking for the people of the city of New York he said: "Their hope is in the people of this State. By my lips at this moment they ask this Convention not to tie up the hands of the people of the State, not to abdicate the power of the State, not to build a wall between that part of the State and the rest of the people. They ask humbly that this Convention will now retain in the hands of the people that authority which is theirs by the authority and practice of our institutions; that authority which they are bound to exercise wisely; that authority which they throw away if they adopt the article reported by the chairman of the committee."

These were the words of Mr. Curtis and they express the views which he held on the subject of local self-government at that time. But, Mr. Chairman, we have an authority with whom perhaps more of us are personally acquainted than with Mr. Curtis, who was a member of the Convention of 1867, and also is a member of this Convention and who spoke upon this subject in 1867. I refer to the

gentleman from Rensselaer (Mr. Francis), a gentleman for whose public services and private character alike I have the most profound respect. He was a member of the Committee on Cities in the Convention of 1867, and his name is second among the signers of this report now before us. Mr. Francis made a long and very able speech against the adoption of the proposed amendment by Judge Harris. The substance of it was that the State should not release to the municipality the rights which it was necessary for the State as the parent of all to maintain, and in the course of his remarks the gentleman from Rensselaer said: "The chairman of the Committee on Cities has submitted a report which instead of one section mainly devoted to cities, as in the Constitution of 1846, has sixteen sections. Its effect if adopted would be to make every city in the State a little State in itself, independent of legislative authority. If this article goes into effect, New York and Brooklyn will be practically independent States. This State must abdicate its powers and yield its sovereignty to the municipalities. To this, I, for one, earnestly object."

Now, Mr. Chairman, I have been wholly misunderstood, if the purport of what I have already said is interpreted by you or by the Convention as hostile to the principle of home rule; not as given to us in the report or amendment proposed by the committee, but as a proposition to be expressed in proper form and language and to be submitted to the people with the Constitution we shall recommend. I have only quoted what I have quoted for the purpose of showing you how public sentiment has changed upon this subject. The gentleman from Rensselaer would have profited but little from the years of experience and observation which have whitened his locks if he had not learned to change his opinion when there was proper cause for it. I admire him for that. But, Mr. Chairman, those who have perhaps been most earnest in seeking the adoption of this principle of home rule and cumulative voting have not been content, in the proposition which they have submitted to the Committee on Cities, to allow the people of the State to make an experiment in these novelties — for certainly they are novelties in this State — but they have proposed to us that these measures be made compulsory. That is, perhaps, naturally to be expected from the ardor and enthusiasm which are to be found among all extremists. I differ with them. I do not believe that we should hitch ourselves to an experiment, however star-like it may appear, and I commend the wisdom of the majority of the Committee on Cities in so far as they have stepped away from the compulsory features of the home rule and proportionate representation proposition, as submitted by the

committee of twenty-one from the confederated municipal reform clubs of the State, and have made an earnest, although I believe a mistaken, attempt to leave it optional with the people to adopt those alleged privileges. I do not speak for the minority of this committee, Mr. Chairman. I am not their spokesman. I speak only for myself. But I am perfectly willing to vote for a measure which shall, in constitutional language and in form fitted for submission to the people, give to the people of the State the opportunity to vote upon this question of home rule and proportionate representation. I am myself perfectly content to do that. But, Mr. Chairman, if adopted, these schemes will not prove the panacea for the evils of municipal government, nor will they accomplish what is claimed for them by their enthusiastic friends. Some time was taken last week in this Convention by a band of sweet and melodious exponents of national unity to induce this Convention to insert in the Constitution words of allegiance and loyalty to the national government. Mr. Chairman, in my opinion there is no need for that. The crimson of Old Glory is indelibly dyed into our hearts by the blood of those who gave up their lives that our country, one and inseparable, might live forever. If danger menaces, it lies rather in our failure to solve this question of government for our cities. Instead of words of reverence to the national government, I would have, if anything, words put into our Constitution which would burn into the hearts of every man and every woman and every child in our State, a true conception of the individual responsibility which rests upon everyone who wears the civic wreath. What we need, Mr. Chairman, is what was referred to in the excerpt from the New York newspaper read by Judge Harris in his speech before the Constitutional Convention of 1867. We need to educate and cultivate and enlighten public sentiment. We need to teach our people that instead of considering municipal government as a thing apart, they shall regard it as something in which they have the most direct and personal responsibility. We must educate them to the point where they shall regard themselves as stockholders in the municipal corporation; their dividends to be measured by the cleanliness of their streets, the good order of their city, the wisdom and honesty with which their money is spent and the manner in which the laws are enforced. I conceive that anything that we may put into this Constitution or into the statutes of the State with regard to the mere method of administering the laws to be nothing but a means towards the end.

Mr. Chairman — In criticising in the most general manner the form of this amendment, I cannot use more apt words than were

used by the gentleman from Rensselaer in the Convention of 1867. Speaking of the article then proposed he laid down or expressed what I conceive to be a perfectly true and correct rule of Constitution drafting. He said: "I object to this whole article, to its form and to its spirit. The form of the article is more like a legislative enactment than a constitutional provision. It goes into details, petty details; whereas a Constitution should deal only in generalities, laying down fundamental principles, and leaving details to the Legislature."

I have already said that I can conceive how the gentleman from Rensselaer could change his mind upon a question of principle, but why he should change his mind upon a rule of correct drafting, such as expressed by him in the words I have just read, I do not understand, unless he was lead away by the persuasiveness and eloquence of the chairman of the committee. Mr. Chairman, I hesitate to point out the defects in this proposed amendment.

Mr. Jesse Johnson — I hope you will.

Mr. Hotchkiss — Because where there are so many defects, sir, it would appear almost invidious to select any one for criticism. The time of this Convention is too valuable to go through this line by line and point out what strikes me as most obvious and serious defects in its form and in its substance. The question was asked by the chairman of the Cities Committee, why did not the minority of this committee propose something better if they did not agree to this? Mr. Chairman, that was quite unnecessary. Where the minority object to this upon principle we could propose nothing which would remedy its defects. Where we agree with it in principle, it was simply a question of phraseology; phraseology which I trust we can agree upon, if the Cities Committee, as I sincerely hope it will, shall have an opportunity to reconcile their views upon this subject. But, Mr. Chairman, I will suggest one of the points upon which I personally agree with this measure in addition to that of the principle of home rule. Although I was decidedly adverse to the proposition when it was first suggested, I now believe that the idea of giving to the Governor the power to remove the head of the police in any city is a proper thing to do. But I believe it to be wholly improper to provide as this proposed measure does provide, that the original power to appoint the head of the police force shall rest only in the mayor, or the mayor with the consent of the common council. There is no necessity for that. It is legislative; it is inadvisable. If the Governor has reserved to him the power to remove the head of the police, and, if, as suggested by the President of this Convention yesterday, the power of appointment or removal

is lodged in him, such appointment to be for the unexpired term of the officer removed, or until the next election, I think it would be better than to make it until the end of the mayor's term of office. Such a measure would receive my hearty concurrence. There is no need for going further.

Turning to this fifth section, Mr. Chairman, which contains the provision by which no law shall be passed conferring the power to appoint the head of the police force of any city on any city officer other than the mayor, I am not certain ——

Mr. Jesse Johnson — Any city except the mayor, if you will read there.

Mr. Hotchkiss — It is my conjecture that this provision means Buffalo. In other words, this Convention is asked to legislate with respect to the peculiar and unusual, and, I trust, never to be repeated, state of affairs, that has recently existed in the city of Buffalo. It might be expressed in these words: "The Legislature is hereafter and forever warned against monkeying with the affairs of Buffalo." (Laughter.) That simple legislative provision incorporated into the Constitution of the State would do away with the necessity for section 5, and it would also do away with the necessity for all of section 6, by which an election board is to be created for all cities (with special application to the city of Buffalo). What an excellent precedent for lexicographers in the free and easy use of our language would this Convention establish if they would insert here so graphic and expressive a word as "monkeying." Mark Twain proposed to rear a column to the memory of Adam. We have done nothing for our Simian ancestors, and associating them in our Constitution with Buffalo would give them a monument more enduring than brass, and afford that city a distinction which it might never otherwise achieve.

Mr. Chairman, let me suggest to you — not all, because they are legion — but just one of the objections to this State election board. We are to have, if this measure is adopted, majority and minority representation in all election boards and "officers" of cities. I assume that that is a misprint. I assume that it means "offices," but it don't say so. But minority and majority representation; that is, the bi-partisan fad, as applied to administrative boards; and, although the chairman of the Cities Committee, in justifying the proposed amendment allowing minority representation in the legislative councils of cities, says that the committee is opposed to minority representation in mere administrative boards, we find nearly one whole page of his article given up to the attempt to interject into the Constitution of this State a principle which is

reprehended by the report of which he is the first signer. But look at it. If minority and majority representation means anything, it means that every party nominating a ticket shall have a representative upon all election boards. Now, in New York, we have many Democrats, some Republicans, a few Socialists, once in a while a Prohibitionist and always enough of other classes to get together and hold what they are pleased to call a convention, although on the part of our Republican friends the industry has usually been a somewhat harmless one. What new parties will come into the field I cannot say, but it is certainly reasonable to suppose that some other party will spring up at no distant day. Now, as we have twelve hundred election districts in the city of New York, it means that the State board shall have the appointment of at least forty-eight hundred individuals to act upon each election that occurs there. Brooklyn, as I understand, has about 800 election districts. I think there are about five or six thousand (when we get into such numbers it does not make much difference), say about five thousand election districts in the State.

Mr. Johnson — Will the gentleman allow me?

Mr. Hotchkiss — Certainly.

Mr. Johnson — As I understand the provision, it is that the State election commission, if authorized, may have the power given them to appoint the city election commission, who will probably be two or four, and on them as officers of the city shall devolve the power of appointment of the officers for each election.

Mr. Hotchkiss — If that be so, Mr. Chairman ——

Mr. Johnson — Is it not so?

Mr. Hotchkiss — If that be so, I sympathize with the gentleman in his inability to express himself clearly. Although this provision was before the Cities Committee for a number of days, and although the time of the Convention was taken up (and properly so) by the chairman of the committee for two hours yesterday, he has not heretofore so explained that section. I do not read the section so. I did not read it so during the many times that I did read it in committee. I have never before heard anyone suggest such an interpretation for it. If that is the intention of the committee, it is certainly to be regretted that they have not expressed themselves in clearer language.

Mr. Johnson — Won't you read the section?

Mr. Hotchkiss — Mr. Chairman, another objection which I make to this measure lies in the limited, and, in my opinion, improperly

exclusive interpretation which it puts upon municipal purposes. It defines in section 3, all the subjects they would allow the local legislatures which they propose to erect, to act upon. They include, among other things, "fire," although they express it in language which has never before met my eyes in any public or private instrument: "City apparatus and force for preventing and extinguishing fires." I presume they mean "fire department." But it excludes police and charities and corrections.

Mr. Becker — And education.

Mr. Hotchkiss — I do not undertake to cite all that is improperly excluded from the provisions of this proposed amendment, because that is without the domain of reason. There is in my judgment no good reason why the police department should not be under the control, subject to wise limitations reserved to the Legislature. There is no reason why the police department should be regulated from Albany and the fire department from New York city. If I am a resident of Indiana, owning and paying taxes upon property in the city of New York, or if I, a resident of the city of Albany, am similarly situated, I have as great an interest in seeing to it that there is a proper fire department efficiently maintained in the city, as I am in seeing to it that life is safe. Fire is only a means by which property is endangered. Larceny is another and only another form of peril. If we have to pay for the police, if from the pockets of our citizens comes the compensation which they receive, if we, in New York, are most directly interested, as we are, in the observance of order, in our city and in the maintenance of an efficient police department, why should we not have the right to say what that police force shall wear in the way of uniform, under what circumstances there shall be promotion, what compensation they shall receive? Why should it be reserved to the State to legislate upon such matters of purely local concern in that respect? This, so long as the State retains a proper measure of control, to be exercised under circumstances of great emergency in which the interests of the people of the State may be jeopardized. To reserve that control it is simply necessary to give to the Governor, as I would be content to give him, power to remove the head of the police department in any city when it is discovered that the laws are not properly administered. Substantially the same suggestions apply to charities and correction.

Mr. Jesse Johnson — It is not a city department.

Mr. Hotchkiss — Under the close interpretation given by the Court of Appeals, I grant you, that officers of the police and cor-

rection departments are not municipal agents; but, sir, the Court of Appeals has decided that the fire department is not in this sense municipal.

Mr. Johnson — May I interrupt you again? The question of charities is a county matter and not a city matter.

Mr. Hotchkiss — But what becomes of us in New York where we have no county? We raise and distribute there to relieve the poor and distressed in the city of New York millions of dollars. We have millions of dollars invested in expensive sites, expensive plants and expensive buildings and all the apparatus necessary for the care of the unfortunate within our gates. We, in the city of New York, pay for this. Why should we not have the right to say how that money shall be distributed, how the affairs relating purely to our local charitable institutions shall be administered? Still, if this measure is adopted, this will all be taken away, and the suggestion of the gentleman from Kings only reminds me that we will then occupy the conspicuous position of being the only city in the State whose borders are equivalent to the borders of the county; hence we shall not have the right to distribute the moneys which we raise for this purpose. For substantially the same reasons I think the committee errs in failing to include corrections among its definition of municipal purposes. With us we have a bureau of charities and corrections combined. They have been administered together for many years and have been administered certainly with as strict an observance of the law as in any other county or city of the State to my knowledge. I know of no city in the State where petty criminals are punished or more certain of conviction than they are in the city of New York.

Mr. Chairman, as I have said, it is not my object to point out all of the objections which can reasonably and in no captious spirit, without stopping to quibble over mere phraseology, be raised to this measure. I have simply sought here, to justify the minority of this committee so far as I was moved to become a member of that minority, in withholding their consent to the measure proposed. But I should deem it a great misfortune if the opportunity were not given to the committee to frame a proper measure for the purpose of giving to the people of this State the opportunity to apply the principle of home rule to such of their cities as may wish to abandon or modify their present charters. But I trust that the ultimate action of this Convention will be to kill this measure deader than Caesar's ghost, because it is impossible to revise it. You cannot make anything good out of that phraseology. As I have suggested,

it runs riot with every rule of constitutional drafting. Rather allow us, or allow the Convention itself, an opportunity to frame something not in the words, but after it as an example of a measure which is, to my mind, substantially correct in principle and is a proper form of constitutional drafting, namely, introductory No. 205, introduced by Mr. C. H. Lewis, and which comes here from the "Committee of Twenty-one" of New York. I would take that and amend it. I would not take it as it is, but I think in a very short time, if the friends of home rule would be content to act and not to talk, if they would be content to come together and express in a very few simple words, the principles that they want this Convention to adopt and submit to the people, I am persuaded that in two hours' time we could frame an amendment which would be satisfactory to this Convention, or at least a majority of it, for we do not expect that there will be unanimity upon any question upon which that may be so properly a difference of opinion as upon this.

Mr. Chipp — Mr. Chairman, I move that the committee do now rise, report progress and ask leave to sit again.

Mr. Mulqueen — Mr. Chairman, I ask the gentleman to withdraw his motion to enable me to offer some amendments.

The motion of Mr. Chipp being withdrawn for that purpose, Mr. Mulqueen offered certain amendments which were handed to the Secretary.

The Chairman — The question is still upon Mr. Dean's motion to substitute proposed constitutional amendment No. 22, for the proposition reported by the Committee on Cities.

Mr. Chipp — Mr. Chairman, I renew my motion.

The Chairman put the question on the motion of Mr. Chipp that the committee rise, report progress, and ask leave to sit again, and it was determined in the affirmative. Whereupon the committee arose and the President resumed the chair.

Mr. I. S. Johnson — Mr. President, the Committee of the Whole has had under consideration the proposed constitutional amendment (printed No. 376), entitled "Proposed constitutional amendment to provide home rule for cities." have made some progress in the same, but not having gone through therewith have instructed me, their chairman, to report that fact to the Convention and ask leave to sit again.

The President put the question on agreeing to the report of the Committee of the Whole, and it was determined in the affirmative.

Mr. Cookinham — Mr. President, I move that the amendments offered and the substitute, not already printed, be printed and laid upon the tables of the members.

The President put the question on the motion of Mr. Cookinham, and it was determined in the affirmative.

Mr. Alvord — Mr. President, as this is a very important matter, and is in the way of other business of this Convention I move, sir, that it be made a special order for to-morrow morning, immediately after the reading of the Journal.

The President put the question on the motion of Mr. Alvord, and it was determined in the affirmative.

The Secretary read notices of meetings of committees.

Mr. M. E. Lewis — Mr. President, I move that the Convention do now take a recess until 8 o'clock this evening.

The President put the question on the motion of Mr. Lewis, and it was determined in the affirmative, whereupon a recess was taken until the evening at 8 o'clock.

EVENING SESSION.

Wednesday Evening, August 8, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber in the Capitol at Albany, August 8, 1894, at 8 P. M.

President Choate called the Convention to order.

The President — The question before the Convention to-night is the special order, whether the Convention will agree to the adverse report of the Committee on Suffrage on the amendment introduced by Mr. Tucker (introductory No. 194), the report being adverse to the amendment.

Mr. Lincoln — Mr. President, I understand that the amendment was amended to-day by the Suffrage Committee. I suggest that the amendment as amended be read.

The President — The Secretary will read the amendment as it was returned to-day by the Suffrage Committee, amended

The Secretary read the proposed amendment as follows:

Proposed constitutional amendment to amend article two of the Constitution, so as to separately submit to the electors of this State the question of woman suffrage.

The Delegates of the People of the State of New York, in Convention assembled, do propose as follows:

Section one of article two of the Constitution is hereby amended by adding the following words at the end thereof:

But at the general election next succeeding the general election at which this Constitution shall be submitted to the electors of this State for adoption or rejection, the question, "shall the word 'male' be stricken from article second, section one of the Constitution, and cease to be a part thereof?" shall be separately submitted to, and be decided by, the said electors; and in case a majority of the electors, voting at such election on that question, shall decide in favor of such striking out, then, and not otherwise, the said word shall be stricken from this section, and cease to be a part thereof; and in that event every female citizen shall thereafter be entitled to vote, at all elections held in this State, upon the same qualifications and conditions as are in this section prescribed as to male citizens. It shall be the duty of the Governor, by his proclamation, to make known the result of such election, as to the question so separately submitted, immediately upon the completion of the canvass by the State canvassers.

Mr. Lauterbach — Mr. President, the task of arguing that the report of the committee be not sustained, and so accomplishing as the result of to-night's debate the ending of the matter for the consideration of the Convention, has been entrusted to me, owing to the physical inability of Mr. Tucker to assume that duty in respect of his own amendment. If the policy that actuated the Legislature in 1892 and 1893 had been carried out to its legitimate conclusion, I would be addressing this evening not a body composed of these male delegates only, but as there was intended to be, and should have been, a number of women delegates seated in this Convention. For so far has the progress of events proceeded that without compulsion, almost without solicitation, the Legislature of 1892, recognizing the changed condition of affairs that had supervened since 1867, put upon the statute book a provision that the delegates to the Constitutional Convention of 1894, might be both men and women, and when the statute was changed from its condition in 1892, to that of 1893, so as to comply with what were assumed to be political necessities, although every line of the statute of 1892 was

carefully scanned and many changes were made, yet with solemn deliberation was re-enacted in section seven of the statute of 1893, under which we are all here assembled, the right of the people of the Empire State to send women to the floor of this chamber. (Applause.) And it is to a Convention called together under such circumstances and in an age that betokens such a spirit, that I am to address myself, asking at this time simply your non-assent to the report of the Suffrage Committee so that the important question which it involves may be properly and fully discussed in the Convention itself.

Why the spirit that breathed through the statute did not take form in the selection of delegates to the Convention I know not, but would that it had, and that some woman champion of woman's rights, of the rights of mankind generally, of the rights of womanhood, as well as the rights of manhood, could have stood here to address you; and the address then would have been, as the addresses of all the women have been, brief, clear, terse, cogent, unanswerable. (Applause.) I shall make but a poor substitute for any one of the noble women who stood before the Suffrage Committee and before a great number of the other delegates and addressed you upon the theory and the science which lie behind these petitions, and upon every practical feature connected therewith. And when they had finished, and the representative emissaries of those who were opposed to the prayer of their petition rose and revamped the exploded doctrines of Goldwin Smith and asserted that we are living in an age of force and not in an age of intellect, every member of the Convention with unanimity, whether champion for the cause or opponent of the cause, said with one acclaim, " If the force of argument is to be considered, if sound reasoning is to govern, if the modesty, the candor, the ability, the straightforwardness of the women upon the one hand, and the bold, unsupported assertions of the men who knew nothing to say in respect to this matter except the upholding of force and portrayal of womanhood only in its degraded aspects are to determine this question, the woman should prevail." If this Convention could have determined the matter the night after the nineteen women gathered upon that platform and one after another, in speeches each of only five minutes in duration, had fashioned for this Convention a diadem composed of unexampled gems of eloquence, of pathos, of argument and of reasoning, following as they did the sound scientific discussion of the subject by Dr. Mary Putnam Jacobi, and the historical disquisition of that noble champion of every noble cause, that self-sacrificing woman whose sands

of life have nearly run out in her devotion to everything that has savored of patriotism, love of country, Americanism, Susan B. Anthony, it would have resolved that the word male should then and there have been stricken from the Constitution. (Applause.) Coming as they did to us not from the highest walks of life only, but representing every phase of womanly activity, the farmer's wife, the artisan's wife, the college graduate, the working woman from every condition and from every direction, they came and asked, "For what reason do you deprive us of the ballot, of the one emblem of citizenship, that which is the proudest possession that any American citizen can possess, the one thing that not one of you men would abdicate or abandon?" and we could make no answer. They said to us, take from you your fortunes, cast your lives in far less pleasant places, you agree with us, men of the Constitutional Convention, that you would sooner lay down all that you have acquired, that you would sooner give up all the honors that have come to you, that you would rather abandon any proud position that is yours, than be deprived of the right to vote or have curtailed in the slightest degree your right to exercise the elective franchise, the symbol of power, the weapon of defense, the instrument of self-protection, the only thing that makes American citizenship worth having. We are, they said, members of this community; we are citizens of this State, entitled to all the privileges, as we are subject to all the burdens that citizenship implies or that it should imply. We are, some of us, taxpayers, we are all of us loyal to our flag and our country; why this demarcation against us? Why this differentiation that deprives us of that which seems to be synonymous with citizenship itself? Where have we erred? What sin have we committed? What fault has been perpetrated? Have we the intelligence to cast our vote? Do you doubt it? Look throughout all womanhood, grade for grade, class for class, from the top to the bottom. Does not every woman in every rank of life stand at least the equal in general capacity and intelligence of her male associates in the same rank of life? Why, then, this deprivation?" And there was no answer, and there can be no answer. I beg of you that, in determining this question, you pay heed rather to the record which these women have made here, to their own expressions, their own testimony, than to my inadequate presentation of the case, or to that of any champion of their cause outside of their own ranks. Another thing I shall ask on their behalf; it is for the exercise of the unpledged, unbiased individual judgment of every member of this Convention. I ask you to remember your oaths honestly and fairly to determine this as every other question

in this Convention, and, if the echo still rings in your ears of solicitation to adjudicate adversely to the petitioners on the ground of party policy, or on the ground of a cowardly expediency, or because the success of party schemes or selfish aims would be put at jeopardy, I ask you to free yourselves from these influences and that your minds shall, at least, be as blank paper, so as to be receptive of the merits of the arguments that have been advanced, and that may be advanced, in favor of the simple proposition which you are asked to determine. And I ask every man, whatever may have been his pledges, actual or implied, whatever his idea of party necessities, or party exigencies may be, that on this night, at least, for this nonce, it is his duty to act as a delegate, as an American, as a human being called upon to do justice to his fellow-beings and fellow-citizens, rather than to be guided solely by his notions of party loyalty, party fealty. (Applause.) If I shall accomplish nothing else, I know that I have accomplished that. I know, whether it be Democratic policy or Republican policy to vote this measure down, that if you feel that the demand of these suppliants is one which, in justice, should be complied with, that all the dictates of those who may regulate party machinery, or who may regulate the affairs and concerns of the Convention will be complied with, if the rights of your mothers, your wives, your daughters, your sisters, are really ignored, if it be shown that their interests are injuriously and unjustly affected, you will act in their behalf, and in behalf of womankind at large, irrespective of any party proclivity or any party expediency. Impartial suffrage; should it not be impartial? The demand, therefore, rang throughout the State when it was suggested that this Convention was about to be called; and it was not left to be discussed only by the 170 men sent to a convention. Hundreds of thousands of men and women throughout the State declared their views in respect of this great question. Every hamlet, every town, every nook and corner throughout the State became busied with the discussion of this matter. Petitions for granting this inestimable right were rapidly subscribed, circulated, not in the dark hours of the night, and kept back in order to be suddenly precipitated upon the Convention at its session, but openly, notoriously, so that the adversaries of the proposition, if any there were or could be, should know that such petitions were being circulated.

The petitions were gathered together. None but adults signed them. None but those qualified to vote under existing law or who should be qualified to vote, if existing law were existing justice, approved them. You were petitioned to submit this question to

the fiat of the people, you were petitioned, that while having the power to prevent this submission, you would be generous by its non-exercise. Six hundred thousand petitioners pray that your action shall be such that the million and a half electors of the State of New York shall be permitted to pass upon this question. The orange-ribboned packages came from every quarter, and came day by day, emanating, not only from the Thirty-second District, whose population was almost unanimous in favor of this measure, not limited to the country hamlet, not confined to any one section of the State, but from every quarter and from every point of the compass, poured in upon this Convention this mass of petitions, to an extent probably never to be surpassed. Following these came the petitions of some fifteen thousand individuals in antagonism to the measure. It is difficult to conceive that any women should have been found to subscribe to such anti-suffrage petitions. But we know of the women. They are few. We know that they exist. They are probably the women of whom it was said, when the sparse petitions were presented: "They are more beautiful, more lovely, more elegant and exquisite than the women represented by the other petition," and these lovely exquisites, gathering to themselves some five or six thousand men, did secure the subscriptions of a few thousand women so as to form a petition of some 15,000 in all, and that by the expenditure of money, after the argument of attorneys, after every avenue of society influence had been exerted, after everything that aristocratic ingenuity could devise had been fully exhausted. They were the names of these who could not bear political affiliation with the laboring women or the domestic at service, their chief protest being: "Shall we contaminate our skirts by going to the same poll with our own cook and our own chambermaid?" There is fellowship, a *bon homme*, a leveling of all men, which the ballot has caused among men; and when the ballot is given to the women such objections will be no longer made, even by the meanest of them. There will be a leveling of those who are too high to meet those in their upward course, who stand too low to-day. The exercise of the elective franchise will level, equalize and arrange, and there will be no further protest by the aristocratic dame against meeting women who earn their daily bread, and who now need only the ballot to enable them to earn it with the same calm interest and under the same advantageous circumstances as the laboring men of the State of New York, who stand politically the peers of all men.

The whole community became as much interested in the prayer of the pro-suffrage petition as did we and in casting your ballot

upon this subject, remember that fact, and bear in mind that you are asked to submit to the people the determination of a subject with which the people are just as familiar as you. There is no man or woman that walks the streets that does not know every element that pertains to this question of woman suffrage, as well as the President of this Convention understands them; and this one question so thoroughly understood by every individual needs no sanction of any Constitutional Convention. It needs no expert knowledge on the part of members who are here gathered together, as is the case with questions involving a system of judicature, or those involving apportionment, or any of the many vexed questions which we must determine, which we must separately consider, upon which we must first set our own fiat before submission to popular vote. This is a simple problem, the solution of which does not require your intervention. It may be asked, why leave this directly to the vote of the people any more than we leave any other subject to be determined. Because this one subject, supported by 600,000 men and women, mooted and discussed for the last thirty years in every posible phase by the greatest orators and statesmen, presented to the community in every way, is as well understood by every individual in the community, as it is by the members of the Constitutional Convention. Whatever may be your personal opinion, it is entitled to no more weight than that of any other elector, so that I am justified in asking that you will permit this matter to go to the people to be voted on.

You are not straining your consciences or violating any duty if you thus permit your personal predilections to be thus subordinated. We are rapidly advancing in the methods to be sought in learning the wishes of the people. We are getting to know something of the referendum. Who thought of the referendum three or four years ago? No one. But an elevated railway project creates excitement in the city of New York, and the question whether the municipality shall give of its funds to the building of an enterprise of that character is discussed. The people of the city of New York understand this question as well as the Legislature, and better. They asked the members of the Legislature of the State of New York, not to determine this matter for themselves either affirmatively or negatively, but to leave it by way of referendum to the people themselves for determination. The demand was complied with and in November, when your Constitution is to be submitted for approval and when this question of woman suffrage, as I hope sincerely will also be adjudicated, the referendum will have done its work and the people of the city of New York voting directly,

ignoring Assemblies and Senates, ignoring all intermediary legislative bodies, will vote upon a question which they will understand as well, if not better, than the people who are their representatives.

That is what you are asked to do. You are importuned to take this question of woman suffrage out of your own jurisdiction, out of your power to destroy, out of your power to say to these women, "we will afford you no relief, you shall remain unheard until two successive Legislatures can be found to pass upon this question before the people shall vote thereon." But the members of this Constitutional Convention will, I am confident, follow the suggestion of Mr. Tucker and leave this question to a direct vote of the people. Is there anyone who will feel that he is violating his oath of office by so doing; if a moss-grown prejudice in his own mind would impel him next November to vote against the proposition itself that he will fail to do complete equity, justice, by permitting other people equally well qualified to vote upon the subject at the same time? Vote as you please in November. I know how everyone will vote when once the opportunity is afforded. I feel that no member of this Convention will leave his house on the morning of election, leave his wife's side and the side of his daughter and see their faces beaming with intelligence, will have heard discussed the political questions of the day from every standpoint with a thoroughness and efficiency that perhaps few men can equal, and vote otherwise than in favor of impartial suffrage.

But that is not the question here. If the prejudice does exist, if you must vote against it, if without knowing why, because no man can know why, you shall still insist upon maintaining your own unfounded prejudices at that time, do it, and may your consciences not smite you too severely. But in any event, give these women the privilege of the referendum. You say that the majority of men are against it! Let them so proclaim. I believe the majority of the voting men of the State of New York are in its favor. Shall you check the fair expression of their feelings? Shall you, because you have the technical power so to do, so vote that ninety men here shall choke off the expression of opinion of six or seven hundred thousand voters at the polls in the State of New York next November? That cannot be.

Now, that is the situation in which this matter presents itself. As the result of these petitions fifteen, I think, separate bills floated to the Secretary's desk almost before the petitions were laid upon it. Every member had a theory, everyone felt that some justice should be accorded. One member suggested municipal voting, another

school voting, a third that the subject should be referred to the women for adjudication, a fourth that the right should be accorded tentatively until 1905, and if the women behaved themselves in the meantime, another vote should be taken to determine whether it was to be continued. The methods of doing this thing were almost as numerous as the imagination could depict. They all went to the Suffrage Committee. The bold and manly thing to have done was to have stood right by the proposition to strike out the word "male" from section 1, article 2, and go bravely and squarely before the people and have the matter flatly and unequivocally adjudicated. But this the committee deemed inadvisable; it was a body of gentlemen so organized as to give the most patient hearing to the women, the most kind and courteous treatment, a body never lacking in the most polished courtesy toward them, permitting them to have their say, and apparently to make their legitimate impressions, and then finally to dispose of them and their grievances as the Legislature has done again and again; inspire them with hope and make its realization Dead Sea fruit. You have seen the spectacle that has been presented in the Legislature. You have seen the Assembly pass woman suffrage affirmatively and the Senate turn it down, and you have seen the Senate pass woman suffrage affirmatively and the House turn it down. You have seen the matter usually defeated by sixty-four votes, when sixty-five were requisite. Men have been treacherous. The arguments of the women have been listened to, but the power that the men had has not even been squarely and fairly exercised, and for years and years they should have blushed with shame as this farce, this outrage upon the just demands of women, was being perpetrated. (Applause.) There are those in this chamber who can testify to the truth of what I say. There are those whose vote was not infrequently given upon such occasions to "jolly the women along." (Laughter.) And we jollied the women along, and they came, we received them, and our committee listened to them most attentively. Arguments were advanced, and no reasonable request that could be made but that was at once complied with, but if there is any man in this Convention that did not know within forty-eight hours after the organization of the committee that the vote would be thirteen against and four for the women, he knows less of the inner history of this Convention than he should know. (Applause.)

So we listened and we did not pass upon the section that strikes out the word "male." We have great parliamentarians in our committee, shrewd men, and that section was not submitted, but we took the rest of them, all the other bills that were there, and we

reported them adversely, adversely, adversely. But we must have a discussion of this subject. Its result is, of course, a foregone conclusion, but the sham will be maintained. We must have a pretense of discussion before this well-organized vote in opposition to the claim of the women can be brought to a head, and can be placed upon the record. It will not do either for the Republican party or the Democratic party to say that the women were not afforded a patient hearing; that will not do. We know their power. We saw what they did in Brooklyn at the last election, when to a woman they stood up in defense of right against wrong, struck down wrong and sustained right, or else Brooklyn would not have been saved politically as it was saved on that occasion. They knew the record of the women in every political emergency. They watched them during and from the period of the civil war down to this time. They knew their efficacy and they knew their strength. It was necessary not to disgruntle them. Neither party can afford, women, openly and avowedly, to reject your application, no matter how great is the expediency for so doing. So, we, your advocates, are here to-night, in a parliamentary sense in the worst possible plight in which we could find ourselves, arguing against a majority report, and if we succeed, being permitted the poor boon of getting into the Convention and fighting the battle all over again; and there it will be fought all over again if the occasion shall arise. But, I believe that the sense of fairness of this Convention, now upon this August night, in 1894, is going to be such that this abominable farce will cease, and that every man in this Convention will honestly and fairly put his vote on record in favor of giving these women, not the pretense of a chance, but a real chance, the chance of going to the people for an expression of opinion. And yet I concede if theirs is not an admissible claim, if it is not a well-founded application that is desired to be submitted to the people, do not grant it. There might be some project supported by six or seven hundred thousand people that might, nevertheless, be fallacious, it might be untenable, it might have no foundation; and I shall enter sufficiently into the discussion of the woman's question at this moment to see whether this is a question that does not deserve, by reason of its own merits, to go before the people to be adjudicated.

I will not enter, to-night at all events, into a discussion of the scientific aspects of this question, as to whether the elective franchise is not a natural and inherent right that inures to women as to men, and that of itself gives to them, as adult, non-criminal and otherwise than by sex, qualified citizens, the right to vote. I leave that to

more philosophical minds to discuss; whether it is a natural right, whether it is an artificial right, whether it is a conventional right, whatever the nature of the right may be is not the question now. Is it right? Is it right of itself that that they should be permitted to vote? No matter from what source the right is derived. Is it right at all in the present condition of affairs? Do women stand in a situation to require it? Do women stand in the position that, if given to them, they will be able to do justice to the great boon with which you shall have intrusted them? If you do not mean, at the end of this nineteenth century, to carry out what you have impliedly promised by all your acts, you will perpetrate an act of injustice in this *fin de siecle* cause for which you can never atone. If you have not meant to make women fully and absolutely your equals, if you had not intended to qualify them for the full rights of citizenship, then it was your duty to have kept them in the state of comparative darkness in which they were at the beginning of this century. There was a time when it would have been inexpedient for women, not for the good of the body politic, as a class, to have applied for the right to vote, whether it was a natural or an artificial right. They were not qualified to exercise it. You denied them education even beyond the beginning of this century. A woman had no right to be educated in anything except the most rudimentary matters, reading, writing, perhaps arithmetic, hardly that. There were no schools for her, though she paid her taxes toward the school fund. The century had well progressed when, just across the river (every man in Troy knows the names of Willard and the Willard School) a noble woman, believing that women and men were formed in the same mold, that they had the same adaptability, was willing to try the experiment of educating women, and their education was begun. Her example, the first in this State, was emulated because it had been successful, and school after school was opened, and Vassar College and other great female colleges were founded, and women were sent to school and became educated and the public schools became open to them. It was not only in the lower rudimentary departments, not only in the primary schools, which were the only schools which existed for the benefit of women up to the middle of this century, but the grammar schools, and in the higher grades, that they were permitted to attend the Norman Schools created for them at public expense. Other circumstances helped to insure their liberal education. The work of the housewife at the farm was no longer absorbing as it had been. The farmers can tell you more about that than I. The woman of the Grange, who told her simple story upon that platform, has explained to you that cheese-

making and butter-making that occupied all the time of the mothers and daughters became a matter of factory work; that spinning and kindred arts as domestic employments had passed away and were unnecessary to be performed, and time came to these women for their development, more time than to the men upon the farm, more time than to the artisan. What wonder then that the great average of women, who attended the great schools of learning throughout the State, exceeded greatly the proportionate number of men who went there to be educated! What wonder that they became as well educated? What wonder that they are here about us, as fully equipped in every mental attribute, in every intellectual qualification, in everything that qualifies them to cast a vote intelligently and to take part in the matters and affairs of the government intelligently and well? So these women became equipped. You did this for women. It was cruelly done if you shall now stop. You have done cruelly in equipping them as you have, if you have begotten the appetite and desire, together with the ability, to partake of the benefits of citizenship and then, like Tantalus, have struck the cup from their lips as they are about to drink. But you have done more in holding out to them the hope of complete enfranchisement. The husband and wife were one, the husband was the one, the *femme covert*, what was she? A nonentity. Her property, his property; her children, his children; her belongings, in every respect, his belongings; her individuality absorbed in the individuality of the man, in obedience to the English rule. It was not of Anglo-Saxon origin.

It was foreign to the true spirit of Anglo-Saxonism or of Teutonism, a principle which had its origin in the Orient, where women were degraded, where a woman was a chattel, where even her presence in the temple counted as nothing toward the number of worshippers that were essential to make up the number of those who could address God properly, where the harem was her only home and sanctuary. It was an Oriental iniquity. It never belonged to the spirit of the Anglo-Saxon race. But the domination once acquired by man over woman was maintained until 1848. Was there ever such a year? Has history ever shown a year like 1848? You older men know it, know its record, how every country in the world, as by one simultaneous outburst, became involved in the great work of regeneration, of revolution, of revivification, of improvement, of destruction of the wrong and the upholding of the right. Glorious 1848. It will have its counterpart in what shall be glorious 1894, if justice be now accorded to woman. In 1848 it began to be seen that there was an injustice: that the woman should have her own property, at least, even if she could not exer-

cise the full rights of citizenship, and men, who had been tyrannical and who had outraged the proprieties of the situation, blushed; and, although it took five or six or seven years before the matter was finally accomplished, yet in 1848 the people of the State of New York, always first to do justice after all, the generous people of the generous Empire State, put upon the statute book the act that disenthralled the woman that had been married, and who, up to that time, had been an abject slave. New York State, the pioneer among the States in all that has been great and good, in 1848, gave woman the right to her own property, her own earnings, and subsequently, in 1860 — it took twelve years to do that — to have a fair say in respect to the affairs of her own children and their guardianship. In 1860 it was perfected, but there was a spasm for a moment; they had done too much, and in 1862 there was a modification of the statute as it was passed, but there was a protest that swept throughout the State, and in 1871 finally women found that women were entitled to the fruits of their own industry, that they were entitled to the guardianship of their own children, that marriage did not mean absorption; that it meant companionship, fellowship; that it meant equal rights civilly, equal rights in a property sense, and if justice be done by this Convention in 1894, equal rights in that which will be the crowning glory of it all, equal rights in a political sense.

Now that is the woman you have created, re-created. You have thrown off her shackles, you have made her free, you have qualified her to accept that which she now asks. You know that she is fitted to perform her share in the duties of the day. Let her record of the schools she has attended tell you, testify for her. Let the record of every enterprise in which she has engaged give its testimony as to her ability, and can you then believe that you have the right to stop short now of full justice, now that you have made woman better, nobler, free, untrammeled, your companion, your equal? Are you willing to still keep one mark of her slavery and degradation imprinted upon her shoulder? Shall the *fleur de lis* of disfranchisement still remain, or are you willing to obliterate it and make her as she should be politically, as she is in all other respects, your helpmate, your co-worker, your associate, as she was intended to be, as she will be if you will have the confidence to permit her to exercise the full rights of citizenship? But yet more has been done in the direction of which I have just spoken. What you will accord to the women generally will be a priceless privilege, and will be cherished; but there are other directions where the right to vote would be more than a privilege; where it would be an absolute

necessity. Six million working women in this United States of America, more than half a million in the State of New York, are almost helpless without it. School teachers, factory girls, shop girls, women engaged in every enterprise, from the highest to the lowest, are pursuing their vocations under almost crushing difficulties, which will disappear if this franchise be accorded them. I pray for the right of self-protection, for the right to have a weapon that shall enable them to do justice to themselves, in behalf of 600,000 women, or about that number, in the State of New York, asking to have the protection which only the right to vote can give them. What would the workingmen of this State be without the vote? I ask the workingmen who are here gathered. Would their existence be bearable? Before co-operation and combination, supported by the power of the ballot, whose force had remained unrecognized by its possessors, had enabled them to gather together, the car driver was paid one dollar and sixty cents a day for sixteen hours' work. But the giant learned to know his strength. It had lain fallow and idle and was not exercised. But when he announced: "I will use my vote in favor of those who do me justice, and I will use my vote against those who do me injustice," his lot was improved. And how rapid the change. From degradation and squalor, from the depth of misery, the workingman rose to be a man who is self-respecting and world-respected, finding his strength, not in added wage, not in greater financial prosperity only, but mainly in the fact that, as an American citizen, he is the peer of every other American citizen, and can show his strength as an individual and in combination with other individuals aggregated together for their own protection. How is it with the unenfranchised working women, gentlemen? You know their situation. Not the women who may have the vote, but the women who, for the perpetuity of their own existence, must have the vote. How is it with them? They are gathered everywhere. They are honest, industrious, faithful and loyal, but they have no vote; they have no weapon of offense or defense, and what is the result? Longer hours of labor than men, underpaid, far below men. The well-equipped female teacher, obliged to maintain her respectability and appearance, and obliged so to maintain herself that she shall be a credit to the school where she performs her duty, earns, in the city of New York, $450 a year; and the man who does the same work, whose expenses are no greater, is almost ashamed to receive a thousand dollars for the performance of the same services.

I am a director of a railroad company. It was robbed by its employes, gatemen, ticket takers, and it resolved upon a change.

The men were discharged and women took their places. The experiment has run along two years, and where all was peculation and dishonesty, there have been honesty and fairness, not a single dollar dishonestly taken by a single female employe. And how is she requited? Her hours of service are longer; fourteen dollars a week were the wages of the men, ten dollars a week is the wage of the women. There is better service, more loyal employment, and yet the absence of the vote encourages oppression and discrimination which would disappear if that potent instrument of power were once placed in their hands.

I do not speak for the aristocratic dame who may have signed the petition or who may not have signed the petition. I do not speak for your wives and your daughters, to whom the privilege of voting would be a great boon and blessing. But I speak for the women of toil. I speak for the women who honestly labor, to whom you have opened up every avenue of work and employment and who you know do their work properly and well. I speak for these underpaid and suffering women, and ask that you change their condition of misery into one of happiness by permitting this matter to go to a vote.

I represent one of the working woman's organizations in New York. I believe that my interest in this matter was excited by that fact. But I have seen the little women come to this Assembly and to the Senate; I have seen them eloquently and earnestly petition that the factory law might be extended over the great dry goods warehouses, the great shops of New York, so that the factory inspector might see to it that the laws made for their reasonable protection are observed. I have seen little Mrs. Woodbridge, their president, come here again and again, to the legislative committees and present her case, being received just as courteously as the Suffrage Committee has received these committees, and being shown the door just as courteously when her modest request was laughed away. I have seen delegates representing workingmen's conventions, who have come forward to have boycotting legalized, and I have seen a subservient committee of the Assembly pass the report in favor of the application almost before the applicants, who had not asked it as a favor, but had demanded it as a right, had left the committee room. Does not this give evidence of the difference that the ballot affords? I am not to-night discussing the great abstruse questions underlying this matter as to physical and pathological differences. Suffice it now to say that I believe them to be ridiculous. They were once humorous; they are so trite as to be no longer enter-

taining. Everybody knows that the average woman is able to pursue her vocation in life and attend to the mere matter of depositing a ballot on election day just as well as the average man is able to attend to his vocation and perform the same duty.

It is idle to say that they cannot afford the time; that their domestic duties absorb them too much. If it were true, it would be bitter testimony to the injustice of men who would drive them into an absorbing occupation which would prevent them from knowing what is going on about them in their country, and what the affairs of government require them to do, and not have sufficient leisure to devote to their country's interests and their own. But it is not true. Every woman would have time to understand the political questions of the day, and every woman will have time to deposit her ballot. It will degrade woman if you give her the ballot — that is the hue and cry, and that is the thing that has affected some. Did you ever hear of the degradation of the ballot before except in this connection? Are you degraded by the use of the ballot? What is the proudest emotion that every American citizen has felt during his life? Was it not when on the November day succeeding his majority he was able to take advantage of his citizenship, of the proud heritage that had descended to him from his forefathers, to exercise the right to cast his vote in respect to the affairs of government, when on that November day he could add his flake to the great snowstorm of ballots which then fell into the ballot-box? And if you were to put upon your statute books one line that would tend to deprive him of that ballot, make one intimation that except for crime or imbecility he would lose the right to vote, an irresistible storm of indignation would sweep throughout this State which would carry you from your seats. Degradation of the ballot! Is not the mere assertion an insult to the whole American republican system of government? Ah, but it is degrading for the women. Men, do you with premeditation say of yourselves that your characteristics are such that the women of your family cannot go openly in the light of day to any poll, to any booth, to any ballot-box, as American women and American citizens, and deposit their ballots on election day without fear of insult; is it not true that, on the contrary, rudeness that might be excused in their absence will disappear as if it had never existed, so that when women too shall visit them the election booth of the great cities of the State of New York will be the sweetest and the purest places which can be visited on election day. You dare not insult the American gentleman, whether he be of the most lowly or the highest grade, by alleging that women cannot safely be per-

mitted to exercise the right of franchise, because it necessitates association with men. The ballot elevates, it ennobles, it never lessens, it never injures, it never can destroy.

But you are extending the ignorant vote, that is the danger we are told. Allow these women to vote, and this will be the dire consequence. A great mass of ignorance will at once precipitate itself into the general scheme and polity of our government, and our government will be swamped and destroyed. Have you examined the census? The number of ignorant women in the State of New York, those who cannot read and write, was at the last census six per cent of the entire population; the number of men, eight and one-half per cent. There is before your Convention a proposition, submitted by Mr. Gilbert, that an educational qualification shall be requisite after the year 1905, in respect of every voter who has not become qualified to vote before that day. If you deem it essential that every voter, man or woman, shall be intellectually qualified, pass that amendment, and it will affect women as it does men. So far as I am personally concerned, if, when this matter comes to the Convention for deliberation, you desire to affix as a requisite for the ballot for women, an educational qualification, I am content; and I predict that within a year the six per cent of ignorance in the State of New York will not remain one and one-half per cent, because the women will be apt, and quick and ready to discern what is to their advantage, and their native intelligence will make them readily educated. But I am answered, this is all right for the women, it is perhaps a privilege to be accorded them at some time, but it is not a right, and we do not know that the time has yet come for the extension of this privilege. Well, if the time has not now come, under the condition of affairs that I have described, when will it come? I can understand that, at the Convention of 1867, when Mr. Tucker, and Mr. Veeder, and Mr. Schumaker and the other men who were gathered in that Convention, and then and there, in that far back age, and in the comparative condition of ignorance that then existed, voted in favor of this proposition, it was a brave thing to do. It requires no bravery now to accord this measure of justice; the condition of woman has changed, and what was then a sacrifice on the part of men who had the courage to vote as they voted, is a matter of duty and of obligation at this time.

This amendment is brief. It recites that at the next general election there shall be submitted to the people for their approval an amendment to section 1, article 2, which, if adopted, will enable the question to be submitted at the next general election, of course

entirely apart from the rest of your Constitution, whether the word male shall be stricken from the Constitution or not.

It is unfair to the women that that concession shall be made in the matter of procedure, it is most unjust that they should be compelled twice to go through the ordeal of a public vote. But men on both sides of the house, fair men, just men, have said to me, "do not impose as a part of the Constitution itself the provision to strike the word 'male' from the Constitution, and jeopard the whole instrument in the event of the unpopularity of this measure before the people."

Well, I am not a zealot upon this question; I am not a crank; no one in this circle is. We feel and appreciate that there are other things, none so sacred, none so important as the particular question to which I have addressed myself this evening, which are engaging out attention, and I am willing and all are willing that there should be no embarrassment to the general work of this Convention by the submission of this question to the people. It cannot hurt your Constitution in the fall of 1894, to have submitted the amendment to section 1 of article 2; but if you think it does, I will in Convention make this further concession, that the preliminary amendment shall also be separately submitted, so that your sacred Constitution, which I am as anxious as you are shall be made as perfect and as right and as acceptable to the people as possible, shall in no respect be jeopardized, so that all the features of your Constitution, the important question whether the Court of Appeals shall have seven men or nine men, the important question whether a bi-partisan board of election shall or shall not be had, the important question whether there shall be reapportionment or no reapportionment, shall be entirely separated from what may appear to many of you to be so unimportant a question as the most sacred right of one-half of the population of the State of New York. We will, therefore, agree, and we will do so by solemn resolution, when the opportunity shall be afforded, that even the preliminary submission in 1894 shall be separate from the main Constitution, and when that is adopted, then we must wait until 1895 for a final decision of the matter, and in the meantime both the advocates and the opponents can address themselves to the people of the State of New York, and when there can be a solemn and deliberate adjudication at a time when there is nothing else to vex the public mind, no one's scheme to be thwarted, no individual desire to be defeated. Then, in 1895, with a whole year's preparation, with opportunity to the whole people to fully discuss

the question, it can be submitted if you will permit it to be submitted to the referendum of the people, to be then adjudicated, the question shall the glorious women of the Empire State, who have stood with us in every hour of adversity, who have rendered happier every hour of prosperity, who are our pride, who need but one thing to make them fully our equal, the right to vote, the greatest boon that can be accorded to any citizen. All will agree that what these women have done must have been done most unselfishly, must have been done simply in the interest of the principles they advocated; for them there was no corporate interest to subserve; for them there was no ambitious longing to placate; they wanted no judgeships, they wanted no places; they had no scheme for self-aggrandizement; unselfish in winter and in summer, through good repute and ill-repute, at all times, they have come here year in and year out, have grown gray in the service, are almost ready to give up the battle of life which in this respect they have waged so well, so nobly, but, alas, thus far, so unsuccessfully. May it not be that with the adoption of the contemplated action, pledging yourselves to nothing, but according this slight privilege of the right of going to the people, that finally, in this year of grace 1894, there will come redemption at last, at last? (Great applause.)

Mr. Titus — Mr. President, and gentlemen of the Convention: The arguments presented against the question of universal suffrage melt like snow before a mid-summer sun. But the question that we have to deal with here is the question whether we, the servants of the people of this State, will present this amendment to the people for their acceptance or rejection. Shall we raise ourselves above the people and say: "You shall not vote upon this question; it is not good for the State?" Why should we submit it? For the very reason that 700,000 people of our State have, by petition presented to us here, asked us to do so. I ask you, sir, in all fairness and in all candor, whether if any other question were presented to this Convention, coming from 700,000 people, you would pause a moment in giving it your vote and your support? But I believe that a majority of the gentlemen in this Convention are too honest, too fair and too just to permit, after the case that the women have made, that they shall be non-suited. I will ask you lawyers if you have ever tried a case before a judge and jury and been non-suited? Did you ever leave that court room feeling that half justice had been done you? You have said to yourselves, "Why didn't he allow me to go to the jury?" and in many cases you have gone down into your own pocket and paid the fee for printing in order that you

might go to the General Term. But these women have no General Term to go to — unless it be the next Convention, some twenty years hence — and of the women all about us to-night, that have worked and labored in this cause, how many of them will by that time have gone to their kindred dust?

I do not know that I can say anything more to you, gentlemen of the Convention, than has been said by the women themselves from that platform. They made their arguments there, and, as I have already said, the arguments against suffrage melted like snow before a mid-summer sun. Gentlemen, I feel and I say, in all truth and candor, that if I refused to raise my voice in this matter I would be false to my trust to the State and to the oath I took here on the eighth day of last May.

Gentlemen, if you will bear with me a few moments we will review the various acts that have been passed in the last fifty years for the benefit of the women of our State. The gentleman who preceded me has gone into that matter so fully that I will just briefly speak of one or two matters. In 1846, when the question of the right of a married woman to hold property as a *femme sole* was agitated, we found then people who claimed that the whole of society would be demoralized and that great wrong would come. The act was passed, and what was the result? More than one billion of property in our State is owned by women to-day; they pay a tax of over one million dollars on that property — and, in the language of our forefathers, who established this country, that taxation, without representation, is tyranny. The next act that was passed was in relation to woman doing business in her own name. Gentlemen of the Convention, I will not insult your intelligence by asking you whether women were degraded or their status lowered by that act. We have the living evidence of its effects all about us. I have heard some members in this House say that they believed woman's place was at home, in the bosom of her family. I fully agree with them; and while in the bosom of that family, at the close of day, with her children clustered about her knee while they repeat the Lord's prayer, or be she of the Hebrew faith and faces the setting sun to offer her devotions to the coming Messiah, it matters not; but I ask you gentlemen, in all fairness, should not that woman have some voice as to who shall be the men that are to make the laws under which those children shall live and grow to manhood and womanhood? "Ah, but," you will say, "the father will take care of that." Very true. But let us review how he does take care of that. Take the last election, if you will. What did every gentleman in this Convention do — I myself no exception? We

went to the voting booth; and as we entered and got our tickets and went into that closet, or chamber of reflection, which I think is a better name for it, and stood there alone with our God and our conscience, is there a gentleman in this room to-night, that looked over his ticket and picked out the names of the men with reference to their qualifications for making the laws under which his children should live, when he himself would be no more? No; we were all alike, my friends; we looked to see if they were the nominees of our party, and we voted our ticket. You may say in answer to that that our candidates were all good, true and tried men. Be that as it may; but how often, in convention, have we nominated a candidate for a place on the ticket with the object, as we term it, of strengthening it, when we would not have invited that candidate to that home where we left that mother at prayer with those children. Gentlemen of the Convention, I believe that suffrage to women would have a tendency to purify the ballot, and that both political parties in this State, if they desired a victory would place men upon their tickets whose public and private character would stand the strongest rays of the search light. I have heard some members say that it would grieve them very much to have their wife come home in the small hours of the morning with a load of whiskey and a black eye, from a political meeting. Well, I have attended political meetings for the last twenty years, and I have never seen the occasion when it was necessary to come home in that condition; but those gentlemen know their own wives best. I have heard some object to women voting and saying that when she could shoulder the musket she would then be entitled to vote; for the bullet and the ballot went together. But I am proud to say that I never heard an old soldier make such an expression. They have seen the work, and the labor, and the duty and the service rendered by women for their country; you have seen them in the hospitals and on the battle field; aye, you have seen women there with kind and gentle hands, doing all in their power to aid the wounded soldier. Take the one who organized the sanitary commission in this country and ask to see what services she performed to the many thousands connected with that institution. Take the work of Florence Nightingale, in the Crimea, of Clara Barton, the founder of the Red Cross Society, a society that now encircles the civilized globe and which has earned for the members of the Red Cross the name of angels of mercy. All governments have always discouraged the idea of women as soldiers. The records of the war department at Washington will show that during the war many women enlisted as men, served and fought bravely through the war, but the moment that their sex was

discovered they were immediately discharged from the army. Take, if you will, the services rendered by Jean d'Arc, of France, who buckled on her sword and led her countrymen to victory, as a reward for which she was burned at the stake. It has taken France nearly 400 years to find the value of Jean d'Arc, and to-day, throughout all France, they are erecting beautiful monuments to her memory; and from the ashes of Jean d'Arc phoenix-like will yet arise a new era in the lives of the women of France. Gentlemen of the Convention, I ask you in all fairness and in all candor for justice to yourselves and to your consciences. The Constitution of our country to-day blazes the star of hope above the cradle of every poor man's child. Should the lustre of that star be less bright on account of the sex of that child? Gentlemen of the Convention, the day has come when the women of our State do not seek your sympathy or ask your pity. They plead for justice.

Mr. Moore — Mr. President and Gentlemen of the Convention: During the sessions of this Convention we have received, signed by more than 600,000 citizens of this State regardless of " sex, color, race or previous condition of servitude," etc., petitions worded as follows:

" Gentlemen, the undersigned citizens of the United States, twenty-one years of age, residents of the State of New York and county of ....., respectfully pray your honorable body to strike the word ' male ' from article 2, section 1 of the Constitution, and thus secure to the women of the State the right to vote on equal terms with the men," and the following questions were asked by the petitioners:

Mr. President and Gentlemen of the Constitutional Convention, you are respectfully asked to consider:

Upon what reasonable ground the disfranchisement of women rests?

Is there not in moral, educational and sanitary questions a department of government which belongs to woman's sphere?

Is one not degraded, whether aware of it or not, when other people, without her consent, take upon themselves the power to regulate her affairs?

Is it not unnatural and unjust to impose restrictions upon human beings, which no age, no wisdom, no fitness and no effort can remove?

If, as alleged, women are already represented by men, when was the choice made, and do law and the Constitution recognize such representation?

Is not taxation without representation tyranny?

Is it not true that legislation is always in favor of the legislating class?

Will not the franchise give to women "equal pay for equal work?"

Suppose that a majority of the women of the State do not wish to vote, is that just reason for depriving of her representation even one woman who is taxed?

Is not the usurpation of sex a form of caste, based upon the tyrannical theory that "might makes right?"

Have these questions been answered by the opponents of this measure?

In my opinion, Mr. President, none of these questions have been satisfactorily answered by them, and, in speaking to this question, I desire to call attention to our present Constitution. The principles upon which the government of this State is founded, is the government of all the people by a majority thereof. The preamble of the present Constitution reads as follows:

"We, the People of the State of New York, grateful to Almighty God for our freedom, in order to secure its blessings, do establish this Constitution."

Upon the face of it this preamble would seem to declare that all the people of the State had united in establishing this Constitution, and in section 1 of article 1, the same Constitution says: "That no member of this State shall be disfranchised;" and yet, section 1 of article 2 declares that "every male citizen of the age of twenty-one years, who shall have been a citizen for ten days and an inhabitant of this State one year next preceding an election, and the last four months a resident of the county, and for the last thirty days a resident of the election district in which he may offer his vote, shall be entitled to a vote at such election in the election district of which he shall at the time be a resident, and not elsewhere, for all officers that now are or hereafter may be elected by the people, and upon all questions which may be submitted to the vote of the people."

Thus we see, Mr. President, the first declaration invoking the name of Almighty God, and the first section of article 1 declaring that no member of this State shall be disfranchised and section 1, article 2, in defining the qualifications of voters, this Constitution, enacted by the men people as a Constitution of the whole people, and professing to be anxious that no member of this State shall be disfranchised, literally contradicts itself in declaring that only male citizens shall have the right to the elective franchise. Beginning with the most hypocritical declaration of gratitude to Almighty

God for our freedom, in the name of all the people of this State, but as eventually proven, only the men people, usurping the power and functions of the whole people, it proceeds immediately to limit and confine the most sacred functions of citizenship to the male citizen. Ignoring, by this declaration, the rights of the conceded majority of citizens of this State, depriving them of what, if not an inherent right, should be a right granted by the State to every citizen in it, regardless of sex, is it not time, then, that such a Constitution should be amended, abolishing such a discrimination?

Mr. President, in the discussion of this question, which, in a nutshell, is, really, shall the women of this State continue to be disfranchised, in spite of the declaration in section 1 of article 2 that no member of this State shall be disfranchised, I take the ground that the question of sex has nothing to do with the problem. Is not a woman a member of this State? There is no greater reason, because she is a woman, if she comes within the conditions prescribed by law for the other qualifications of voters, that she should be disfranchised at an election for elective officers in this State, than that she should be deprived of a vote at the meeting of stockholders of a company in which she owns stock, because she is a woman; or that she should be deprived of voting at a church meeting because she is a woman, except that the man-made law arbitrarily prescribes and limits the functions of voting at public elections in this State to male citizens of this State. The only persons who are excluded directly by law from exercising the right of voting are those described in section 1 of article 2 of the Constitution which relates to bribery, and those guilty of the commission of any infamous crime, those making wagers, and persons described as lunatics and idiots; and yet, by limiting the voting to male citizens, you literally make the section read:

Those guilty of bribery, of committing infamous crimes, of making wagers, lunatics, idiots and women shall not vote in this State. In the name of all that is decent, sacred and fair, why do you class your mothers, wives and daughters with these infamous, incapable and imbecile classes? We have as the organic law, in the most solemn manner in our present Convention, a deliberate insult to our women by classing them with these, an insult which, if pressed upon them by any individual, would be resented by you personally as a gross insult to the women of your household. Why the inconsistency? Why should we continue such a political classification? Hon. George William Curtis, one of the most distinguished men of the State, in his great speech in the Constitutional Convention of 1867, said, upon this subject:

"I wish to know, sir, and I ask, in the name of political justice and consistency of this State, why is it that half of the adult population, as vitally interested in good government as the other half, can own property, manage estates, and pay taxes, who discharge all the duties of good citizens, and are perfectly intelligent and capable, are absolutely deprived of political power and classed with lunatics and felons? "The boy will become a man and a voter; the lunatic may emerge from the clouds and resume his rights; the idiot, plastic under the tender hand of modern science, may be molded into the full citizen; the criminal, whose hand still drips with the blood of his country and of liberty, may be pardoned and restored; but no age, no wisdom, no public service, no effort, no desire, can remove from woman this enormous and extraordinary disability. Upon what reasonable grounds does it rest. Upon none whatever. It is contrary to natural justice, and to the acknowledged and traditional principles of the American government, and to the most enlightened political philosophy. The absolute exclusion of women from political power in this State is simply usurpation. The historical fact is that the usurpers, as Gibbon calls them, have always regulated the position of women by their own theories and convenience. The barbaric Persian, for instance, punished an insult to the woman with death, not because of her, but of himself. She was part of him. And the civilized English Blackstone repeats the barbaric Persian, when he says that the wife and husband forms but one person — that is the husband."

Mr. President, these eloquent words were true then — they are true to-day; but, while Mr. Curtis, in 1867, could only claim one-half the adult population of the State, I now can claim it for more than 70,000 above the half.

Upon what, then, is this restriction founded? Obviously, upon the condition of sex only — the word "male" acting as a disfranchisement of women. There can be no other possible ground for anti-suffrage, and that is based upon the organic physical difference of the two sexes, and for no other reason. Simply because she is a woman. Not upon difference of character, intellect or property qualifications, and if not upon these what have you left but a sex basis?

Will you who speak for anti-female suffrage for the reason that a woman should not vote because she is a woman, tell me, suppose both men and women voted now at any general election, would there be an organic difference in those votes, in those ballots? Could one be male and the other female, because, forsooth, some of

them were cast by women and some of them by men? Could the most acute argus-eyed anti-female suffragist, who believes that home suffrage through the man is good enough for the woman, possibly discern between male and female votes, when they came to be counted, unless designated by statute by some arbitrary sign? Obviously not. The objection, then, to a female vote as such, is groundless, has no reasonable or even decent foundation to rest upon.

Is the objection, then, on the ground of her lack of intellectual faculties, perception, mental consciousness or want of capability to logically reason as to public measures or results molded in the casting of her vote? We say, Mr. President, that the educational history of woman does not bear out this assertion. Indeed, the intellectuality of women has been so far developed that in many instances they have exhibited reasoning faculties superior to those of men. This is illustrated in the reports from Cambridge University (England), where there were eighty-three women students last year, and twenty-one of them carried off the first-class honors.

"In the mathematical tripos, Miss Johnson occupied the first division of the first class alone, no man being able to obtain that exalted rank. Another woman took a first class in moral science. In modern languages six women were placed in the first class, and Miss Purdie is the most distinguished classical student in Newham College. It is observed that the proficiency of women in modern languages may be explained by their natural faculty in all languages, but that does not account for their superiority in classics, which calls the reasoning faculties into play, and in the higher mathematics, which require logic."

I call upon the thousands of female teachers, of female newspaper writers and editors, upon authors, essayists, upon female mathematicians, upon poets, upon astronomers, upon inventors, of whom there are hundreds to-day (though they used to say a woman had no inventive genius), upon lawyers, upon doctors, upon ministers, upon that almost innumerable host of females, graduates of our common and High Schools, seminaries and colleges, who have advanced in every profession and business requiring intellectual force and good judgment and tact as the motive of power for its successful achievements, to witness that the assertion of lack of intellectual qualifications as the reason for the refusing them the ballot, is false, misleading and unjust. What do you want in the ballot-opinion? Is it not private opinion publicly expressed, intelligently dictated by an intelligent mind and cast by the hand, the servant of such? And has not woman, as a class, all these qualifications as

much, if not more, than man? Do you want the property representation in the ballot? Do you say that she has not property, hence she ought not to vote? Let us see how that stands in this State, so far as statistics are available, from the following-named counties:

COUNTY.	Assessed valuation of property owned by women.	Number of cities and towns reported.	Number of cities and towns not reported.	Number of women taxed.	Total of assessed valuation of property.
Albany	$3,224,734	1	9	645	$102,859,111
Allegany	2,117,731	27	2	2,206	14,914,843
Broome	6,550,712	16	1	2,794	32,767,259
Cattaraugus	2,799,548	34	...	2,599	19,094,442
Cayuga	6,160,424	24	.....	3,799	30,687,271
Chautauqua	4,618,609	26	1	4,627	29,142,221
Chemung	673,925	6	6	628	22,175,504
Chenango	2,023,307	6	15	791	16,737,267
Clinton	1,212,207	14	.....	1,178	6,758,399
Columbia	4,054,397	19	...	2,135	24,981,659
Cortland	965,152	9	6	1,138	8,705,950
Delaware	530,485	5	14	542	13,381,873
Dutchess	4,811,053	16	5	2,552	47,697,273
Erie	29,670,073	11	15	11,030	263,439,731
Essex	625,429	8	10	535	11,174,540
Franklin	644,204	4	15	483	9,178,101
Fulton	971,611	3	8	777	10,103,932
Genesee	2,654,511	13	.....	1,549	19,248,039
Greene	2,158,081	7	7	1,107	13,735,052
Hamilton	.....	.....	.....	.....	1,724,385
Herkimer	891,267	5	14	781	17,963,910
Jefferson	2,791,100	8	14	2,225	34,354,971
Kings	114,492,151	5	.....	28,283	525,736,011
Lewis	199,575	2	16	204	7,250,541
Livingston	2,984,450	11	6	1,318	26,682,303
Madison	2,510,020	8	6	1,645	19,728,405
Monroe	35,003,305	17	3	12,699	140,016,498
Montgomery	1,909,020	1	10	673	26,773,084
New York	.....	.....	.....	.....	.....
Niagara	5,390,909	14	.....	3,079	36,930,708
Oneida	5,375,006	10	19	2,765	47,927,309
Onondaga	13,187,260	10	11	6,916	85,592,452
Ontario	4,968,382	9	7	1,891	34,137,883
Orange	2,026,558	7	15	1,492	38,235,661
Orleans	2,529,631	10	.....	1,812	17,327,224
Oswego	3,482,503	21	1	3,421	25,653,913
Otsego	1,969,590	12	12	1,237	18,785,660
Putnam	286,830	1	5	126	7,277,169
Queens	6,436,181	6	1	5,189	53,050,559
Rensselaer	1,445,683	4	13	533	78,981,383
Richmond	4,027,275	5	.....	2,313	19,913,326
Rockland	714,034	4	1	562	11,957,286
St. Lawrence	2,686,250	13	19	4,464	24,810,193
Saratoga	139,638	1	19	94	21,104,236
Schenectady	1,782,866	4	2	935	15,277,520
Schoharie	1,077,931	10	.....	837	12,876,550
Schuyler	1,091,110	8	..	904	6,728,889
Seneca	1,677,595	7	3	858	17,519,909
Steuben	318,466	5	30	217	31,912,276
Suffolk	2,413,975	10	.....	2,569	20,216,336
Sullivan	225,337	7	8	447	5,617,562
Tioga	1,104,385	4	5	656	13,353,303
Tompkins	1,399,765	8	2	1,492	11,093,785
Ulster	4,362,800	21	...	3,075	27,559,470
Warren	1,096,987	3	8	687	8,108,112
Washington	1,996,804	16	1	1,561	17,586,084
Wayne	2,110,401	9	6	1,441	20,782,230
Westchester	6,203,589	7	6	1,730	85,080,039
Wyoming	2,610,640	16	.....	1,700	14,947,318
Yates	939,903	3	6	648	11,089,283
Total	$320,324,172	571	389	142,715	$2,353,296,725

These figures are but from three-fifths of all the towns in this State outside of New York city, the certified copies of the assessors' rolls in each of the towns certified to, stating that women in three-fifths of the outside towns, are actually paying taxes on assessed valuation of $320,524,172. The total number of women reported as taxed in three-fifths of these towns is 143,715. The total assessed valuation of the entire State, outside of New York city, by the Comptroller's report of 1894, is $2,353,296,735.

No report could be obtained from New York city, but Brooklyn was over one-fourth the assessed valuation. Careful estimates of New York city will make the amount certainly one-third the assessed valuation. Several large cities were left out in this valuation, but later valuations of Troy and Albany were received, amounting to, in Troy, $17,429,720; Albany, $15,093,632. The assessors' rolls cannot show the thousands of voting men who own no property and yet vote, neither can they show the thousands of women whose property is assessed in their husbands' names, by careless assessors, but in spite of the fact that thousands of men have no property, they are concededly interested in the State, its government, its finances, taxation and politics as those who have. Why not then concede to these women taxpayers and non-taxpayers the same interest in the State that you do to these men? Their intelligence and property qualifications conceded, what next do you require as a requisite for exercising the right of voting? She is intellectual, she pays taxes, the same, at least, as men, what else do you require? Loyalty and patriotism to the State?

Need I, Mr. President, open again the books of the past and read to you the historical record of patriotic women, whose loyalty, whose magnificient heroism on fields of battle, whether with the Hebrew Judith, Boadicea, the English Queen, Joan of Arc, the French maid, rescuing her country and recrowning her king, or with the Clara Bartons, Bickerdyes, Andrews and hosts of noble, brave and loyal women, many of whom gave their lives on fields of battle and in hospitals as truly as did any man for the great sacred cause of liberty and patriotism? Nor need we go only there to find loyalty and patriotism, but in the homes where the mother gave her sons to her country, and the wife her husband for that country, only regretting that they themselves were prevented from going.

But, you say, governments are founded on force, and force means fight, and as it is alleged that women cannot fight they have no means to enforce the laws they might make, and hence they should not vote. Is government founded on force? Is it not rather an opinion expressed at the ballot-box. But take it for granted that

the men have to do the fighting, how does that alter the case for women? Military age for the common soldier is from eighteen to forty-five years, and if the rule was applied to men in this Convention, "No soldiers, no vote," how many members of this Convention could vote? Mr. President, the argument, "No bayonet, no vote," is simply a subterfuge, and is not borne out by facts. Whenever, in the course of events, women have been obliged to take part in war, they have shown themselves capable of enduring longer marches, as in some of our Indian wars, defending Sarragosa, in Spain, and Jerusalem, in Palestine, managing artillery, as Molly Pitcher, at Monmouth, did in that revolutionary battle, and as spies in war, making a success far beyond that of men, and more than that, of inspiring the men to renewed and often successful endeavors after the men had given up the fight. But women have shown themselves in our State and the goodly year of to-day as capable of bearing arms, going through the drills, marching, countermarching, and performing military evolutions with even more celerity than an equal number of men of the same age. The object lesson is right over your heads, gentlemen, on the fourth floor of this Capitol. If you go up there you will find many photographs of the schools — one of the Fort Plain Liberal Institute — and there you will see photographs of both male and female soldiers drilling as citizen soldierly are required to do. I was unaware of the existence of such an institution for the military co-education of the sexes, and I immediately commenced to investigate. An interview with the principal informed me that the women bore the fatigue of the drill equally as well as the men, and as such tentative soldiers they were a great success. A letter to the Secretary informs me: "That as far as the girls' ability to drill, it is equal to that of the boys as was shown in a contest between the two companies."

But the opponents of this amendment say, the place for the woman is in the home, hence she should not vote. Is it, indeed? As well might you say, that the place of the man is in the store, in the shop, in the field, in the office, hence he should not vote. Why, Mr. President, what is the State but an aggregation of homes which are the cause of all business.

As has been said by an able writer, Rev. Samuel J. May, "The true family is the type of the State. It is the absence of the feminine from the conduct of the governments of the earth that makes them more or less savage. The State is now in a condition of half orphanage. There are fathers of the State, but no mothers." As there can be no true private home without the womanly influence, so the great public home — the State — without that influence

of women in conjunction with men, loses, by lack of it, the full complement of intelligence, loyalty, patriotism and public interest in the State to which it is entitled, and which can only come from the exercise of full citizenship by all the members of the State.

Ours will be the State of the women only, Mr. President, when they can say with the men, we are voters; we have the same rights, the same power as voters as the men. The interest a man takes in the State is in proportion to his right as a voter under its laws, and he that is any less than a voter is simply a vassal, subject to the will and caprice of somebody, and from whom he has absolutely no redress, and to whom he owes allegiance. His interest is gone. The State is not his, but the other man's. But give him a voting chance and all is changed. Under the mantle of citizenship, there falls upon him a sense of power, responsibility and pride in his State, as his. Just so will it be with woman. Give her the full enfranchisement, and with it will come the added public interest in public affairs for better laws, better morals, greater elevation of character in both private and public life, which alone make the true life of the State possible and continuous.

Mr. President, a letter addressed to me and signed by such men as Russell Sage, Dr. Charles H. Eaton, Dr. Faunce, Frederick R. Coudert, R. Heber Newton, Edgar Fawcett, Wm. Dean Howells, John D. Rockefeller, Thomas L. James and many others, sympathize with what I have said upon this subject in even stronger terms:

"The women of this State pay taxes upon hundreds of millions of dollars yet have no voice in directing the expenditure of public funds.

"The women of this State contribute by their industry to the wealth of the community, yet constantly work at a disadvantage when competing with political superiors.

"The women of this State have the same vital interest in public affairs as have their fathers, husbands, brothers and sons. They have been emancipated from personal and legal subjection to the men of their own families, and they are not willing to remain subjected to the political sovereignty of all other men. Their personal rights have been secured to them by successive acts of legislation. They now pray for civil rights, which are the natural complement of personal, industrial and legal independence."

The public press have also within a few days spoken in no uncertain tone, and I beg to quote only two or three.

The Albany "Journal" warns the Convention not to reject the amendment. The New York "Recorder" speaks its mind most decidedly, as follows: "It has been decided by the Committee on

Suffrage of the Constitutional Convention to report adversely on the petition of the most intelligent women of this State that, as women, they shall be admitted to equal privileges with men along the whole line of citizenship. This action of the committee is not in the interest of better, purer and higher government of all people. It is, on the contrary, a block on the wheels of advancement and progress. The question has been argued threadbare, and every plea presented against it has been left without a logical leg to stand on. There are few departments of human endurance in which woman is not now proficient to act. In brain power, she is the equal of that sex which arrogates to itself fellowship and supremacy. The Recorder advocates full suffrage for women, because it believes that the conferring of it will exalt woman and give us in the next generation, and in the generations to follow, the highest type of citizenship the world has ever had. In these seething days of unrest and revolution of all kinds, the best and most conservative course in all society should be invoked to save, rescue and redeem it. That influence is the influence of women. At the present time, she is the great conservator of religion, no matter what the church to which she belongs may be. Her influence in the State would be equally beneficient, but to give it full scope and swing she must be emancipated from the vassalage in which she is held. The moral force that has saved the church must be utilized to save the State. The Convention should put this report of its Suffrage Committee in the waste basket and submit the question to the people." (Applause.)

We have in that grandest of all word-painting, the picture of a complete civilization in the Revelation in Holy Writ, of the holy city, and the length and breadth and the height of it are equal, nothing of its component parts left out, and small wonder there that the walls were of jasper and the city like unto pure gold and the foundations precious stones, and each several gate one pearl, and the kings of the earth do bring their glory and honor into it, and they shall bring the glory and honor of the nations into it. That day and city so long foretold is coming, Mr. President. The climbing of the race towards this ineffably glorious civilization is slow, but individuals and communities are fast learning that the day and the city will hasten only as each goes onwards in the march for human rights and human progress for all the members of the State. I ask this Convention for itself, for the State as a State, not to delay the coming of that perfect civilization by clinging to the dead ideas of the past, but to take this long step forward now — which is equal rights for every member of this State.

Permit, then, this great question to go to the people. Men of this Convention, you are making history now, for the politics of to-day is the history of the future. See to it, then, that you make it on the side of the better citizenship, which this measure will certainly insure. (Applause.)

Mr. Cookinham — Mr. President, there are several gentlemen who have manifested a desire to address the Convention upon this subject. They do not desire to speak this evening. As the hour is late, and as by special order this matter will be before the Convention to-morrow evening, I move that the Convention do now adjourn.

The President put the question on the motion of Mr. Cookinham, and it was determined in the affirmative, whereupon the Convention adjourned to August 9, at ten A. M.

Thursday, August 9, 1894.

The Constitutional Convention of the State of New York met at the Assembly Chamber, at the Capitol, Albany, N. Y., August 9, 1894.

President Choate called the Convention to order.

The Rev. G. M. Heindel offered prayer.

The President — Before we proceed with the special order assigned for this morning, is there any particular business that any delegate has to bring before the Convention?

Mr. McKinstry — Mr. President, I would like to introduce a resolution.

The President — Unless objection is made, the resolution will be considered.

The Secretary read the resolution as follows:

R. 165.— Resolved, That the Secretary request from the clerk of each county in the State answers to the following questions:

First. Has there been any defalcation by any county treasurer in your county during the last twenty years, and, if so, state the date and amount of such defalcation?

Second. What portion of such defalcation did bondsmen make good?

Third. How many terms had the defaulting treasurer served?

The President — This would, under the rule, go to the Committee on County, Town and Village Officers.

It was so disposed of.

Mr. Marks — Mr. President, Mr. J. I. Green requests me to ask that he be excused for the balance of the week, as he is called away.

The President put the question on excusing Mr. J. I. Green from attendance, and he was so excused.

Mr. C. B. McLaughlin — Mr. President, are reports now in order?

The President — Unless objection is made. It seemed to me that before going into the special business of the day, unless objections were made, those matters could be gone through with.

Mr. C. B. McLaughlin — I have a report from the Committee on County, Town and Village Government.

The President — The Secretary will read the report of the committee.

The Secretary read the report as follows:

Mr. C. B. McLaughlin, from the Committee on County, Town and Village Government, to which was referred several proposed constitutional amendments relating to sections 22 (being printed No. 341) and 23 (being printed No. 250) of article 3, and sections 9 (being printed Nos. 93 and 237) and 11 (being printed No. 237) of article 8; also section 22 of article 3 (being printed No. 55), and a proposed new section to article 8, to be known as section 12 of the Constitution (being printed No. 51), respectfully reports that the committee has had under consideration and has given to the several propositions referred to it careful consideration, and, as a result of its deliberations, reports that, in its judgment, no changes should be made to the present Constitution, as contemplated in the several proposed constitutional amendments heretofore referred to it.

The President — This is the best report that has been received from any committee. (Applause.)

Mr. C. B. McLaughlin — Mr. President, I move the adoption of the report.

The President put the question on the adoption of the report, and it was determined in the affirmative.

Mr. Davis — Mr. President, I ask to be excused from the session to-morrow.

The President put the question on the request of Mr. Davis to be excused from attendance, and he was so excused.

Mr. Crosby — Mr. President, in the absence of the chairman of

the committee, I desire, as chairman pro tem., to move that the proposed amendment to the Constitution, introduced by Mr. E. R. Brown, be printed and placed upon the desks of the members.

The President — Is it one that has already been received?

Mr. Crosby — It is not. It has been presented to the committee, and many parts of it adopted by the committee. For the purpose of the use of the committee and to inform the gentlemen of the Convention of the sentiment of the committee, we thought it advisable to have it printed and placed on the desks of the members.

The President put the question on printing the said proposition, and, it being determined in the affirmative, it was ordered printed, with introductory number as O. 376, proposed constitutional amendment to amend article 3, relating to the apportionment of Senate and Assembly districts.

Mr. M. E. Lewis — Mr. President, is it not true that the report of the Committee on Cities was made a special order this morning immediately after the reading of the Journal?

The President — It was.

Mr. M. E. Lewis — I move that the Convention now go into the Committee of the Whole on the report of the Cities Committee.

The President put the question on the motion of Mr. M. E. Lewis, and it was determined in the affirmative.

The House resolved itself into Committee of the Whole, and Mr. I. S. Johnson resumed the chair.

Mr. Dean — Mr. Chairman, I rise to withdraw my substitute to the pending question. I do this, not because I am convinced of any fundamental error in the scheme, for it is based upon well-tried principles of popular government, but because I am convinced that it is impracticable to deal with the question intelligently in the Committee of the Whole, and because I see no hope of reaching that result through a committee which has committed itself to the absurdity of proportional representation, and which flatters itself that it has been cunning enough to devise a plan which will be of party advantage. I believe in home rule. I take no stock in the idea that this is a complex question or that it takes any very high order of talent to solve the problem. Local self-government, applied on the broad basis, which characterizes general self-government, is perfectly feasible, but it can never be attained by gentlemen who lack the courage of great convictions, and who distrust the intelligence and the integrity of the masses. The plan

which I have suggested takes some space; it is practically a Constitution for the government for more than one-half the people of this State, and gentlemen who are frightened at the bugaboo of legislations in the Constitution oppose it simply because it is long; as a matter of fact it contains as little legislation as almost any propostion now before us. It lays down broad principles for the government of cities, leaving to the several municipalities the problem of their own salvation, and so long as I have faith in human nature, and so long as experience demonstrates the wisdom of self-government, I shall not subscribe to the doctrine that home rule is not practicable, or that it can be attained by any mere jugglery committed in its name. Believing in this proposition, but realizing the hopelessness at this late day of accomplishing anything of importance in this direction, knowing how futile must be any attempt on the part of practical men, who have been chosen by intelligent constituencies, to get a hearing before the Committee on Cities, so long as there is a theorist or a professor of political ethics within reach of the telegraph wires, I submit to the inevitable. I ask permission, Mr. Chairman, to withdraw my proposed substitute, and trust to the intelligence of this Convention to deal with this three-months' condensation of "professorism" in the domain of civil government.

The Chairman — Is there any objection?

Mr. M. E. Lewis — I object.

Mr. Cochran — I renew my motion of yesterday that Mr. Dean be allowed to withdraw his substitute.

Mr. M. E. Lewis — Does not that require unanimous consent?

The Chairman — I think it can be done by a majority vote. It may be withdrawn with the consent of the Convention.

The Chairman put the question of allowing the substitute to be withdrawn and it was determined in the affirmative.

The Chairman — The question is now on the amendment offered by Mr. Mulqueen to strike out, after the word "council," in line 16, page 4, and insert in lieu thereof the following:

The mayor of any city may remove the commissioner, superintendent or other head of the police force of such city for cause, upon charges preferred before him. A copy of such charges shall be served upon the official or officials sought to be removed, and an opportunity afforded him or them to be heard in his or their defense. Upon such a removal the mayor of such city may appoint the successor of such officer or officers so removed, to hold office

until the expiration of the term of office for which such officer or officers was removed when originally appointed.

Mr. Cochran — Mr. Chairman, am I not correct, sir, that we have not yet disposed of section 1? It seems to me that we must first dispose of section 1, and all amendments that are pending to that section before we take up the subsequent sections of the proposed constitutional amendment.

The Chairman — By the vote of the committee, the whole matter was read through first, and there seems to be no amendment to section 1.

Mr. Cochran — I understood there was an amendment pending.

The Chairman — There was one adopted, but there is none now pending as the Chair understands. .

Mr. Mulqueen — Mr. Chairman, I ask that the amendment be passed for the present, as there are some gentlemen I understand who desire to debate the whole question.

The Chairman — Does the gentleman withdraw his amendment for the present?

Mr. Mulqueen — I ask consent to pass it for the present.

Mr. J. Johnson — I hope that request will be granted. The Committee on Cities courts the fullest debate.

The Chairman — Is there any objection to this being laid aside? If not, it is so ordered.

Mr. Jenks — Mr. Chairman, I make the usual motion to strike out the first section of this proposed amendment.

The Chairman — Mr. Jenks moves to strike out the first section for the purpose of debate.

Mr. Jenks — There is much in this proposed act to criticise; there is something in it to approve. I have known the chairman of the committee so long and so well that I do not propose to pose here as his candid friend, nor do I seek to be a conspirator to strike down the great Caesar of the Cities Committee on the very floor of the senate house. I rather quote the Scripture, and say in the words of the Divine Writ: "And Samuel said unto Jesse, are these all thy children?" with the hope that later he may bring forth the ruddy and strong son that he has kept in reserve, to be anointed and accepted of the Lord.

Mr. Chairman, much work has been done by this committee, and this report and proposed amendment may be said to be the seal of the committee, that is, "presumptive evidence of consideration," although many of those whose amendments were rejected

might not give to the committee the definition that it "was wax or some other tenacious substance capable of receiving an impression." Whether or not the gentleman is proud of this proposed amendment I do not know, but after he has done, perhaps he will procure a stencil, and, following the fashion of young women who write in autograph albums, he will mark upon the very front of it: "When this you see, remember me." (Laughter.)

Now, Mr. Chairman, I propose very briefly to examine the various sections. The first simply provides laws for the incorporation of new cities. In the words of Sir Boyle Roche, I ask, "What should we do for posterity, for what has posterity done for us?" The question of to-day is of the old cities, and I am disappointed that there is not a broad provision which pertains to the cities of to-day, rather than one which may benefit our children's children if such there are to be. "Every city shall have a common council which shall consist of one or two bodies, to be elected with or without cumulative voting." Whether the voting provided for be cumulative, by preference, proxy or by substitute. I agree with my eloquent friend, Mr. Dean — the very Debs of debate — that it is a fad and an ism which should be excluded forever from the consideration of this Convention.

As to the second section, I believe that its purpose is good, but that its execution is poor. So far as the last term of the section is concerned, it is certainly defective, because when we seek to make a definition in the Constitution, it should be so exact and so perfect as to be beyond the cavil of even hypercriticism. Now, the article provides that the term "city officers," as used in this section, includes "all officers elected for a municipal purpose." Does not the gentleman know, surely the committee must know, that the officers of the department of police, excise, health, charity, education, are not officers elected for a municipal purpose? In the case of Maximillian against the Mayor, which leads on this question, the Court of Appeals has said, speaking of such officers: "They are public officers though getting their right of office from a circumscribed locality, and the acts which they do are to be done in their capacity as public officers in the discharge of duties laid upon them by law for the public benefit, and far removed from acts done by a city or town in its municipal character in the management of its property for its own profit or advantage." Now, when this committee seeks to define the term "city officers" as those elected for a municipal purpose, by the very definition they exclude the officers of police, the officers of excise, the officers of fire, the officers of charity, the officers of education.

Section 3 classifies the cities of the State. Why and wherefore I know not, but the sharp knife has been drawn so as to divide them into but two classes. Surely it is not proper, it is not right that they should be so divided, that on one side we have cities of 50,000 population or more, and on the other side all other cities. Then the committee goes on to provide that "laws relating to all cities of the same class are general city laws," and "except as permitted by section 4, the Legislature shall not pass any law relating to cities except a general law." I beg the committee to bear with me a moment when I say to them there is nothing more pernicious or more hazardous than this attempt to enact legislation for cities by simply providing that there shall be general laws, without any further attempt to make them harmonize with present special laws and existing charters. The Court of Appeals — and I hope you will not consider it "*infra dig.*" for a member of the Committee on Judiciary to quote from the Court of Appeals — the Court of Appeals, Judge Finch, writing the opinion, say: "The cities acquire their corporate life by force of special, several and purely local acts which create and frame them in a regular exercise of governmental functions. They have never been created by general law and cannot easily or prudently be organized by any other method than by special and local enactments. "It may be possible," says Judge Finch, "to frame some general laws under which cities could be organized, but difficulties would spring up in many directions, and the probable result would be some broad and general outline still requiring to be supplemented by more or less of special legislation." Such is the deliberate, well-considered expression of the court in the 139 New York, writing in the supervisors case. But assuming that general laws can be framed, I ask the gentlemen of the committee to look at the features to which general laws are to apply.

"Streets and highways." Is it possible to frame general laws so as to dock them and dovetail them into the provisions of the various cities of this state relating to streets and highways? The committee has been misled by the provision of the present Constitution relative to opening streets and highways. I ask any gentleman who lives in a city to look at the condition of the legislation, whether by charter or statute, touching his streets and highways and compose it if he can with general laws which shall relate to them.

Next are enumerated "parks and public places, sewers and waterworks." Such public works are generally the growth of peculiar charter provisions, or of peculiar special laws. How then is the Legislature by some broad fiat, under the form of general law, to

make a provision which shall be so elastic as to be in articulation with these various special provisions? Then comes "the character and structure of buildings." Laws are now entirely different in cities of this State of 1,000,000 or in cities of 200,000 or in cities of 70,000, as to buildings within the fire limits. Next are classified "the city apparatus and the force for preventing and extinguishing fires." I venture to say that at present such provisions are different in all such cities, and that no general law can be drafted so as to complete or be harmonious with them. Next, we come to the matter of "salaries." Is it to be believed that a general law can be passed so as to provide in all cities of the State of more than 50,000 inhabitants, a uniform rule for salaries with fairness? Are the salaries of Rochester, and there is no reflection upon that municipality, to be regulated by a statute which names the salaries of the great city of New York? So far as the "matter of vacating, reducing or postponing any tax or assessment," the gentleman well knows that for many years the city of Brooklyn groaned under an enormous arrearage and that by special laws which were urged and pressed by Mr. Low, who now approves this article, the city was lifted out of the very slough of despond, almost the chaos of bankruptcy. Are we now to have general laws applicable to every city of over 50,000 people relative to the vacating, reducing or postponing of taxes and assessments?

I need not go on. I think that I have indicated, so far as is necessary at this stage of the debate, that all of these matters which this committee has treated under the guidance, perhaps, of ex-Mayor Low, as subject for general laws are treated now by provisions which are peculiar to every city, in the sense that they are of charters or of special statutes for such matters of local government, which cannot be amended or continued harmoniously by general laws.

Now, under section 4 it is provided that "laws may be passed affecting one or more of the subjects enumerated in the last preceding section, in any city, on the consent of the mayor, or the mayor and the common council." I am opposed, in the words of Mr. Dean, to making the mayor the mere creature of the Legislature, "a bigger man than old Grant," a greater man than the Governor of the State. Shall it be that this mere municipal officer is to sit with full panoplies of power, and the absolute right of veto in the local executive chamber, and by his fiat set at naught the will of the people of this State? The principle is right, but the practice is wrong. Suppose that party politics came into question? May we not have the Legislature chucking at the mayors of cities local

legislative matters to make political issues. The mayor will veto, or not, as he pleases, and thus a game of shuttle-cock and battledore between the mayor of the city and the Legislature of the State will be played. Or if the mayor of the city shall not approve of legislation, and it must come to the people's vote, I ask the gentleman what measure of intelligent reform could ensue from putting before the people of the city ten or fifteen or fifty different statutes in a sort of wholesale referendum? No special legislation shall be initiated or inaugurated in the Legislature touching the local affairs of a city without the previous preliminary assent of the mayor and of the local authorities. That is the way the measure should be amended and that is the way the proposition should be changed.

Now, there comes the provision as to the power of the Governor to remove the head of the police force. I fully approve of this. For, aside from any questions of party, which, thank God, have not yet arisen in this debate, I believe that it is a wise, salutary and beneficient principle; and I am glad that the committee have incorporated it. I believe that the police power of the State, using the term, not as a lawyer, but as a layman, is a matter of State government, and that, therefore, it is proper that you should commit to the Governor the power to take by the throat and cast out any man who shall not fairly administer the police affairs of any municipality. But I believe that the principle of home rule is violated in permitting the Governor of the State to make an appointment of a local police official. I believe that if the power of appointment be vested in the mayor or in the mayor and the common council you should not say that if the officer so chosen should fail in his duty, that, therefore, the local appointive power shall name another man to administer the police affairs of the city. Let your Governor punish, not appoint; destroy, not create. Now, I come to the provision as to the election of officers, which is gross centralization. I see no reason why the Legislature of the State should enter into the affairs of the cities so as to appoint a board of election commissioners. I believe in equal minority and majority representations upon election boards of cities; but if the power be vested in the mayor, or in him and the common council, if you please, to appoint the heads of other departments, I see no reason why, under wise and well-framed general laws, the power should not also be given to local authority to appoint its own election officers. This solves the problem, yet violates no principle.

Then comes the marvelous provision of section 7, "nothing in this article contained shall affect the power of the Legislature to consolidate contiguous cities, or annex contiguous territory to any city, or

to make or provide for making a charter for any city created by such consolidation." Look you! Here is a provision that the Legislature may absolutely wipe out, and annex the city of Brooklyn to the city of New York. A true principle of home rule is that no municipality should be annexed to another, unless the people of the first city, at the polls, express their wish for annexation. What is the value of this whole article if the Legislature can wipe out Brooklyn and consolidate it with the city of New York, and then make a charter not subject to a single restriction of this provision for general home rule? Here are the proposed provisions that are to govern municipalities. The great municipality of the future, we are told, is to be united New York and Brooklyn, and yet this very article which should pertain to this great city above all, and which is to provide the panacea for all evils, frees the Legislature to make any charter it pleases for the Greater New York.

And, then, finally, the article provides, "except as expressly limited, the power of the Legislature as to cities, their officers and government" is continued. As to that I shall perhaps have something to say, but not at this moment.

Now, gentlemen, I want to say of this article: It seeks to give life, but it kills. The committee has avoided the cardinal principle of home rule, because the committee is afraid of permitting the practical execution of it. It is cowardice, not alone in the committee, but cowardice of every member, perhaps, of this Convention, cowardice that may rest in me, not to face this question of home rule fairly and squarely. Let us say, sir, once for all, either that the cities cannot govern themselves, either that the municipal corporations of this State should go into the hands of a receiver, or that home rule should be applied in all its breadth and all its strength. Home rule is American, so we have been told. Nay, the whole history of the civilization of this world is the history of great cities, whether it is of cities that sprang up through the barter of a king who wanted money, or were chartered to offset the insolvent power of the nobility, or were founded to repel invaders like the great cities of the middle ages in Spain. The whole progress of liberty, whether I quote Guizot, Toqueville or Robertson, it matters little, has been due to the calm, brave, self-sustained, free exercise of local self-government by the people within the bounds of cities. Toqueville says: "The local assemblies of cities constitute the strength of freemen. Municipal institutions are to liberty what primary schools are to science. They bring it within the people's reach — they teach men how to use and how to enjoy it. A nation may establish a system of free government, but without the spirit of municipal

institutions it cannot have the spirit of liberty." Writers say the rule of cities is the question of the Sphinx. Men have always been frightened by the problem of city government. Not alone the dilletante who sings with Byron that "the hum of cities is horrible," but such as the philosopher who said the great peril to American institutions is the rule of cities. Back in the time of Elizabeth, you remember that her city of London, which had not then even 500,000 inhabitants, was subject to three proclamations which prohibited the building within three miles of its borders of a single house or dwelling. The fear was then that the people of the cities, knowing their strength, and united, would carry on the fight for liberty and freedom not alone against the feudal power, against the nobles, but even against the sovereign will. The difficulties in the government of cities are not far to seek. I tell nothing new. I may be unconsciously plagiarizing. They are these: First. There are so few direct taxpayers. You may take almost anything from a man indirectly, little from a man directly. The man who pays the rents does not understand that the tax levy bears upon him. The man who pays the direct tax into the receiving office is he who protests. The other is indifferent; he is the workingman, the rent payer, who sees no tax bill and forgets that any burden is upon him. It is chiefly on account of the fewness of the direct taxpayers that the difficulties in the government of cities exist.

Another difficulty is that the affairs of the city are not understood by the intelligent citizens who live in them. We have a complex system of city government; we have boards and bureaus; we have commissions and routine of delicate charter provisions and manipulations. No man, unless he becomes a student of his own municipality, burning the midnight oil, can understand the system and program of government. Take these two things, then, the intricate method of administering government in cities, the fewness of the people compared with the population who pay direct taxes, and you have the chief bars to good clean government.

A man goes about his business in despair, and says: "Those fellows in the city hall or common council can manage it. I pay my taxes. They are unjust, but I do not know the remedy, nor where lies the fault. The system is wrong, but who is the man?" How many men know the manner in which their own city is governed? They may hear of the board of works, or of the common council, but who can put his finger on any provision of the city government and say this or that is the provision that should be changed, or this or that is the provision which should be remedied

or amended, or here is he who must account? Now, if we cannot have the town meeting or the folk mote, we need so far as is possible, true representative government; we need a system so simple that the man when he comes to the voting booth can know exactly what he is doing and his full measure of responsibility. We want to have simplicity and responsibility coupled with unity in the administration of the affairs of city; and then it seems to me we have in our imperfect way, at least, partial solving of the problem. Lord Coke quoted the judge who said, "Blessed be not the complaining tongue, but blessed be the amending hand," therefore, if the committee will bear with me, I will, purely in a tentative way, suggest to the chairman of the committee what provisions might be incorporated in the article, in order that when the ruddy, virile son of Jesse cometh forth, he may be adopted by our unanimous vote. (Applause.) I believe in the divisions of cities into classes, but the classes should be more than two. They certainly should be three, and I suggest for the careful consideration of the Committee on Cities, if this matter be sent back to them, that the cities of the State might be divided into three classes, the first of 250,000 and over, the second of less than 250,000 and more than 50,000, and the third of all other cities.

Then, gentlemen, I let the common council consist of, say 120 men, in cities of the first class, and in cities of the second class of seventy-five, and in cities of the third, final class, of thirty. It may be wise, it may be well, that in the great city of New York there should be a system of dual chambers. It may be wise, it may be well that there should be a smaller, Senate-like body, if you please, elected by the citizens at large, but the gentleman's experience and mind go hand in hand when we say that one general ticket, elected by the whole city, does not show such improvement, in either ability or honesty or in statesmanship, as to commend itself either to him or to me.

The chief election officers of the city should be required to divide the various cities into districts of compact territory and of relative equality of population, as near as may be, and from each district there should be elected for a term equal to that of the mayor a representative to the common council. I believe there should be the divorce of municipal elections from State and national elections. I believe, sir, that full power should be intrusted to this common council by general laws, not even such emasculated powers as are given in this proposed article, but it should be intrusted with every power of local government and with every governmental power committed to the city by the State. That is, I believe it should

have the power of fixing the appropriations; I believe it should have the power of determining the tax levy; I believe it should have every power that may be vested in a local legislature. This, of course, is subject to this criticism; it may be said that the experience of the past has shown to us that the common council of cities should rather be shorn of their powers. But is not this the crucial test of the ability of the people of a city to govern themselves. If, with a large body elected from separate districts, intrusted with the full power of local government, the cities of the State cannot or do not elect men who are competent to administer their affairs, then, I say, let them be blotted out forever and be administered by commissions appointed by the Governor or Legislature. The only way to do is thus to educate the people. It was Disraeli who said that true progress was to educate his party. But the way to do this is to educate the people, so that a man will understand when he goes to his polls at the spring elections that he has two men to vote for — the mayor, the chief executive of the city, and the member of his local legislature. He knows, when he votes for his member, that he will have the power of appropriation, the power of taxation, the power of legislating upon all city affairs, to say what bonds of the city shall be issued, what obligations of the city shall be issued, what expenditures and what contracts shall be made. Then if there be not public spirit, and if there be not enthusiasm and patriotism enough in the inhabitants of the city when the issue is put fairly and squarely before them to elect such men as will represent them fairly, then let chaos come again, and they deserve it.

I believe that the heads of departments should be entitled to seats on the floor of the common council, but without the power to vote. I believe that the heads of the departments should not communicate with the local legislature by means of long letters, which are pigeon-holed, lost sight of and never read. I believe the head of a department, if he have power to express himself, and anybody who knows his business can express himself, should be subject to question, interrogation, explanation and to the hectic of debate upon the very floor of the common council. Public opinion rules to-day. Newspapers are our mayors, our common councils. Give us in addition not simply the agitation of some local Demosthenes during the week or two of political campaign, but through the year let us have a common council selected from the full body of the citizens, large enough to represent all the different elements of the city, where the heads of the departments must come to explain why and wherefore they want this appropriation or why and wherefore

they have neglected this sewer, or why and wherefore they have not done this or that matter of municipal business, and, if they do not or cannot, then soon will the people gibbet them at the very cross-roads of public opinion. I believe there should be general State laws applying to all cites of a class, but I believe that provision should be made that no amendment can be passed to such laws so as to eliminate a city from a class and yet such special amendment be held general because it amends a general law. I believe that the provisions as to general laws should be so carefully guarded that the Legislature will be absolutely prohibited from passing any special law amendatory of the general act so as to exclude any city. Then I think, as I have already indicated, that the mayor and the common council, not mayors in cities of over 50,000 inhabitants, and mayors and common councils in other cities, as proposed, should have the right to say whether any special law affecting the finances or indeed any law affecting any matter of municipal concern, should be introduced in the Legislature of the State. Do not have the Legislature chuck to the mayor of the city this or that piece of legislation. Do not have the Legislature throwing down to the people this or that proposed statute to make an issue in a political campaign or at the polls.

I suggest a provision that cities, heretofore incorporated, might become incorporated under general laws, and that it may be wise to also provide that the cities of the State should have the power to make their own charters, when such wish is expressed by a vote of the people at the polls. This is afforded in some Constitutions of the new western States. It is the true principle of home rule, entire and complete, and fundamental. Let the people of a city make their own charter, and then, if they cannot execute it, theirs are the blame and shame. Because common councils in the past have not come up to the full measure of the responsibility, that is the slight responsibility, that has been put upon them, it is believed that there can be no scheme for a local legislature free to deal with city affairs and city concerns. I insist that if you once put into the hands of a municipal body, large enough to represent all shades of views, the full responsibility, then the matter rests with the people of the city, and the people will sooner or later see to it that there is good government, for it is their government; that the lesson must be learned by experience.

The gentleman has said that this proposed article is like the slow growth of a tree; that is, that we should have first the plant, and then the sapling, and then the oak. I accept his figure. But I believe we should now have the full sturdy oak, for though an oak

concealed the second Charles, "While underneath the Roundhead rode and hummed his surly hymn," it was also an oak which covered the charter of Connecticut when the second Charles sought to seize it. I believe that we want the oak in its full growth, powerful, strong, vigorous, ready to stand the tempest and the storm. Fisher Ames said that other States were like proud merchant ships under full set sail, which in a moment might strike a rock and sink forever; but this republic he compared to some great raft. You remember the figure. We sail on it and sometimes our feet are wet, sometimes the seas dash over us, but it never sinks. We have had tribulations, we have had sorrows, we have had troubles, we have had scandals, we have had disgraces, but I believe that the strong, sturdy arms of the common people, when full responsibility is cast upon them, will send their raft through wintry waters to the surface of the summer seas. I regard the discussion of this measure not as any party question. I have tried to keep away from partisanship. I have studied not to deal in mere criticism, crimination. If we cannot discuss this free entirely from party, so much the worse for us. I want to treat the matter as a member of this Constitutional Convention seeking to solve the most important problem before us. And, sir, I hope, for I am still young enough to indulge in these day dreams, I hope the day may come when in the words of the man who feared for American institutions because of our cities it may be said of their citizens:

"Then none was for a party,
And all were for the State,
And the great man helped the poor
And the poor man loved the great;
Then goods were fairly portioned,
Then spoils were fairly sold,
For the Romans were like brothers
In the brave days of old."

(Applause.)

Mr. J. Johnson — Mr. Chairman, I desire to ask the gentleman a question, not as argumentative, but as explanatory. I would like to ask two questions.

Mr. Jenks — With pleasure.

Mr. J. Johnson — First, assuming that his proposition is correct, that the true theory of government is a common council, a large council that should represent all parties, all sections, all classes of the electors — I think I am fairly right in my statement of his position — can that be accomplished in cities without cumulative voting,

or some method of minority representation being permitted? Secondly, he says that if this system which he proposes does not succeed, suggesting that it is possible that it might not, he would then remand the cities to commission government. Would not putting what he suggests into the Constitution make it impossible to remand the cities to commission government, and necessarily leave them with the system that he suggests might fail?

Mr. Jenks — My first answer is this. I do not say that cumulative voting is necessary, because if the legislative body be great it will represent many small districts. I believe that so far as is necessary then that all shades of opinion will be represented. I do not believe the day has come yet for minority representation. I believe that this is a government by majorities. I would say to the gentleman that the London county council, which consists of 138 members, is not elected by a cumulative minority or any kind of reference voting. As to the second measure; I do not believe that the day will ever come when the citizens of the city of Brooklyn or any other city will be so lost as to require government by commissions. But if it were necessary it is always possible to amend the Constitution by the act of the Legislature and by the vote of the people.

Mr. Root — Mr. Chairman, I do not wish, sir, to enter into any extended discussion of this matter at this time, but I do desire to interpose an observation which seems to me apposite to the remarks made by the gentleman from Kings (Mr. Jenks). I entered the chamber while that gentleman was referring to the free cities of the middle ages, and I listened with great interest and satisfaction to the remarks which he made upon that subject and those which followed. It gave me great pleasure to see that this important question, which has been considered with great pains and ability by a committee composed of gentlemen who certainly are the peers of every member of this Convention, is receiving, at last, that dignified, courteous and deliberate consideration to which it is entitled. The observations of the gentleman from Kings (Mr. Jenks) rise fully to the dignity of the subject and fitly represent the great municipality which has sent him to this Convention. I, for one, thank him for the attention which he has given to this subject and the ability which he has displayed. But, sir, let me ask the gentleman if, filled with natural and proper pride in the great city which he represents, he has not taken a somewhat one-sided view of the relations of municipalities of the State to the State? The free cities of the middle ages stood by themselves, governed by themselves, but they undertook to exercise no power of governmental

rights over others, and acknowledged no duties to others. The great cities of the State of New York can build no walls around their borders. They seclude themselves in the midst of no barriers between themselves and their fellow-citizens of the State. They undertake to furnish to us and acknowledge their obligations under the law to all of us from Montauk to the State line in Lake Erie, the great market, the great centre of education, of recreation, of business, the centre commercially, financially, politically, around which revolve, and from which throb and pulse, the life current of a State which is a political, social, commercial and financial unit. Now, sir, the city which the gentleman represents undertakes to cast votes which will determine who shall be the presidential electors of the State of New York, to cast votes which shall determine who shall be the Governor of the State of New York, to send representatives to the Senate and Assembly, whose votes will outweigh those of any less number from any other part of the State of New York, in determining the policy and the law for the whole State. That city cannot cut herself off from the rest of the State. That city cannot put herself in the position of a free city of the middle ages with a wall around her, governing herself exclusively; or if she does, she secedes from the State and becomes a city by herself. And against that or any amendment or law which provides for that, I rise now to protest. No, sir. The cities of the State, while properly claiming that they should be exempted from undue interference with their private affairs, nevertheless must admit the right of the people of a State to which they belong and to which they owe allegiance, equally with the smallest hamlet, to see that the great bureau of police in which every citizen is interested, that the exercise of the elective franchise in which every citizen is interested, remain under the domination of the law of the State. One is correlative to the other. The two must go hand in hand, and I understand, sir, that the attempt of this committee has been to put into the measure which they have reported, on the one hand, a just exemption from undue interference in purely private and local matters in the city, and on the other hand, the assertion and the protection of the higher right of the people of the great State of New York to preserve her autonomy, her political independence, her political unity and the rights of all her people by control over those governmental functions in the city, which are the proper province of the general government.

Now, sir, it may be that this committee has not drawn the line rightly. It may be that there should be tearing down here and building up there, but they have pursued the right method I assert,

and that instead of deriding their efforts, it is our duty seriously to proceed upon the general lines which they have laid down; and in that I hope this Convention will heartily agree. (Applause.)

Mr. Schumaker — Mr. Chairman, I am certainly very much surprised at the remarks of the gentleman from New York (Mr. Root). I have heard of no attempt by my colleague, Mr. Jenks, or any of my colleagues to build up on Long Island a city of the middle ages. He must have come in very late. He must have understood very queerly the remarks of my friend and colleague, for he never lisped one word in relation to making Brooklyn a city of the middle ages, not dependent upon State government, that it should be there alone with a wall around is as old Nuremberg used to be and all those cities along the Danube. We never had any trouble about the cities in our own part of the State, and I mean the cities of New York and Brooklyn, until there was an attempt made to govern those cities outside of those cities by a Legislature of the State of New York. And then the people rose up against it; from the 1,500 majority in the city of Brooklyn against the dominant party, we rolled up for Tilden and reform 21,000 instead of 1,500. And what was the reason? The commissions. We hardly knew where we were. One Legislature would give us a commission for the police, another Legislature would give us a commission for something else, till the people of New York and Brooklyn stood bound hand and foot to commissions made in the city of Albany by a political party; and I am astonished that the gentleman is ignorant of those facts. Talk about the cities of the olden ages! Why, a man in New York or Brooklyn hardly was able to breathe without some satrap down there from Albany was on his track. I believe, Mr. Chairman, in a simple government of cities. I believe that it should be as simple as the government of a town or village. I believe that the simpler your government is the better for the people. I remember one good old man who in those days had moved down to our city from a country town. "Why," he says, "I did not know that we had a government except when the taxgatherer came around until those infernal commissions were made at Albany to take what little liberty we had from us here in the cities of New York and Brooklyn."

And he was right. I was brought up in the country and never knew that there was such a government to interfere with anything at all except when the taxgatherer came around and my father used to complain of the extent of the taxes. Now, it all rests with having good officers, with good men. The great philosopher, William Penn, said that a bad government, a bad set of laws administered by

good men, was a better government than good laws administered by bad men. That is the true secret of all good governments. Make the laws of a city plain. The laws of the city of Brooklyn used to be very plain. The laws of the city of New York used to be very plain. Good old Mayor Powell when he was met on the street and was asked about a bond could take his hat off and tell the man who asked about the bond the date of it, and when it was issued and for what purpose. We want a good mayor, we want a good common council; it does not make any difference whether fifteen, fifty or one hundred and fifty. We want good men there and if we have good men there we have a good government. You can make all the provisions in the Constitution, you can pass all the laws in the Legislature you wish, then if you do not have the proper agents to carry out those laws, you will have a bad government. That there is no question about, from my experience. I have lived in the city of Brooklyn for over fifty years. I remember most all the mayors. I remember on one occasion I went to our old mayor, and a good man he was, Josie Mosier, and showed him an opinion of the Court of Appeals. He looked at it and said, "That is the opinion of men, isn't it?" I said, "Yes. We must follow it." "Well," he says, "I won't." And in four years afterwards the Court of Appeals reversed their decision in favor of good old-fashioned Josie Mosier.

Now, you can put all the complicated articles you please in the Constitution for the government of cities, but if you elect bad men you have just as bad a government as you had before. My colleague and I disagree about the removal of officers. The people of the city or the people of the town can remove an officer who is false to his duty, like a flash of lightning, if it is necessary. They can ignore him entirely. I do not think there should be any interference on the part of the State in the removing of any municipal officer in a city. It may be done. The people will do it, and when they do they do it effectively. But if they will not take any interest in politics, if to save twenty shillings over in New York or from New York over in Brooklyn, a man will not go to the poll, he is the sufferer. If we cannot arouse political interest in the cities of our State sufficiently for proper government, and the people will not go and vote the proper ticket or elect the best men, they are the sufferers. And let them suffer; they will soon find out that it is a great deal better to exert themselves and get proper officers and then afterwards they will not suffer so much. I was very much surprised, indeed, to hear my friend from New York (Mr. Root)

make the suggestion that he did, or I should not have said anything. But upon the whole, I am not sorry that I said something. (Applause.)

Mr. Dean — Mr. Chairman, I simply desire to congratulate this Convention upon the fact that it has a gentleman of sufficient gravity to discuss this absurd proposition, sufficiently dignified to please the gentleman from New York (Mr. Root).

Mr. E. R. Brown — Mr. President, in the Committee of the Whole it would be well, if we desire to make any progress upon this subject, to confine ourselves very closely to the principles which are to be considered by the Convention, and possibly enacted into an amendment.

The doctrine of home rule with reference to cities is in many respects a misnomer. The reason that no cry has come up from the State against special legislation in relation to towns, is that no special legislation is demanded; substantially none. In relation to cities an entirely different state of things exists, and it has become necessary that there should be a much larger body of legislation. Out of this legislation has grown a great diversity. The citizens of one city, thinking that a particular evil could be reached in a particular way, have proposed a remedy; the people of another city, thinking that a particular evil could be reached in a particular way, have proposed another remedy, and there has been no constitutional or other provision of law in this State which has tended to create uniformity in the legislation for cities; and this great diversity of law has given an opportunity to those who desired to put through measures which are not really in the interest of the localities which the laws affect. I believe that it would be one of the best things that could possibly be accomplished by this Convention if some constitutional provision could be enacted which would tend to reduce the laws in relation to cities to some uniform system, but should yet be sufficiently elastic so that in cases which demand special legislation it could be had. Such a constitutional provision would result in a growth of municipal law which would, in the course of time, tend to remedy the evils from which we suffer by the present great diversity. I regard this present measure, in so far as it contains that principle, as highly desirable.

There is another provision in this measure which must commend itself generally to this Convention, and that is the provision which gives to the Governor of the State the right, in the last resort, to control the police officers of the State. The Governor, since the foundation of this State, has had the power to remove the sheriff of any county of the State, if that sheriff did not properly perform

his duties. The head of the police in a city is simply an assistant sheriff for the preservation of the peace of the city, or the preservation of the peace of the State; and this is another very desirable principle which is incorporated in this bill.

The other principle which is incorporated here is the principle of equal minority and majority representation on election boards. I do not think that that provision is especially pertinent to this measure, because I believe that should be a general measure covering the entire State. That, I think, will be almost the universal opinion of this Convention.

In considering, however, some of the details of this measure, in relation, first, to the provisions for cumulative and proportionate and minority representation, I do not object to that provision, provided it may be adopted only on the consent, by vote, of any municipality which desires to have it. It should not be imposed upon one city, or upon any class of cities, in the State of New York, except by express consent and desire of the city. I do not regard it as a very practical suggestion, however, in the first instance, because I believe that the decided sentiment of this Convention is against such a system of voting.

Mr. Jesse Johnson — Will the gentleman allow me to make a suggestion? As the committee understands it, nothing relating to the membership of constituent parts of the common council, or as to its election, can be imposed without the consent of the city.

Mr. E. R. Brown — I did not so understand the provision, Mr. Chairman. With respect to the division of the cities of the State into classes, that is a desirable provision, in my opinion, because I regard cities of a million or more of inhabitants as, from the nature of things, easily governable in a general way by the same laws; cities of 200,000 inhabitants, easily governable in a general way by the same laws; but I should differ very materially from the Committee on Cities in relation to this second division. There should be many more divisions; at least two more divisions, in my opinion. There is a large number of cities in this State, and it has been stated upon this floor that sixty-one per cent of the population of the State of New York live in cities; but cities of 10,000, of 15,000, even of 25,000 inhabitants are substantially rural communities. They should never be spoken of in the same way as the great city of New York. It is a misnomer in relation to them. As to cities of 10,000, 15,000 and 25,000 inhabitants, the citizens in them have the same degree of acquaintance and familiarity with one another, take the same interest in public affairs that they do in the smaller towns of the State. When you pass

beyond that line and get into cities of 35,000, or 40,000 or 50,000 inhabitants, you then begin to reach something of that spirit which has grown up in these days of neglecting the duties of citizenship in cities; but I do not believe that cities of over 25,000 inhabitants, 40,000 or 50,000 inhabitants, should be classed with a city like Buffalo, with 300,000.

Mr. Becker — Will the gentleman permit a suggestion? The classes made by this bill are those of over 50,000 population, one class; and those under 50,000, another.

Mr. E. R. Brown — I have not made myself clear. I believe that cities under 25,000 or 30,000 should be a class by themselves. I do not believe that the city of Buffalo should be in the same class with New York and Brooklyn. Neither do I believe that the city of Syracuse should be in the same class with Buffalo. There are many subjects in relation to which the Legislature can pass laws that will affect equally all the cities of the State, and should so affect them. But, when you come to divide the cities into classes, those matters, which can only relate from their nature to one particular class, should relate only to cities which are approximately of the same size. The main point, however, that I would insist upon in relation to this measure, is that of uniformity of legislation. I think that is the most desirable end that can be attained; and so far as cities of the size of Watertown, or of Oswego, or the smaller cities of the State, are concerned, I believe that in relation to all the subjects which are enumerated in this bill, and in relation to a large number of subjects that are not enumerated in it uniform laws may be made which will substantially meet all of the wants of those cities.

Mr. Choate — Mr. Chairman, I desire to propose an amendment, if it is in order, to section 4, which will very much simplify, and I think bring about a union of sentiment upon that part of the proposed scheme of the Committee on Cities, which will get rid of all this complicated machinery that is made dependent upon the assent of the mayor or the mayor and the common council, and to get rid of what seems to me to be the objectionable feature of a double veto, one in the hands of the mayor and one in the hands of the Governor, but to provide a mode by which the interference of the State in the internal affairs of cities shall be checked, but not taken away. I do not believe that the people of this State will ever consent, or ought to be asked to consent, to abandon their sovereignty over any division of the city in respect to any of its affairs; and I would, therefore, propose as an amend-

ment to section 4 what, as I understand it, will be entirely within the spirit of the report of the committee, although a very serious alteration of this section 4, I would have it read in this way:

"Laws may be passed affecting one or more of the subjects enumerated in the last preceding section, in any city, by a majority of the members elected to both houses, if, after a full hearing by the mayor, he assents to the same, or by a vote of two-thirds of the members elected to both houses, if he refuses his assent."

Mr. Chairman, I have seen the day in the city of New York when, in respect to these internal affairs of the city, which you will observe involve the expenditure of somewhere approaching twenty millions of dollars a year, a prohibition by the Constitution upon the Legislature from interfering would have been destructive of the true interests of the people of the city, and, therefore, of the people of the State. I am surprised at the quarter from which the opposition to this feature of the bill has chiefly originated.

Mr. Chairman, in the city of New York, about which I suppose the principal interest in this amendment centres, I think we need from time to time rescue by the Legislature. Now, what is the difficulty? Constant interference by the Legislature in our municipal affairs however potent, at the instigation of anybody, however interested — that ought not for a moment, or for any time hereafter to be allowed. I do not believe that the millennium of municipal affairs is coming whatever we do or whatever we leave undone. I agree with the gentleman from Kings, who spoke so eloquently about it, that no form of Constitution, no form of legislation, will give good government in such a city as New York as long as the people of the city — people who are interested in its prosperity and welfare — see fit to abandon the conduct of their municipal affairs to a set of men who make it their chief interest, and their personal interest, and their daily and nightly and yearly business, to manage it for them. Now, there are two evils to be avoided. One is the abandonment of the power of the State over the city. In my judgment, as I said when I began, the people of the State never will consent to that in any form. The other is, to prevent, if we can, constant, causeless, unchecked, undeliberate, unnotified interference with its domestic affairs. It seems to me that if you will adopt an amendment to section 4, somewhat in the form which I have proposed, you will accomplish these two objects. You will reserve to the State its sovereignty; you will give to the city an opportunity to be heard in respect to every intervention in its municipal affairs, and you will still reserve to the State, by a requisite and suitable majority — a three-fifths vote — power, if the true welfare of the

State and the city require it, to pass the law in spite of the objection of the mayor. I offer that as an amendment in writing.

Mr. Jesse Johnson — Mr. Chairman, I desire to say — and I think I voice the sentiment of the Committee on Cities that reported this measure — that this proposition is entirely in accord with their views. You will find it at the bottom of page six. It is suggested that the amendment be read.

The Chairman — The Secretary will read the amendment.

The Secretary then read the amendment offered by Mr Choate, as follows:

" Before the word ' laws ' in the first line, insert the word ' special,' and after the word ' city,' in the second line, strike off all the rest of the section, and insert, ' by a majority of the members elected to both houses, if after a full hearing of the mayor, he assents to the same, or by a vote of two-thirds of the members elected to both houses, if he refuses his assent.' "

Mr. Johnson — Mr. Chairman, I was about to say that on page six of document No. 33 of the report of the Cities Committee, they state that the purpose was to have a consent from the city as to these special matters, and the committee will most cheerfully accept, and thank the mover for any resolution that makes this any more acceptable in manner or mode, if that may be. The suggestion, however, of the committee would be this — and I hope it will meet with the acceptance of the President of the Convention — that in many of the cities, many of the interior cities, the common council exercises a very large and important function, and they would feel notably in cities like Rochester, where they have almost the ideal common council, that my friend from Kings has pictured — they would feel that it would be hardly fair that they also might not be heard. But the principle, sir, is on the line we suggest, and we cheerfully endorse the spirit and the purpose of the amendment.

Mr. E. R. Brown — Mr. Chairman, I would like to offer an amendment if it is in order.

The Chairman — The Chair suggests that possibly this amendment should not be considered until that section is reached, unless with the consent of the Committee of the Whole.

Mr. Hotchkiss — Mr. Chairman, I offer a substitute for the whole measure under consideration, except section 2, covering the question of separating municipal from State and national elections. That section I am satisfied with if the objection raised to it by Mr. Jenks is overcome. His objection to the definition contained in that sec-

tion of the phrase "city officers" is a very pertinent objection; and it is perhaps to be regretted that we have not had the benefit on the Cities Committee of one sitting as a member thereof who has had the very considerable experience in municipal affairs that Mr. Jenks has had. I will attempt with his assistance, and the assistance of others, to correct that definition, and I will then at a subsequent time offer a substitute for section 2. The substitute which I now offer to the amendment proposed by the Cities Committee will be found in substance in proposed constitutional amendment (introductory No. 205, printed No. 207), and I wish members would all turn to that upon their files and follow me, as I can indicate briefly the amendments which I have made to it. The proposition or proposed constitutional amendment, as it is upon our files, comes from the committee of twenty-one, as it is called. I stated yesterday, when I referred to it, that I regarded it as a most excellent example of correct form in draughtmanship. I leave the whole of the first page unaltered. On the second page, beginning with the words "and that," on line two, I strike out "and that in," being the last three words on line two, down to and including "council," in line eight. The effect of that amendation is to strike out the proposition for making proportional representation, and the election of a common council upon a general ticket from the city at large, compulsory in cities of over 500,000 inhabitants, and to leave it optional in every city in the State with the electors in each city whether they shall introduce those provisions into their charters. I strike out the word "other" in line nine, leaving it to read, "whereby in any city." I make no other change on the second page.

I then take a part of the third section of the proposition submitted by the Cities Committee, and I define the phrase "municipal purposes," as used in the preceding section of the substitute as I propose it; so that the phrase will be defined exactly as it is defined by the Committee on Cities, but adding, "police, charities and corrections." I simply include, among the purposes covered by the phrase "municipal purposes," "police, charities and corrections."

The next section of the substitute is taken also from the proposition of the Committee on Cities.

Mr. M. E. Lewis — Mr. Chairman, may I interrupt the gentleman one moment? Does he leave section 3 as it now stands, with simply the addition of a definition of "municipal purposes?"

Mr. Hotchkiss — Mr. Chairman, no, I use no part of section 3 except this definition. I propose a section in my substitute which reads in this way: The term "municipal purposes" includes, (1)

streets and highways, with the exception of bridges, tunnels, etc., (2) parks and public places, (3) and so on and so forth.

Mr. Jesse Johnson — Is it the same as ours?

Mr. Hotchkiss — Identically the same as yours, only adding "police, charities and corrections."

The next section of the substitute is taken in part from the proposition of the Committee on Cities, and reads: "The Governor may remove the commissioners, superintendent or other head of the police officers of any city for cause, upon charges preferred before him. A copy of such charges shall be served upon the official sought to be removed, and an opportunity afforded him to be heard in his defense."

The third section of the proposition reads as follows:

"For the purpose of securing fair elections, equal majority and minority representation shall be provided in all election boards."

It may be necessary to change the phraseology of that section. I am not altogether pleased with it, but I have allowed it to remain as it was reported from the Committee on Cities, in order that the disposition which we manifest in expressing in simple and clear language the desire to secure, in every election board in the State, whether it be in a city or in a county or in a village, equal representation between the several parties, might appear clearly and distinctly to the entire Convention.

Mr. Jesse Johnson — Mr. Chairman, does the gentleman's proposition go to having the minority representatives appointed by them or only from them?

Mr. Hotchkiss — I do not go into any question of legislation. One of the great merits of this amendment proposed, as it comes from the committee of twenty-one, lies, in my judgment, in the fact that it confines itself to matters which are properly expressed in and regulated by the Constitution, and it leaves it to the Legislature to formulate the details and to carry out the expressed will of the people, as it is prescribed in the Constitution. If the Legislature shall say that the appointing power shall lie in the State, well and good — although I would object to it for one. If they are content to leave it where, in my judgment, it should be left, namely, to the municipalities or localities where the elections are held, I think it would be very much better. But it is not the detail, it is the principle, for which we should strive, and which the minority in this Convention, I am certain, will stand shoulder to shoulder with every man in the majority to secure, namely, the absolute divorce of partisan advantage in the casting and counting of votes.

Mr. Chairman, I shall not attempt to justify this substitute at any length, because I prefer to have it printed and upon our desks where it may be debated properly with the eyes of every member upon the word and line of the substitute. I propose to wait until then for any extended discussion of the merits of this substitute over the proposition of the Committee on Cities. It embraces every feature that that proposition embraces, home rule, proportionate representation, the election of the municipal council from the whole city or by districts, as the city may choose, and it retains, all in proper and constitutional language, the control of the State upon municipal affairs where that control needs to be exercised in the interest of all the people of the State. It extends in detail, in the definition of "municipal purposes," the privilege of the municipal legislature to act with reference to those three subjects, namely, police, charities and corrections. I know that the suggestion to include police will meet with very great opposition on the part of some. But without attempting to argue the question at length, let me ask you, Mr. Chairman, whether when we retain in the hands of the Governor of the State the power to remove the heads of the police department in any city — whether when we do that — we do not reserve to the State all that is necessary for its protection? If the enforcement of the laws by the police department in any locality is lax; if the emergency arises when the public interest demands, as in case of mob or riot, that the head of the police should be removed, does not the reservation and the granting of the power of removal to the Governor, give to the people all that they ought to ask and all that they require for public safety? I think that it does, and I think that, so far as the mere regulation of the affairs of the police is concerned, it may be properly left to the city authorities.

I wish it to be understood that this substitute does not cover the matter of the separation of elections. That will be covered by another section, which may be substantially in the words of section 2 of the proposition framed by the Cities Committee, with a proper definition of the phrase "city officers."

The Chairman — Do you understand that there is already one substitute, and that this cannot be acted upon until that is disposed of?

Mr. Hotchkiss — What substitute do you refer to?

The Chairman — Mr. Cookinham has already one substitute, which was offered last night or yesterday.

Mr. Hotchkiss — A question of information. Is my substitute in order?

The Chairman — I do not think your substitute can be considered until the proposition is perfected.

Mr. Hotchkiss — What proposition, may I ask?

The Chairman — The proposition submitted by the Cities Committee.

Mr. Hotchkiss — Then, may I suggest, if that be so, Mr. Cookinham's proposition could not be received.

The Chairman — It can be received and may remain upon the table, to be taken up in its proper order; but the proposition must first be perfected, and then the substitute acted upon.

Mr. Hotchkiss — Is it in order, Mr. Chairman, for me to offer this as an amendment to Mr. Cookinham's substitute?

The Chairman — I am inclined to so hold.

Mr. Hotchkiss — Perhaps I might accomplish what I think all would seek to aid me in accomplishing, by moving that my substitute be offered as an amendment to the proposition of the Committee on Cities.

Mr. Alvord — Mr. Chairman, being very much in favor of a portion, at least, of the proposition of the gentleman at my left, and desiring to get out of this muddle as much as possible, I suggest that it be offered as an amendment to the proposition or substitute, offered by Mr. Cookinham, and that when we come into Convention again a motion to print all of these matters will be wholly in order.

Mr. Hotchkiss — Will the Chair regard me as having repeated the very skilful language of the gentleman from Onondaga?

The Chairman — It is now offered as an amendment to the substitute offered by Mr. Cookinham, and will be received.

Mr. Jesse Johnson — Mr. Chairman, we have now, for the first time, a tangible proposition from the minority of the Cities Committee, and I congratulate the Convention upon it. That proposition emanated from the Committee of Twenty-one, was introduced by a member of the Cities Committee, was very fully considered and very carefully weighed, and there were many and various hearings upon it. I wish to say to this Convention that very much of the thought there is embodied in the report which the Cities Committee have presented; and I desire to state further, that, having been able to see and hear from and have the written and the spoken word of those gentlemen, one of whom is, I believe, in this room now, I state that the gentlemen that presented that are satis-

fied with what our committee have reported. And when that had remained without the indorsement of my friend, until those that thought of its provisions were satisfied that they were practically embodied here, it is pressed forward now, after those who produced it are satisfied with the amendment here. What, then, is the difference between them? My friend suggests that it would have been well if some gentleman familiar with municipal law —

Mr. Hotchkiss — Mr. Chairman, may I interrupt the gentleman? I did not suggest anything of the kind. I said that I regarded it as, perhaps, unfortunate that we had not upon the committee a gentleman so intimately familiar with municipal law as the gentleman from Kings, who we know served for three terms of corporation counsel of the city of Brooklyn. I said it with no reflection.

Mr. Johnson — I have spent about half my life in municipal law. Now, the proposition turns on this question. My friend desires to arrest the power of the State in matters that we cannot arrest it in or interfere with it at all. And that gives us an opportunity to explain. We do not do anything as to education; we do not do anything as to charities; we do not do anything whatever as to them; we leave them as they are, under the protection of section 2 of article 10, which says they must be administered by local officers. We think these are matters of the State, and I desire to say that the Committee of Twenty-one so construed their definition, and never would have presented the article that they did present did they not construe it that way. They understood the word "municipal" left those out. My friend would put them in. It is then said that the word "municipal" has not a clear definition. "Municipal" means "city;" it is the correlative of it. He says that a police officer is not a city officer. My friend from Kings says so. A police officer is a city officer, a municipal officer, or else he is not within the protection, as to being elected or appointed from the city. (Article 10.) The rule that holds that the State cannot appoint a police officer, or a superintendent of the poor, holds that they are city officers.

Now, one suggestion more as to elections. My friend is, I think, a little in error as to the proposition of the Committee on Cities. He says that he would not have any State board of elections, but would leave it to the Legislature to organize such a board, if they saw fit. Do I quote the gentleman right? Would leave it to the Legislature to provide, if they saw fit. Gentlemen of the Convention, that is all that our amendment does, and it does exactly that; and, unless our amendment is passed, it cannot, in the judgment of the committee, be done, because of the inhibitive provisions of

section 2 of article 10. So that he entirely justifies and makes necessary the provisions which we have put in as to elections.

Mr. Cochran — Mr. Chairman, will the gentleman from Kings allow me to call his attention to general order No. 8, which has been reported from the Suffrage Committee, and which covers the question of bi-partisan election boards, and to ask him if that would be satisfactory to the Cities Committee?

Mr. Johnson — It would be very satisfactory to the Cities Committee, if it only went far enough. The Cities Committee believe that it is a delusion and a snare to say that the Republican party is protected, because half of the inspectors of election are appointed out of one or two hundred thousand votes by a man of the other party. We do not want our watchers appointed by the person who is vitally interested in seeing our vote small. We do not say that it will always be abused, but, if you concede us the principle, as you do, why not give us the thing? Why give us a principle which is delusive? Give us the principle, and add one thing to it, which is this — that there shall be representatives, not only out of a body of, but from and appointed by, the representatives of the party. Without that, what you give us is merely ashes of the fruit, a delusion; and when I courteously suggested to the gentleman that it should make provision that the counters should represent the party, and not merely be appointed from out of their number, he said that was legislative. I submit, sir, that there is nothing more important proposed in the Constitution than that elections shall be preserved, and nothing more necessary, if we preserve it by bi-partisan boards, than to say that they shall be appointed by bi-partisan boards. So that I say his position as to elections entirely overlooks the fact that we cannot do what he says we should do without amending the Constitution. He indorses our proposition. His amendment to section 2, as to elections, entirely overlooks the fact that municipal officers are city officers, and city officers are municipal officers, within the line of The People v. Draper, in 15 New York, and the entire line of cases that follows. If "municipal" does not mean "city," we will substitute the word "city." He leaves out the proposition that the representatives of the party shall be representative and overlooks the fact that so much of the vital thought of the Committee of Twenty-one is here with us, that they hail with acclaim our proposition; and I submit, sir, when they are satisfied, it is late, two months after it has been before the committee, to hear the first advocacy of it from a member of the committee.

Mr. Becker — Mr. President, I had intended this morning to consider quite fully some of the provisions of this amendment as

proposed by the committee, but on coming here, instead of finding, on the surface, at least, the captious criticisms, the sneering allusions, the attempt to defeat by methods of ridicule, rather than of legitimate argument and consideration with which this debate opened, I found that my friends, with some of whom we have sat long and faithfully on this committee, had changed their *modus operandi* of defeating this measure. The scheme seems now to be to appear plausibly anxious to bring about great and beneficent reforms in municipal government, to offer for the first time, as the chairman suggests, after months of discussion in this committee, proposals which learned gentlemen, conscientious gentlemen, able gentlemen, but, may I add, theoretical gentlemen, constituting the membership of good government and reform clubs, have brought forward for the consideration of this Convention. I reiterate what has been said by the chairman of the Cities Committee, that such was the intention of the majority of the Committee on Cities, was, I repeat, its intention, and the majority believe that it has effected that intention into a purpose and result of giving substantially all that is embodied in the amendment offered by Mr. Hotchkiss, which is, in part, the amendment proposed by the Committee of Twenty-one of New York eliminating from it, as is eliminated in the amendment, the two real things which constitute the meat that there is in this cocoanut, and that is, the State control of the police and of the elections. And in passing, while I fear somewhat that the amendment suggested by the President of this Convention will not bring about, as soon as he hoped that it would, that condition of popular feeling in the cities which will make the good people of those cities come forward to the Legislature and demand what we have said in this amendment can be given to them free from constitutional limitations and restrictions, if it is the opinion, as it seems to be, of a large proportion of this Convention, that it is the most, the furthest, measure of home rule that can be given, namely, to permit ultimate legislative action over and above, and without the consent of the officers of the municipality, why, I see nothing to do but to accept it, and it may be, in the end, a wise measure. What the committee had hoped to do was to provide that on these special subjects which are here enumerated, and which are purely business matters — just as much business matters, as the running of a mill, the carrying on of a bank, the carrying on of a store — that as to those business matters, into which politics should never enter, and never could enter and never would enter, except upon the basis of the distribution of patronage, that on those matters the locality should be the sole judge of what it wanted. In the great cities, where, on account

of the influx of foreign population, on account of the ignorance and illiteracy of its voters, on account of the very large proportion of the property owners of those cities who do not live in the city and have no voice in its government, we thought it wise that following out the lines already laid down, which have imposed upon the mayor, as the responsible head of the city, very large powers of appointment, very large powers of municipal control, we thought it wise that whenever it was proposed, as to these purely business, mark you, and not political, matters, that whenever it was thought wise to change the law applicable to cities in that respect, by passing a special law, which our amendment provides should be especially done, whether it be Buffalo, or Troy, or Albany, or Rochester, or Syracuse, or Binghamton, before it could take effect, it should be absolutely necessary that the consent of the local authorities should be obtained. In New York and Brooklyn the consent of the mayor; in the other cities the consent of the mayor and common council. Now, our central thought, in reference to that idea, that germinated in our minds and carried us to conviction, was this: We dare not now give to these cities, as their common councils are at present constituted — particularly, now I speak of the cities of New York and Brooklyn — we dare not give to them absolute home rule; we dare not give to the common councils in those cities, which have been shorn of all their powers for so many years, which have now no voice, substantially none, in the matter of city affairs, except, perhaps, as almoners of a certain amount of patronage and the distribution of certain franchises and privileges; we dare not give to those bodies, any more than we would dare to give the full powers of a man to a child that was just learning to walk, all the powers of local self-government and home rule; but we will provide that when, by experience, by making the mayor *de jure* in the cities, and the mayor and common council *de jure*, where they are now *de facto*, the final arbiters, or chief arbiters in most instances, of what is good for the community, that we will finally bring the matter to such a condition that in time the people of the cities will find it incumbent upon them to demand of the Legislature the creation of a local body, having full legislative powers, elected in such manner as the people desire, to which the full powers of local control shall be given.

Now, we went a step further than the Committee of Twenty-one did in that respect. The Committee of Twenty-one, as you will notice, if you have read their amendment, now offered by Mr. Hotchkiss, provides that they can only have such a council, "that may determine at a general election" (followed by voters vot-

ing at a special or general election), "may determine that the members of its common council, or a portion of the members, shall be elected on a general ticket from the whole city, and with or without minority or proportional representation among such members."

Now, you will see, if you read that carefully, the only thing they are allowed under that to determine, is that the members may be elected from the whole city, with or without minority or proportional representation among such members. In other words, the only question under that amendment that could be submitted to the people, is, shall you elect your whole council on a general ticket, and shall there be minority or proportional representation among its members? Now, our committee thought that we ought to be more liberal than that; that we ought to afford more latitude, less limitation; that we should put it in a position where if the good people of the city of New York or Brooklyn wanted to have a council of two bodies, one of which should be elected, as the Assembly is, by a system of direct representation, and the other should be elected by the citizens at large, with or without this provision for minority or proportional representation, they could have the opportunity of getting them.

We went a step further in liberality in that respect. We provided that they did not have to submit that question before they could get that relief to the people. And I ask my friend from New York, under the present system of political government and the distribution of political patronage, when would you ever get such relief in the city of New York? When would it be possible to have it, with a working majority there in the hands of one political faction of over fifty or sixty thousand votes, when in God's name would you ever get a council created in any way in accordance with this provision, or the suggestions contained therein, when would it ever be possible? You might get it in Brooklyn some time; you might get it in the other cities of the State some time; but I guarantee you that so long as patronage is there and patronage is distributed, so long as that vast working majority, controlled and operated like a machine, exists, the good people of that city, the taxpayers of that city, might desire it ever so much, but they would never get it, not within the history of anybody who sits in this Convention, even if he lives to be as old, as venerable and as respectable as the oldest member of it. They could never introduce a reform of that kind and carry it through. So we said in that respect you need not be limited in going to the people to ask for this, which is the colored individual behind the pales of my friend's amendment, the amendment that he suggests and now offers. But we say if you get a

Legislature that desires to give you this, and your mayor approves of it, like any other measure of local legislation, you may have the authority that will provide for these two councils, or we will provide for a single legislative council, with or without this system of voting with which my friend seems to find so much fault.

Mr. Hotchkiss — Mr. Chairman, I rise to a question of privilege. The gentleman has characterized me as the author of the substitute. I am not its author. It came here from the Committee of Twenty-one, the Good Government Club, the Reform Club, and the Republican Club of the city of New York, all combined. If he is to find any Ethiopian behind that fence, he is welcome to it.

Mr. Becker — I find the Ethiopian in the portion of the section which my distinguished friend has stricken out. Under proposition or proposed constitutional amendment No. 207 — to which I ask the attention of the gentlemen of the Convention, as it displays how utterly hollow these pretensions are that are made here — the provisions were all in from line two to line eight, which my friend has stricken out, as follows: "That in each city organized thereunder, which, by the last preceding federal or State census, had more than eight hundred thousand inhabitants, the members of the common council shall be elected on a general ticket from the whole city, and in such manner that there shall be minority or proportional representation in such council." That was the thing that my friend struck out.

Mr. Hotchkiss — May I ask the gentleman a question?

Mr. Becker — Certainly.

Mr. Hotchkiss — If I understood the gentleman correctly, he discovered his alleged Ethiopian in the fact that we sought to prevent, in the city of New York, the opportunity, on the part of the people, to elect their council from districts in one house, and from the city at large in another house, so that the lower branch could come from the city at large and the higher branch from districts. Will he point out to me anything that I have struck out of this proposed amendment which covers any such thing as that?

Mr. Becker — The gentleman has misunderstood my meaning. I said that the Committee on Cities thought wise to permit that liberality; but what the Committee of Twenty-one proposed was that, in New York, if they did have a common council with these general powers that should be elected on a general ticket, and in order to give the good citizens of that city, who are in a hopeless minority, some representation in that body, some opportunity to keep watch of the expenditure of public money and the conduct of municipal

affairs, there should be in that body, by constitutional provision, absolutely embodied in our organic law, minority or proportional representation. That is what I meant, and that is what I said, and I said that is what he left out of his bill, and that is what he has left out, and he simply provided that the only contingency under which New York can ever have any kind of minority representation, any kind of protection to the hopelessly engulfed minority in that city, is when his friends, constituting fifty or sixty thousand majority, in the goodness of their hearts and giving away their claims to patronage, which are innumerable, and from which two-thirds of them get their support, see fit to give it to them, and I ask again when that will be?

Mr. Choate — Will Mr. Becker allow me to ask him a question, and that is, in respect to the operation of this scheme. There is one point upon which my mind is very much concerned. You have spoken of a faction in possession of the city of New York, and also have made an assertion against which I seriously protest; that the good citizens are in a hopeless minority. I believe them to be in a great majority. But that is not the point upon which I rose to direct my question. Assuming your theory that the city of New York is in possession of a political faction, and for that there may be some grounds, and it has existed so for a good many years, and perhaps will exist for a good many years to come. Now, the scheme of the committee, after once giving powers which will be in possession of that faction, we will assume, is to prevent the Legislature and Governor from interfering except with the assent of that power represented by the mayor. Now, then in the only occasional instance, once in a few years, of the Governor and Legislature being in opposition to that power, is the only time when relief could come to what you call " the good citizens of the city " as against that faction. What I want to know is, whether the effect of your scheme as a whole is, to prevent on the only occasion when relief is possible, when they are in accord with your supposed faction, the two together doing what they please with the affairs of the city. When they are in conflict and you require the assent of the faction, how can the State come to the rescue of the city at all. (Applause.)

Mr. Becker — I understand that this proposed amendment of the Committee on Cities provides for two classes of laws; one which is known as general city laws, and the other which is known as special city laws. My impression was, and if I am wrong about it no one will hasten more rapidly than I, and I think the other members of the committee, to correct the amendment in that particular,

if they have the opportunity — that under this bill, if the occurrence took place to which the President alludes, in which the city of New York desired to have a new charter, providing for a central council with minority representation or anything of that kind, my impression is — I may be wrong about it, and the suggestion of the President implies that he is in doubt about it, and, certainly, where so able and astute a lawyer as he is is in doubt about it we would do well to pause and consider it — but my impression was that under the provisions of the present bill, if that occasion occurred, it would be entirely in the power of the Legislature to give a proper and substantial charter under the guide of a general law to the city of New York, but that if after the charter was once given and the powers had been there reposed, then as to the special matters which we have enumerated here, and which we regard as purely business matters, as I have before stated, it was desirable to have any special law adopted, that then the special law could be adopted by obtaining the consent of the local authorities.

Now, I say again what I said at the outset. I am perfectly prepared, if it is the judgment of men of experience and ability, who are there on the ground and understand the local situation, as the President of this Convention does, and I think the members of the Cities Committee would be willing to accept the amendment which he proposes, if he thinks it will cure the evil. What I said was not in criticism of his amendment. It was merely for the purpose of showing that what was brought on here at this late day, as an amendment to the proposed amendment of the Committee on Cities, was not offered in good faith and did not do what it proposed to do. My criticism had no reference whatever to the proposed amendment of the President. It simply had reference to the gentleman here who has foster-fathered or foster-mothered, if you please, the proposition of the Committee of Twenty-one. Now, all these matters are really not matters of substance and can be taken care of at the proper place and at the proper time, and I have no doubt that will be done. I do not desire to take up the time of the Convention further, but simply to ask your attention for one moment in reference to the policy and principles involved in regard to the provisions for the selection of these boards of election inspectors. I am deeply gratified and greatly pleased to hear from my friend, Brown, from Watertown, for whom I have the utmost respect, who comes from one of the counties in which there is not a very large city, and who says he is willing to have this principle applied to the whole State. I do not think there would be the slightest objection on the part of the Committee on Cities to have it so apply. We believed it was a

good thing. We believed, after the most careful, the most painstaking, the most thoughtful, and, I might say, the most powerful, consideration of the situation, of how to provide for purity of elections and the protection of the citizen in the exercise of the elective franchise, that this proposed scheme was a good one, and we believe sincerely and earnestly it is a good one.

I wish five minutes of your time to tell you why we believe it to be a good one, although the whole ground, it seems to me, was thoroughly covered by Mr. Johnson, but, as he had so much ground to cover in his speech, perhaps he did not make it quite so clear as it ought to be made. Now, how are the election inspectors at present appointed? There is a provision in the statute adopted last year for bi-partisan election boards. They are appointed in New York city by the police board. In Brooklyn they are appointed by the board of election commissioners, as they are called, who are in turn appointed by the mayor, and are his creatures, removable by him at will. They are appointed in Buffalo by the common council of the city of Buffalo, and without the approval of the mayor, as I now recollect it.

Mr. Hotchkiss — Will the gentleman give way?

Mr. Becker — I prefer to finish what I am saying now. And it is provided in the law now, as I understand it, that the sole power of appointing these men is absolutely limited to the local authorities in these cities; that the State has no control over them whatever. I say again that in New York city they are appointed by the police commissioners, who are the mayor's creatures, and in Brooklyn by the election commissioners, who are the mayor's creatures, and in Buffalo by the common council, with or without the consent of the mayor, I have forgotten how that is.

Mr. Hotchkiss — Mr. Chairman, may I implore the gentlemen, in the interest of the statute law of this State, to give way for a question?

Mr. Becker — I decline to give way.

Mr. Hotchkiss — The statutes are gone!

Mr. Becker — The statutes are not gone, because the gentleman has them in his hand and can use them whenever he wishes. What I desire to say, without interruption, is that at present the election boards are controlled solely by the local officers. Now, I do not care how that is got at in the statute, or what the statute says; that half of the boards be of one party and half of another party; the fact remains that the local authorities who may be the subject of election by that very election board control that board

and control the appointments, and that it is possible, and everybody knows as a matter of history that it has occurred, that half of a board that is grudgingly conceded to the minority is liable to be, and has in the past been, not strictly what it purports to be. That is, they do not appoint two good Republicans, if the Democrats are in the majority, or if the Republicans are in the majority, they do not appoint two good Democrats to represent the minority. They appoint two that they can use; two that will be amenable to the others on the board; two that will work with them; two that will operate with them. There is no way that the people can get at of correcting it under the existing circumstances. Now, if that system is unsatisfactory, and I for one, honestly and earnestly believe it is, how are you going to remedy it? Suppose you give the power to the Governor. Don't you meet with the same objection, that he is liable to appoint the two of opposite political faith from him that will be amenable to his dictates, or the dictates of his party associates. It is absurd to suggest that the appointment should be vested in the minority — in the defeated candidate for Governor. The people of this State have no use for defeated candidates. They are dead and gone, no matter by what majority they are defeated, so far as the people are concerned. Now, where do you propose to place this power? Now, we start out with the assumption, which my distinguished friend of the minority in this Convention makes, that the matter of elections is in State control. How can anybody deny it? It is supremely a matter of State interest. I am just as much interested in the faithful casting and honest counting of votes in the city of New York as any man in this State. You have got that principle, then, to start with. Now, where is the whole State which is interested in this matter represented, or fully represented? Is it not in the Legislature? There never will be a time, probably never, in the history of this State, but that there will be in both houses of the Legislature, a minority party there represented. There ever and always will be a time when the minority party will not be represented in the mayor. There may be a time when the minority in the common council of a city will be so small that it will have no practical effect; but the basic principle is that this is a State matter. Now, where are the State officials selected by the people of this State to have this interest? Who can so well exercise the power of the selection of election officers as in the Legislature? Can there be any answer to that proposition? Is there any man who supposes rationally and reflects free in his mind from any idea of partisanship, that that is not just as fair to one party as to another, and that

it does not lodge the power of appointment just where it belongs, in the State itself and in the representatives of the people of the State? Does anybody suppose for a minute that if my friends who constitute the majority of this Convention were given the power of appointing for the city of New York, this fall, two election commissioners in each district or a board of election commissioners, who, in turn, should select these two, and the minority of this Convention had the right to select the other two, or the board of election commissioners for that city who should select the other two, through whose medium that appointment should be made, that they would not be perfectly honest and fair appointments as regards one side as against the other? Would not my friends be particular and see to it that the appointees were such that they would watch faithfully and guard the ballot-box absolutely, and safely and securely, and would see that the votes were correctly counted, and, on the other hand, wouldn't we, of the majority, see to it that our appointees, no matter whether or not made directly by ourselves, or whether they were made through the medium of a board which we appointed, were the very best people that could be selected for that purpose, who would be there attending to their duties and watching the other side? Does anybody question that that thing would not work practically? Now, we found, of course, that the Senate and Assembly could not be bothered with appointing all these inspectors throughout the State. That would be impossible. There are resignations and refusals to serve, so we said we cannot give you that power to do it directly, but you may do it indirectly, and you may have an election board, of which the minority shall nominate one-half and the majority the other half, whether that board be two or four or six men, it makes no difference if it is divisible by two, and that board shall select these inspectors throughout these great cities, and if the other members of the Convention not coming from the great cities desire to have it extended to the whole State, we would be very glad to have it so extended. Now, when we have got that principle once there, always conceding the proposition that you cannot make a man good by law, when we have gone as far as we can go in that direction, and provided for this double representation on these boards, each side watching the other, each side guarding the ballot-box as against the other, each side responsible to the central authority selected from the representatives of the State at large, when you have gone as far as that, you have taken a long step towards securing honest elections. I ask you if the frauds which were perpetrated at Gravesend would be possible under such conditions? I ask you if the frauds which were perpetrated in the fourth district of the First

Ward of the city of Buffalo, upon which the Committee on Privileges and Elections unseated delegates in this Convention, would be possible under the provisions of this measure? I say, while it might not be impossible, it would be grossly improbable, and this is one of the most valuable features of this bill. Again, these commissioners will have control of the municipal elections. Suppose that a proposition is to be submitted on the principle of a referendum to the people of the city at a general election, which the politicians want to beat. If they do not control the election machinery they will have hard work to beat it. If they do control the election machinery, we know from the past that they are capable of beating it, and have the ability and means of doing it. You can take any phase of this proposition, as applied to home rule, as applied to State interests, or the election of city officers, or applied to anything else that concerns the government of the whole State, and you will find there will always be a minority representation in the Senate and Assembly, coming direct from the people, and so long as there always will be a majority representation there, if you vest them with the power of the appointment of these commissioners, or of the commissioners that select the election officers, you have done a very good thing, and you have done as much as you can do to preserve State control of elections, and at the same time having a responsible body in turn responsible to the people who clothe them with this power.

Now, I thank the gentlemen of the Convention for listening to me so patiently. It seemed to me that they did not understand the basic principle of this amendment, and I hope I have at least made it plain, and I hope I have made it somewhat clearer. I will now give way if the gentleman desires to ask any questions.

Mr. H. A. Clark — Mr. Chairman, I now move that this committee rise and report progress, and ask leave to sit again.

Mr. Hotchkiss — Mr. Chairman, I rise to a point of order. The gentleman has not finished, but has stated that he will give way for any question.

Mr. Becker — I did not wish to be discourteous to Mr. Hotchkiss. I wish him to have full opportunity to ask anything he desires.

Mr. Hotchkiss — I would like to ask of the gentleman whether he is not aware that the election law so far as it relates to the city of New York, and as it now exists, provides that all election officers shall be nominated by the chairman of the general committee of the respective parties, leaving to the police department simply the power to appoint from the persons so nominated?

Mr. Becker — I am aware of that fact. It doesn't change the argument at all.

Mr. Hotchkiss — May I ask the gentleman if he is not content to trust the members of his own party in New York, selected in that way to act honestly at elections?

Mr. Becker — I am perfectly willing to trust them.

Mr. Hotchkiss — Then why not leave the law as it is?

Mr. Becker — Because I prefer to have something that is better.

Mr. Cassidy — Mr. Chairman, I move you that the committee do now rise, report progress and ask leave to sit again.

Mr. A. H. Green — Mr. Chairman, if the gentleman will withdraw his motion a minute, I will say that I am requested to offer a brief amendment which is merely to cover an ambiguity, and to which I believe there is no objection.

Mr. Cassidy — I will give way to Mr. Green.

The Chairman — Mr. Green offers an amendment, which will lie upon the table.

Mr. Cassidy renewed his motion that the committee rise, report progress and ask leave to sit again.

The Chairman put the question and it was determined in the affirmative.

The President resumed the chair.

Mr. Hotchkiss — Mr. President —

The President — Nothing is in order until we get out of the Committee of the Whole into Convention, when the report of the Committee of the Whole is received.

Chairman I. S. Johnson, from the Committee of the Whole, reported the action of that committee on proposed constitutional amendment (printed No. 376), entitled, "Proposed amendment to provide home rule for cities."

The President put the question on agreeing with the report of the committee and granting leave to sit again, and it was determined in the affirmative.

Mr. Hotchkiss — Mr. President, I move you, sir, that the several amendments offered this morning and the substitute to the proposition of the Cities Committee for home rule be printed. I do not know, Mr. President, whether there was any amendment offered.

The President — There was one offered by the President of the Convention.

Mr. Jesse Johnson — Won't you make it all amendments?

Mr. Hotchkiss — Then I will amend it so as to make it broad enough to cover the very valuable amendment offered by the President, and also the substitute offered by myself, and also the other amendments and substitutes of any kind whatever.

The President put the question on the motion of Mr. Hotchkiss, to print all amendments and substitutes offered to general order No. 13, and it was determined in the affirmative.

Mr Francis — Mr. President, I move that this subject be made a special order for to-morrow morning at 11 o'clock.

Mr. M. E. Lewis — Mr. President, I move as an amendment that it be made a special order for to-morrow morning, immediately after the reading of the Journal.

Mr. Jesse Johnson — Immediately after other business?

The President — The Chair will state that there are always, after three days, various matters that ought to be attended to, not included in general orders or special orders.

Mr. Holls — Mr. President, I move as a substitute for the motion that this proposed amendment be placed at the head of the calendar of special orders for to-morrow. That will give us a chance to get through with all the other business and then take this up.

The President put the question on the substitute offered by Mr. Holls, and it was determined in the affirmative.

The President announced the order of petitions and memorials.

Mr. Barhite presented a memorial from the Rochester Chamber of Commerce with reference to discrimination in express rates.

Referred to the Committee on Railroads.

Mr. Lester presented a petition from citizens of the county of Saratoga with regard to the manner of conducting primary meetings.

Referred to the Committee on Suffrage.

The President announced the order of motions, notices and resolutions.

The President announced the order of standing committees.

Mr. Acker, from the Committee on State Finances and Taxation, to which was referred the proposed constitutional amendment introduced by Mr. Cassidy (introductory No. 252), entitled, "Proposed constitutional amendment to amend sections one, two, three, four and five of article seven of the Constitution, in relation to the canal debt and the maintenance of the canals," reported in favor of the

passage of the same without amendment, and it was committed to the Committee of the Whole.

The President — The Secretary will read the amendment.

Mr. Cochran — Mr. President, I understand, sir, that this amendment has been reported back without any change to the original amendment, and it is printed, and as the members have all seen it, I move that the reading of the amendment be dispensed with and that it go to the Committee of the Whole.

Mr. Cady — Mr. President, as I understand, that is the report of the Committee on Finance.

The President — On the proposition in reference to the disposition of canal money.

Mr. Cady — I suggest that as an amendment precisely similar to that is before the Canal Committee and will be disposed of shortly, that this amendment be laid on the table until the other one is reported.

The President put the question on the motion of Mr. Cochran to dispense with the reading of the amendment and it was determined in the affirmative.

The President then put the question on the motion of Mr. Cady, to lay the amendment on the table, until an amendment referring to the same subject in the Committee on Canals was reported, and it was determined in the affirmative.

Mr. McMillan offered a resolution, which the Secretary read as follows:

Resolved, That general order No. 1 (introductory No. 73), be recommitted to the Committee of the Whole for the purpose of amending it by adding after the word "passage," in line 5, page 1, the following: "And the time when said bill printed in its final form was placed on the desks of the members shall be entered upon the Journal of that day, so that said proposed constitutional amendment shall read as follows:

Section 15 of article 3 is hereby amended to read as follows:

No bill shall be passed or become a law unless it shall have been printed and upon the desks of the members in its final form at least three calendar legislative days prior to its final passage; and the time when said bill printed in its final form was placed upon the desks of the members shall be entered upon the Journal of that day; unless the Governor, or the acting Governor, shall have certified to the necessity of its immediate passage, under his hand and the seal of the State, nor shall any bill be passed or become a law except by

the assent of a majority of the members elected to each branch of the Legislature, and upon the last reading of a bill no amendment thereof shall be allowed, and the question upon its final passage shall be taken immediately thereafter and the yeas and nays entered on the Journal.

Mr. McMillan — Mr. President, I ask for the suspension of the reading for the purpose of making a statement and making a motion. Owing to the absence of the delegate who has charge of the proposed amendment, I desire to move that the resolution lie on the table until Tuesday next, and in the meantime it be printed and placed on the Convention files.

The President put the question on the motion of Mr. McMillan, and it was determined in the affirmative.

Mr. E. A. Brown (for Mr. Vedder) from the Committee on Legislative Powers and Duties, to which was referred the proposed amendment, introduced by Mr. Barrow (introductory No. 81), entitled, "Proposed constitutional amendment to amend section nine of article three of the Constitution, in regard to two-thirds bills," reported adversely thereto.

The President — The Secretary will read the proposed amendment.

The Secretary read the amendment.

Mr. Barrow — Mr. President, I desire at the appropriate time to ask the Convention to disagree with this report, and that it be referred to the Committee of the Whole. Mr. Goodelle, whom I understand desires to oppose my motion, is not present at this moment, and I would, therefore, ask that the matter be deferred until Tuesday morning next.

Mr. Dean — Mr. President, I move to lay this upon the table.

The President — Mr. Barrow's motion is to postpone the consideration of this until Tuesday morning. The effect of that will be that it will come up when the same order is reached, if it is reached that day. Now, Mr. Dean moves to lay upon the table — which is it, Mr. Dean? Do you move to lay the motion upon the table or the amendment?

Mr. Dean — The amendment.

The President — Mr. Dean moves to lay it upon the table, from which it can be taken at any time by vote of the Convention.

The motion of Mr. Dean was lost.

The President — The question is on Mr. Barrow's motion to postpone until Tuesday next. The effect of that will be, Mr. Bar-

row, that if general orders shall consume all that day, it will not come up until Wednesday.

Mr. Barrow — Make it Wednesday.

The President put the question on the motion of Mr. Barrow, that the consideration of the report of the Committee on Legislative Powers and Duties on his amendment, in reference to two-thirds bills, be made a special order on Wednesday, and it was determined in the affirmative.

Mr. Maybee — Mr. President, Mr. Bush, of the Seventeenth District, desired me to ask that he be excused from attendance for to-day and to-morrow.

The President put the question on excusing Mr. Bush from attendance to-day and to-morrow, and it was determined in the affirmative.

Mr. Mereness — Mr. President, I move that the Convention do now take a recess.

The President — Before the motion to take a recess is put, the Secretary will read the notices of committee meetings.

The Chair will state that Mr. George B. Munn has been assigned as clerk of the Select Committee on Forestry.

Mr. Davies asks to be excused for to-day on account of illness, and, if there is no objection, he will be so excused.

Mr. I. Sam Johnson — Mr. President, thus far in the Convention I believe I have not been absent a single day or a single hour, except when engaged in committee work, nor have I been absent from a meeting of any of the committees to which I have been assigned, and I hoped to be able to say so until the end of the session; but I find an important matter, an action in which the public of my county is interested, and which will occupy my time to-morrow and a portion of next week (just how much I cannot state), has to be attended to, and I, therefore, ask to be excused for to-morrow and next week, or so much of next week as may be necessary.

The President — How will municipal government be carried on in your absence?

Mr. I. Sam Johnson — I am unable to say, Mr. President.

The President put the question on excusing Mr. Johnson, and it was determined in the affirmative.

Mr. Doty — Mr. President, I am engaged in the same matter to which Mr. Johnson has referred, and I ask to be excused from attendance on Tuesday of next week.

The President put the question on excusing Mr. Doty, and it was determined in the affirmative.

The President put the question on the motion to take a recess, and it was determined in the affirmative, whereupon the Convention took a recess until eight o'clock this evening.

EVENING SESSION.

Thursday Evening, August 9, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, in the Capitol, at Albany, N. Y., August 9, 1894, at eight o'clock P. M.

The President called the Convention to order.

The President — The special business before the Convention to-night is the further consideration of the adverse report of the Committee on Suffrage, on Mr. Tucker's amendment.

Mr. McKinstry — Mr. President, the cause of woman's enfranchisement has already been so ably presented in this chamber by women, that it seems like a wanton waste of time for us to renew the argument, for we cannot improve upon the manner or the matter of the advocates who have been before us. If ever a disenfranchised class earned the right to have their political disabilities removed, these women have earned it. Their symposium of addresses will go into history, and will become more famous and resplendent each succeeding year as present prejudices melt away. Only upon the ground that a decent regard for the opinions of our associates requires some statement of the reasons for our action, can this debate be justified.

My vote is ready to be cast for any of the propositions presented for equal suffrage, upon the plain principle of equitable right. I will not say natural right, because that proposition is fiercely disputed, but I defy any man who prizes his right to vote, to give any good reason why the average intelligent, conscientious, law-abiding and taxpaying woman has not the same equitable right to a voice in the government that he insists upon having for himself.

I will not argue upon the question of expediency, although there is abundant argument at hand, founded upon experience and existing conditions; upon the fact of woman's most wonderful advancement during the last fifty years; upon the fact of her brilliant success in business and professional life, in the walks of art, science and literature, in great works of charity and reformation; also upon the fact that to-day there are more young women receiving what is

called a liberal education than there are young men receiving such an education. I repeat, the equitable right of every capable woman in this State to vote is equal with our own equitable right to vote. There is not one of the tenets of our theory of government which justifies your claim to recording at the polls your will as a freeman, which does not guarantee, in theory, the right of every free woman to record her will at the polls.

We have a class of American citizens in these days who are disposed to undervalue their right to vote. They have enjoyed this right so freely that they do not pause to consider what it cost. They forget the struggles of humanity since the days of Magna Charta and Runnymede, for the right of self-government; they forget the sufferings, wounds, diseases and death our forefathers endured to establish for us a government without a king; they are the class who are already forgetting the sacrifices of the brave Union soldiers to save the government; but, notwithstanding this indifference to their blessings, should you pass an act to disfranchise them, their protest would be immediate and emphatic.

I once saw a man's vote challenged at a primary election on the ground that, having served a term in State's prison without pardon, he was not an elector. The challenge was soon withdrawn out of pity, for the expression on that man's face indicated that all he had suffered in wearing prison stripes, in performing prison labor, and enduring prison hardships, were as nothing in severity with the penalty of having ceased to be a voting citizen in this great republic, having become, in a sense, a man without a country.

Another incident made an equally vivid impression. Some years ago an eastern lawyer, with more zeal than knowledge, and more initials to his name than the law requires, published an elaborate opinion that under some provision of our colonial charter, which was never abrogated, women had still a right to vote in this State. I saw a dozen ladies undertake to exericse what they had been advised was their right. The inspectors, by advice of counsel, refused to receive their votes, and the ladies quietly turned away. While the discussion was going on, an old town pauper stood by intently interested in the proceedings. His large family had been a charge upon the town for years. These very women had given of their time and money to preserve that family from cold and starvation; had paid taxes year after year to enable the poormaster to honor the drafts of the old pauper to keep him alive through the winter. And yet, as those ladies sadly turned away, with their ballots still in their hands, the face of the besotted old brute was wreathed in smiles. He had been declared their superior before

the law. All their knowledge, their pity, their philanthropy, their ardent patriotism, went for naught in the scale when weighed against the attribute that he was a male. No depth of mental, moral or physical degradation could disfranchise him. No height of learning, refinement, loving service to humanity or peril for their country, could, by any possibility, enfranchise them. And when I saw that old wretch laugh, and realized the outrageous injustice of the law, I decided that while I had a voice and a vote, they should be given at every opportunity to terminate that wrong.

But I call myself to order, Mr. President, when I recall that this Convention is not asked to confer the right of suffrage upon anybody. We have no such power, those miles of petitions, collected in the Assembly parlor, do not ask us to change voting conditions. They simply ask us to allow those who already have the franchise in this State to say whether they are ready to do justice to a great class of worthy and deserving fellow-citizens who have it not. The submission of no other proposition before this Convention has been prayed for by so many people nor by so many voters. Of the nearly 700,000 names attached to these petitions, I am proud to say that 12,571 were signed in Chautauqua county — the county where the seat of the great people's college is located, the center of the Chautauqua Literary and Scientific Circle, whose members come from every State and even from foreign lands to find there their Alma Mater. Those 12,571 names represent a population as intelligent, as cultivated, as advanced in all the arts and refinements that glorify civilization, as any equal division of population upon the face of the globe. And I am proud to add, sir, that I was informed by reliable canvassers, who circulated these petitions in the vicinity where I am best acquainted, that ninety per cent of the male voters solicited promptly placed their names upon the petition and very frequently with expressions of good-will and God speed.

In addition to these petitions is the memorial of the State Grange of the Order of Patrons of Husbandry, an organization having 50,000 members in this State, the men and women who live upon the farms and who make the State a vision of beauty to all who travel through its hills and valleys. This order is the first order that ever placed its women members upon an absolute equality with the men members. I regard their memorial as of special significance, because it represents the conclusions of men after twenty-five years of actual experience in an order where women freely hold office, serve on committees, take part in debates and vote. I am proud of Chautauqua county that so many of her citizens promptly signed in favor of this request that seems so fair; these women ask-

ing that the settlement of their right may be submitted, not to a jury of their peers, but to a jury of which no woman in all this great State can be a member. I wish delegates would consider seriously the following suggestions:

Great solicitude has been expressed here, lest the work of this Convention, like that of its predecessor, should be repudiated at the polls. It has even been urged against submitting any woman's suffrage proposition that its unpopularity might weigh down the other work of the Convention. If some of the propositions go in that I have heard urged here, the heavier load will be in the other end of the bag. But, gentlemen, there is such a thing as being too conservative. You may submit a Constitution which will show such slight advance, which will excite so little discussion, that it will die of inanition. We heard from Mr. Marshall recently of a constitutional amendment that was voted upon by only about ten per cent of the electors who voted that year, and might easily have been beaten by a few interested parties. We have no other issue before us upon which every voter in the State has an opinion and is eager to express it. The submission of a woman's suffrage amendment, as a separate proposition, will bring out the largest constitutional vote ever cast in this State. It will not only be a full vote; it will be an intelligent vote. It will aid the political party that generally fails by reason of a light vote.

The campaign will be short. Only six weeks intervene between the limit of this Convention and the date of the grand assize in November. Let us have one question submitted that will interest all the people. Let us have a square issue joined before a full jury — not a jury of 170 men in this chamber, but one composed of the great body of electors in the Empire State. To their verdict we will most humbly bow. (Applause.)

Mr. Blake — Mr. President, I shall occupy the time of the Convention but for a few moments. We find ourselves, gentlemen, confronted by a great social and political problem. It is one that must be solved sooner or later by the people of this State, and, I think, there is no more propitious time than the present. We are met by a question that we must decide sooner or later by the agencies established by our laws, and I ask you, why not now? why not now and by the people themselves, who are the source and depositaries of all political power? To those who put their trust in the civic virtue, the wisdom and the patriotism of the American people, the path of duty seems to me plain; for these are the reliance of a free government. These are the source of inspiration to a free people. They give to free institutions their stability, their strength

and the hope of perpetuity. For the correction of every abuse and defect, whether of administration or of government, for the wise determination of all proposals to amend the Constitution, that work a wide and radical change in our laws and our system, prudence and wisdom and patriotism alike dictate that resort should be had to the fountain head and spring of all political power, namely, the people themselves. In that course alone is there wisdom, in that course safety. I care not how complex the problem may be, nor how momentous the question, the people will know how to solve the one and decide the other. If they are incapable of that responsibility and duty, then are they incapable of self-government? In grave emergencies, when new and untried experiments are attempted, when after a century of trial our system of suffrage is sought to be changed by the introduction of what I confess to be a novel and startling experiment, but which is asked for by hundreds of thousands of people, citizens of this State, who, unless it be the people, shall be made the arbiters and the final judges of the issue?

Gentlemen, for half a century now this question has thrust itself into the forefront of political ethics and problems. It has been during that time a live and burning question, sometimes overshadowed by other and important issues temporarily, but always retaining no inconsiderable vitality, and, if the truth must be told, developing with the passing years and increasing in strength. If you shall refuse to send this question to the people, what will you have gained? What will you have accomplished? You will simply have postponed the inevitable. The cause will feed and grow upon its very resentments and disappointments. Behind this act of indiscretion and unwisdom upon your part will remain distrust, discontent, dissatisfaction, and, above all, gentlemen, the reproach that you dare not trust the people who are your masters and of whom you are but the servants. You will have but smothered the fires. You will not have extinguished them, and they will break out afresh each year and a few years hence, perhaps, because of this act of folly on your part, will burst into a consuming conflagration that shall sweep over this State, destroying all opposition, invincible and irresistible.

Do not misunderstand me, gentlemen. I am not in favor of the principle of woman suffrage, although I must confess that I am not so strongly opposed to it as I was. It is a conviction born not to-day nor yesterday; but, whatever my convictions were, they were the product of deliberate thought and study; they were conclusions reached by conscientious effort to find for myself, at least, a just and correct verdict. I may be mistaken; God knows who is right

and who is wrong; but with the light that He has given me, with my poor, limited faculties, I have been unable to reach any other conclusion. But no matter about that. The exigencies of this case, and of the situation, and the question in the shape in which it comes before this Convention, do not require that I should discuss that question. No matter what may be my opinion or your opinion. However curious and interesting it may be, that is not the question; but the real, live, burning question is, and it is a question that must needs be answered, if you would remove it from the realm of doubt and speculation, what do the people of the State of New York think of this proposition? Not what shall be the deliverance of 170 gentlemen or thereabouts, who, after they shall have completed their labors here, represent 170 votes, no more and no less; but what is the calm, cool, august judgment of more than a million of voters, this magnificent electorate of this great commonwealth of ours? That, sir, is the issue, as I conceive it to be. That is the issue, and no decision by any body less potential, or by any tribunal of a character inferior to the Supreme Court of the people, can answer that question or eliminate the doubt.

Now, gentlemen, is there a man here who doubts that this question overshadows all other questions calculated to engage the attention of this Convention — any doubt that it, of all others, occupies the public mind to-day, and that none other is so universally discussed in the home circle, by the fireside, in every walk of life, by society, by the pulpit and the press? And is this the question, gentlemen, that you are going to determine here and now? Is this the question that this Convention proposes to determine and to decide for itself? If there be one question more than another upon which I fancied that I was irrevocably resolved when I came here, it was to give my voice and my vote to the determination and decision of this question by the Convention, and I was fully prepared to take the responsibility of that act. That was my determination then. I had strong convictions, and I thought abiding convictions. On the main question they are mostly with me yet. They have undergone very little change; but I have seen voluminous petitions come in here from every quarter of the State, from every county in the State, signed by thousands and hundreds of thousands of our citizens, showered upon this Convention. Never, I venture to say, from the foundation of our government until now, in any legislative body or in any Convention, has the eye of man witnessed a similar spectacle. And whatever may be said of the cause, gentlemen, I say the exhibition that

repeated itself here day after day for weeks was something magnificent. It was sublime. A vast number of citizens came here knocking at our doors. Some gentleman, I think it was Mr. Titus, stated the number at seven hundred thousand. But whatever the number may be, it was a fair and goodly army. They came here, and with one voice and one prayer they said to us few gentlemen assembled here: "Gentlemen, don't you, we pray you, determine this question. Let us go to the sovereign people. Don't you stand between, that is all we ask. Do we ask too much?" My conscience and my judgment say no. With the responsibility of the oath which I have taken here and with the full sense of my duty pressing hard upon me, I say that your demand is fair and just; and so far as my voice and my vote may assist in this work of justice, they are yours now and they are yours forever. (Applause.)

It has been our privilege to listen to these ladies who argued for their sex with so much ability; and I think we are all agreed that they presented their case with rare tact and intelligence. I have no prepossession nor prejudice, either for or against the lady champions on either side, but still I am constrained to declare it as my judgment that for intelligence, for singleness of purpose and high honor, for every trait that can adorn and dignify grand and noble womanhood, these ladies who have appeared here and presented their case with so much eloquence and ability are — I will not say the superiors, but I do say in every essential particular — the peers and equals of the noblest and best of their sex. Some of them, perhaps, are of stronger mold and cast than their weaker sisters, and I know it is the fashion to call such "strong-minded women." Well, sir, without admitting the correctness of that position, I do not forget that it is the strong-minded of either sex that stands always in the van of human progress, for the uplifting and for the betterment of the human race. I have seen one such here, in form and face venerable. Time, whose ravages no spell nor art can stay, has yet dealt kindly and gently with her. With her three score and ten upon her, like some aged oak of the forest, she still stands proudly erect, unharmed and unbent by the fury of life's storms and tempests; and yet we see the frosts and snows of winter are fast gathering about her brow. Her sun of life speeds swiftly to the west, and not far distant she may find her last resting place, her last home, where the silent majority await her. And to you, gentlemen of a political faith differing from mine, her name, her history, should be a most sweet and precious memory. Some surely there must be among you to-night who can recall days when the voice of Susan B. Anthony (applause), coming like the voice of inspiration

and prophecy, rang out, nay, flamed across the continent, from the Atlantic away to the Golden Gate, setting myriads of hearts afire for her cause. She was then one of a despised band. On the moral side of the question the sympathies of all good men went out to her. But your party and mine clung to the Constitution, because that was a great constitutional question; but she and her little band stood outside the ramparts, outside the Constitution, stood for humanity. It is Lowell, I think, who said:

He is a slave who dare not be
In the right with two or three.

She was in the right. The God of battles, our common Father who loves all His creatures, whether white or black, of whatever race or creed, blessed her cause. And is it not best so, gentlemen? And now she comes here and she prays you, and her heart and soul are in the prayer, to let her appeal to the jury of the people. She appeals to you, who belong to the party of Lincoln and Grant, of Seward and Chase and Sumner (applause), a party that I confess has done much for the cause of humanity, and in other days never hesitated to make its appeal to the people, and I trust will not now. She appeals to you to do this act of justice to her, to the cause she represents, and to the six or seven hundred thousand people that come here knocking at our doors.

Does she ask too much, gentlemen? Why, methinks, if she stood alone, she would not be unheard by you. Will you stand between and say: "No, no, you shall not reach the people." I know not what may actuate you, gentlemen, but I think it would not be republican, it would be most unjust, it would be in contravention of the principles that underlie popular government, and it would expose you and all of us to the charge now heard in murmurs, but then to be thundered through the State, that we dared not trust this cause to the popular verdict. And to you, my fellow-Democrats, you of the Democratic fold, you who subscribe to the immortal principles of Jefferson, the chief of which was a sacred regard for the rights of the people; you who still cherish the memory of Jackson, Douglass, Marcy and Tilden; you who belong to a party that sprang from the plain people, which has always jealously defended and guarded the right of the people to be heard upon all great questions that concern their vital interests; will you deny the people the right to decide this great question? Do you think it is the better course? Do you think it the wiser course? Do you think that you can so check this movement and scatter its forces? If that thought be in your minds, I tell you you woefully mistake, you will most miserably fail, because, stung by a sense of wrong and injustice,

this cause will take on new life and impetus; it will gain fresh strength; it will gain accessions from all people whose sympathies go out to those whose reasonable and just demands have been denied. Remember, gentlemen, that this is no ordinary case; it is a very extraordinary case, and it is not to be judged by ordinary rules.

I admit, gentlemen, that upon the ordinary proposal to amend the Constitution you would have the right to constitute yourselves a court of last resort. I cannot foretell what propositions, one or more, you may submit to the people for their decision; I think you will submit one or more others; but tell me, is there one here, is there a single proposal before this body that has behind it the prayer of so many people, that has behind it the sympathy and support which are behind this movement?

And to whom do these ladies ask that the appeal shall be made? To a new and untried tribunal? No, sir, but to the same puissant court to which the appeal has ever been made from the foundation of our republic, to the sober, intelligent and incorruptible electorate of this great State, upon whose shoulders, in part, rest the free institutions and this admirable system of government of ours. Again, I ask you, to whom do they make the appeal? To your sex, to your own sex. And, if the electors of this State are, indeed, opposed to woman suffrage, why do you hesitate, why do you fear to intrust them with the decision of the issue? What have you to fear? Let us act the part of men, let us be just and fear not. You have it in your hands to decide this question here and now I admit, and you may turn a deaf ear to that mighty voice that is sweeping down upon you and thundering here at our doors to be heard; you may interpose your veto, if you will, but are you sure that your acts will meet the approval of your conscience and judgment? I have heard it rumored and whispered about that no man has a right to vote for submission to the people who is opposed to the principle of woman suffrage. That contention, gentlemen, is not worthy the name of argument. From the foundation of our government it has always been the custom of legislative bodies and conventions to hearken to the voice of the people, to bend to the popular will. What do you want the Senate in Washington and the House of Representatives to do now? I recall a time, and it is only one of hundreds of instances, when a great Senator from the West, George Pugh, I think, of Ohio, from his seat in the Senate made an admirable speech against the majority, and then, after having made his speech, voted for the measure, because he was so instructed by the Legislature of his State. Do you tell me that if the people of this State came here now in vast numbers with their petitions, asking

that the gubernatorial term he extended to four years, that, forsooth, because we believe it ought to remain where it is, you would shut your ears to that voice, to the overwhelming demand of the people? Why this argument scarcely deserves and is scarcely worthy of an answer.

Now, Mr. President, I have only intended to say a very few words upon this question, but I want to say this, that if the people shall be permitted to make the decision, whatever that decision may be, all will be well. Every interest will be satisfied. No one will have the right to murmur, not these ladies, not you nor I. The people will not complain because we submit the question to their judgment and decision. All will bow to the judgment of the free people of this goodly State, as to the voice of God Himself; for, gentlemen, the voice of the free people, so expressed, is the voice of God. (Applause.)

Mr. Maybee — Mr. President, I do not intend to enter into any discussion that involves the question of woman suffrage. It is a question upon which men have the right to differ. I have the right, and every delegate in this Convention has the right to his individual opinion. But whatever may be said on the question of woman suffrage, it can hardly be denied that it is the most important question that is before this Convention for its consideration and determination. It was said that where McGregor sat was the head of the table; and when the woman suffrage question appears, all minor questions retire to the background, unnoticed and forgotten. It is a question, too, that demands settlement and solution. It will not be stifled, it will not be suppressed; like Banquo's ghost, it will not down. You might as well attempt to smother the volcanic fires of Aetna as to try to keep this question from settlement and solution by the American people at some time or other. Whether we settle the question here and now or not, whether in the year 1894 the great State of New York shall attempt the solution of this question, so far as its citizens are concerned, or not, the time will come when, as the great world spins down the ringing grooves of change, as Tennyson puts it, women will have the ballot and exercise it upon equal terms, and as freely as her brother does at the polls.

Mr. President, the question and the only question which we are to determine is simply this; shall the male voters of the State of New York, under existing conditions, at the general election in the fall of 1894, decide the question whether or not at the general election in the next succeeding year the question of the right of women to vote shall be submitted to the male voters of the State? We are not asked to pass upon the merits of the question of woman suffrage.

We are not even asked to refer this question to the people; we are simply asked to give the people themselves an opportunity at a general election to say whether the question shall be referred at a subsequent election. Petitions have come up to this Convention signed by some five or six hundred thousand names — the exact number is not material. It is a fact which no one can dispute that a large proportion of the people of this State have asked us, in the most solemn and deliberate manner possible, to submit this question to a vote. We are here as the representatives of the people. Dare we deny the prayer of this petition, the equal of which was never presented to any representative body? Dare we ignore the petition of six hundred thousand of our fellow-citizens who ask us to submit this burning, this important, this paramount question to solution and settlement by the voters of this State? For my part I think we should be derelict to our duties, false to our trust, unworthy the confidence of the people, if we rejected the prayer of these petitions, if we refused to allow the sovereign people to say whether or not this question shall be settled for the next twenty-five years. It is certainly an important question, one of the most important questions that can be considered, affecting the right of enfranchisement of half the adult population of the State, a population intelligent, able to exercise the right of the elective franchise, who have been educated up to the high demands of the age and the century. Why not submit the question to the people whether or not that class of citizens, the women of the State, shall have the right to vote? I believe the question ought to be submitted. I believe the time and occasion demand its submission, and I shall give my vote, now that the initiative has been completed, the petitions have come up here, in favor of the great referendum to the people of this important and mighty question. (Applause.)

Mr. Cornwell — Mr. President, I will promise not to overtask the patience of the Convention by extended remarks or discussion of the merits of the subject under consideration, as it has been very fully considered in all its bearings by the able gentlemen who have preceded me. The principles of suffrage in this country, although slow of growth, like the giant oak of the forest, have yet assumed such proportions that they have been almost universally adopted, so far as the male population is concerned; their roots are imbedded in the hearts of the people and are deeply grounded among the foundation stones of the Republic. It is safe to say that they give life and strength and vitality, not only to the great principles of universal citizenship, but also strengthen the bulwarks of the State. To my mind the next step in the right direction is to adopt and

carry out the principles of equal suffrage in its entirety, applying its provisions to women, as well as to men. It would seem, to a casual observer, as exhibited by the action of the Suffrage Committee of this Convention, that the growth of sentiment of granting the franchise to women on the public mind had been slow, and its fulfillment very remote — yet I sincerely believe it cannot be long delayed, is sure to come — and when it does come and is a fixed fact, the wonder will be that the franchise was ever given to men and denied to women.

Mr. President, I have the honor, in part, to represent in this Convention the Twenty-sixth Senatorial District of this State, composed of the counties of Cayuga, Ontario, Tompkins, Wayne and Yates. There have been presented to this Convention petitions from these several counties numbering 9,925 males and 15,657 females, total, 25,657 persons, of twenty-one years of age and upwards — asking that the word male be stricken from article 2, section 1 of the Constitution, and thus secure to the women of the State the right to vote on equal terms with men. It will not be questioned that the right of petition is an inherent right guaranteed to every citizen of the broad land. These petitioners represent, so far as I know and believe, the most enlightened and cultured class of citizens of this section of the State. I feel, Mr. President, that I would be recreant to my trust, recreant to my duties as a delegate of this Convention, if I did not make some effort to carry out the wishes of my constituents in this regard, provided there were no insurmountable objections to their requests. I have no doubt that the hundreds of thousands of other petitions from all portions of this State, presented to this Convention on the same subject, also represent the best and most patriotic elements of the several communities from which they came. These petitions show and prove that there is a very deep and widespread feeling among the people on this subject, which, to my mind, should be respected by this Convention. The proposition is a very simple one, and it seems to me should be acquiesced in by every reasonable man.

It will not be claimed that women are not as well qualified to vote as men; neither will it be urged that they are not as greatly interested in the affairs of government, in the making and administration of the laws, in the general welfare of the people, in all that goes to make up good government "by the people and for the people," neither will it be urged that they do not form a part of the citizenship of this great State, entitled to all its privileges, except, perhaps, to vote. The question arises, what reason can be given for this state of things? The answer comes, none whatever, except

custom and prejudice. If it were fashionable for women to vote, they would all vote, as a matter of course. In times past there may have been some good reasons why women should not share with men in public affairs. The past few years have demonstrated that women are capable of going to the front in all matters that pertain to business. They are outstripping men in many of the avocations of life, and men, in place of being jealous of woman, should be willing to extend to her a helping hand, and more than willing to extend to her the privileges of the ballot, if by that means she might be enabled to improve her condition.

Gentlemen, to my mind this is a matter above expediency, above policy, above politics, above every consideration, except the matter of right. If we believe that the giving of the ballot to women is right, which no one will deny, then it should be done. If we believe it would improve her condition, better enable her to take care of herself, better prepare her to cope with man and with the world, then, by all means, she should have it. It will not be denied, and the history of the past will show, that woman has been the slave of man; her condition has improved only step by step. The time has come for woman to take her place by the side of man, his equal before God and the world, his equal before the law.

Mr. President, although this subject has been dwelt upon largely by speakers, both in and out of this Convention, and I deemed it almost superfluous to add anything to what had already been said, I felt that I would not be doing my whole duty to the 25,000 citizens of the district I, in part, represent, whose petitions are now on file in this Convention in favor of these great principles, did I not raise my voice openly in favor of this righteous proposition. I sincerely hope and trust the adverse report of the committee will not prevail. (Applause.)

Mr. Powell — Mr. President, the position in which I find myself placed by the subject before this Convention is somewhat peculiar. Personally I am in favor of granting the right of suffrage to the gentler, the more patient and the more loyal sex, and, yet, if that question were before this Convention to-night for final determination by our vote, I should cast my vote in opposition to what is known as female suffrage. I should do this because it is my belief that the majority of my constituents are opposed to granting the right of suffrage to women; and I believe that under circumstances such as that it would be my duty to humbly subordinate my personal judgment to the judgment of those whom it is my privilege to represent in this body. I can readily conceive, sir, of circumstances where I might deem it my duty to vote in direct opposition to the

sentiment of those whom I represent, or a majority of them. If the question under consideration were complex, if it were one that required peculiar investigation and I had made that investigation, if I was convinced that my judgment was superior to that of those who sent me here, then I should exalt my judgment above theirs, and vote according to my own sentiments and not according to those of my own constituents. But this, sir, is a simple question, as concrete as a question can possibly be, and, therefore, I should deem it my duty, under the circumstances to which I have just referred, to vote according to the wishes of my constituents as I have been best able to determine them.

But, gentlemen, the question before this Convention, as has already been well suggested by the gentleman from New York (Mr. Blake), is not the question of female suffrage. The sole question is whether or not this Convention has the courage, whether it has sufficient confidence in the common people to submit this question to them, for their determination. Why, sir, should we not submit it to the great common people of the Empire State? It has not been suggested, neither will it be suggested, methinks, by anyone who shall oppose this measure, that this question is not of sufficient importance to merit his attention. What mean these six hundred thousand petitioners who have come here and knocked at the door of this Convention, demanding the right to hear the voice of the people of this great State upon this matter? What mean these long weeks of consideration and deliberation, during which our Committee on Suffrage, so patient, so gentle, so kind, so illogical in their ultimate conclusion; these long weeks during which they have been grappling with this Titanic problem? What mean these public sessions of that committee, when this room has been packed in its every path until standing room could no longer be secured? And these occasions, when this committee has met together by itself, and summoning up all of its genius and all of its intellectuality and all of its logic, has fixed and concentrated its every mental faculty upon this question of woman suffrage. In the face of all these facts, if this Convention, by its final conclusion, were to proclaim that this matter is not of sufficient importance to go to the common people, it would stultify, and grossly stultify itself.

It has been, however, suggested by some members of this Convention that we have no right to submit to the people any question, unless we voice our own opinions upon it; that is, unless we recommend it. That is, undoubtedly, true, gentlemen of the Convention, to a certain extent. It is certainly true with two classes of problems; those which are extremely intricate, and also those which require

special knowledge, which must be derived from careful investigation. Take, for example, the report which will soon be submitted to us by the Judiciary Committee, one which will deal with all our courts, from the highest down to the very lowest, one which will deal with our methods of legal procedure, one which will define the rights of juries and judges, matters which we have no right to submit to the people, unless we recommend that which we submit. As an illustration of the second class, take the report which will soon be submitted by the Committee on Charities. That committee, under the lead of its most efficient chairman, the gentleman from New York (Mr. Lauterbach) (applause) — I am glad to see that the appreciation of him extends beyond the narrow confines of our committee room — that committee, under his leadership, has traveled all over this State, from New York to Buffalo, investigating our charitable institutions. And with the knowledge derived from that investigation, as it will be laid before this Convention, the Convention has no right to submit any proposition to the people, unless it believes that it is for the advantage of the people to adopt it.

But here is a question distinct and simple, the ability to pass upon which depends only upon the intelligence of those who act, and their ability to form a right judgment. And for this Convention to say that it is not right to submit such a question without expressing an opinion is simply to stultify itself. It is an act of the extremest egotism. It is the assumption on the part of this Convention that it knows more about this question, which has nothing peculiar about it and which requires no special investigation, than all the rest of the citizens of the State combined. Then, gentlemen, as I have come in contact with the members of this Convention, I have discovered that there are some belonging to the majority, like myself, who find themselves suffering from a dread fear that, if we submit this matter in any form to the people, we shall ruin the rest of our Constitution. They recognize, as I recognize, that there is a peculiar responsibility resting upon the political party which is in the majority in this Convention. It is this, while you who belong to the minority are individually responsible to constituents, we, who belong to the majority, are not only individually responsible to ours, but, in addition to that, there is a party responsibility, the responsibility of the Republican party, which the people of the State of New York has placed in power in this Convention. It has even been suggested to me by a gentleman who is prominent in the councils of the majority, that if we submit this matter to the people in any form, it will lead to a sort of opera-bouffe campaign. Now,

that rather startled me. I know what opera-bouffe is. I have been there. It is suggestive of blazing lights, somewhat scanty attire, and a good deal of jolly merriment. I have been through political compaigns and I know what they are. But when you take the two words " opera bouffe," make a compound adjective, and hitch them on to the word " campaign," I confess that you have created something of which it is rather difficult for my mind to conceive. But I took this problem, as it was presented to me, and grappled with it. Esteeming the intelligence of the gentleman who used the expression, and knowing that his words are ordinarily very wisely chosen, I deemed it my duty to ascertain, if possible, what an opera-bouffe campaign was like, so I started out and thought of all the political campaigns that had ever occurred in this country. I went backward, step by step, along the line of the years, and at last, in the first political campaign of which I have any recollection, it seemed to me that I found a regular genuine opera-bouffe political campaign. And, gentlemen, to my astonishment, I found that it was that opera-bouffe political campaign which lifted Abraham Lincoln to the presidency of the United States. (Applause.) If you are inclined to discredit my word, go back and read the story of that campaign over again. Examine the illustrated papers, see the coarsely brutal semi-humorous caricatures of that great and noble man. See the references that were made to him as some kind of a degraded animal. Read again the allusions to his rough face, his long arms, his lanky limbs; in all that you have an opera-bouffe campaign.

Gentlemen, if all the opera-bouffe campaigns of history would only give us results which will half realize those obtained in that campaign, then, I say, let us have an opera-bouffe campaign in every year of the history of this commonwealth. And, if the campaign which shall occur, if this question be submitted to the people, will only produce one-tenth part of the magnificent results of that campaign, then let us determine to submit this question as soon as possible.

It has also been suggested by gentlemen who are prominent in the majority that this campaign will lead to undue excitement. Is not that marvelous? Too much excitement! Gentlemen, has our statesmanship been reduced to a careful utilization of chloroform and ether and opium pills? Is there anything to fear from wholesome excitement in a republic? I say no. Give us all the excitement you can, so long as it be of a wholesome character, so long as it relates to questions of right and of wrong. I believe if you submit this question to the people — I know that

we shall have abundance of excitement — I believe that if you will submit it to the people, its intelligent discussion of the right and wrong of those great principles which lie at the foundation of republican institutions will act upon the people of the Empire State as a moral and political tonic, and the sooner we give it to them the better.

Some of our friends also are anxious to have a calm, placid, peaceful, summer-like, non-tempestuous campaign when they set their little constitutional boat upon the waves of the great ocean of public opinion, started out to meet its destiny; some of our friends are afraid that this excitement will divert the attention of the people from the weightier matters which they will propose. In the first place, that is all wrong. In other words, their theory is that the best way to interest people in the Constitution is to keep them as far away from the Constitution as possible. Their theory is that if you set people to discussing constitutional questions, they will at once cease to have any interest in the Constitution at all. I submit, sir, that the very moment you arouse interest in one part of the matter thus proposed in connection with the work of this Convention, you arouse interest in every other part. Let these women go about and stir up the community. They will lead men to think of the Constitution, who have never thought of it before, and who would not think of it in this coming campaign, were it not for them. And with this one feature of constitutional law brought to their attention, they will read the Constitution, they will examine the proposed amendments, and we will not only have the largest vote, but we will have the most intelligent vote that was ever cast upon such matters in the State of New York. (Applause.)

I want to use an illustration. We had an election in the city of Brooklyn last fall; it was the most heated election that we have ever had over local municipal affairs. Now, I can imagine some of these gentlemen, who are so afraid that the attention of the people may be diverted from something, coming over to us in the city of Brooklyn in the heat of our campaign about our mayoralty, and a dozen other matters that refer to the city government, saying: "Now, you fellows just keep cool. You don't want to say a word about the city of Brooklyn in this campaign. You must not say a word about its government; you must not refer to the question of who shall be its mayor or raise any questions about it, because the very moment you do that you will divert the attention of the people from other matters." Did it divert the attention of the people? Go read the record of the election that fall and you will find that all the municipal excitement simply aroused the people upon

other matters and brought out the grandest vote that the city of Brooklyn has ever given in her whole history. So will it be with this matter, if you will submit it to the people.

No, no, gentlemen, that is not it. You are afraid, as my friend, Mr. Blake, from New York, suggested, you are afraid of the people. Record it here by your votes, and then go back and blush when you meet your constituents. Afraid of the common people? Shades of Lincoln, and of Sumner, and of Seward; the great Republican party ashamed and afraid of the common people!

Gentlemen, I decline to subscribe to any theory which casts the slightest slur upon the integrity, aye, the infallibility of the people of the State of New York. I am not afraid of them. I proclaim my absolute trust in the common people, and unlimited and unflinching faith in their intelligence and in the integrity of their judgment. And because I believe in the common people, because I trust the common people, I shall vote to submit this matter to their determination, and vote against our deciding it here. (Applause.)

Mr. Platzek — Mr. President, I rise to support the report of the committee. It requires considerable courage. Last night, when I heard my eloquent and very good friend, Lauterbach, I had fears upon the question of how I would cast my vote. I was under the spell of his eloquence. But I have slept, and I have done a day's work in this Convention, and my mind has been cleared again. And, notwithstanding the sweet influences that surround us, I will still express my views against the right of woman to vote. Last night I was impressed with the halo of glory that Mr. Lauterbach threw around and about the oath that he took when he entered this Convention, and I was very much reminded of myself when I have stood before a jury defending some man for a heinous offense, when I tried to frighten them into an observance of the great responsibilities of duty when they sat upon their oaths in the jury-box.

Now, there is a secondary proposition which has become primary, that of the referendum. I am not afraid of the people, neither am I afraid to go back to my own district and face my constituents again if I have discharged my duty here like a man, even though some of them may disagree with me. If I did other than that, I would be unfit to serve them, and I should be ashamed of my American citizenship.

Now, this is no new question. Ever since 1867 woman suffrage has been a live issue, not alone in the State of New York, but throughout these great United States. On the platform, in the pulpit, in political campaigns, in every legislative hall, this question has been discussed learnedly and eloquently. Long before I

accepted my nomination as a representative in this body the ladies of New York were heard in the press and in the drawing-room; and after my nomination I was deluged with correspondence and inquiries as to how I would vote upon this question, because many votes might depend upon it; and whenever I was interrogated I said: "I will answer that question on my oath in the Convention." And I am here to-night to do it. And I am going to tell them that I intend to vote against woman suffrage.

Now, as to the fear of the people. I say that this question, being familiar to every man and woman that can read and write, every person that voted for me on election day, knew that this was the live issue that would be presented in this Convention, and I was made one of 175 referees to come here and to determine that proposition upon my oath and my conscience; and I say to you, gentlemen, especially those of the bar, that when you are appointed as referee by a court of proper jurisdiction, and you accept your fee to discharge your duties, it is cowardly, with the fee in your pocket, to go back to your client and say, I have got your money in my pocket, but you must decide your case for yourself, otherwise I may not get another fee from somebody else. That is the question on the referendum. The proper, courageous, manly act to do is to rise up and discharge your duty, not for the sake of being retained for some other office, but it is right to do what you were sent here to do. And I say to you that you were not sent to this Convention for the purpose of wasting the time of the people, taking their money, arguing important questions, and then say: "This is important; I am against the proposition, but, nevertheless, in order to satisfy both sides I will announce myself as opposed to the question, and send it back to the people that sent me here, and shift the responsibility upon their shoulders, because I have not the courage of my convictions to do what I was sent here to do." And that is all that I shall say upon this question of referendum.

Now, I hardly know whether it is at all necessary to discuss the main proposition. I assume that all of you, like myself, in the conscientious discharge of your duty, have read all the literature that has been handed to you relating to this question. I will say, in all honesty and earnestness, that I have, and I have been very much interested. I have done more; I have listened to every word that came from the lips of the ladies who addressed the committee upon this question. I was never absent. I was an attentive listener. I was an admiring listener. I am not here to say ought, except in praise, of woman. I listened, as you did, enchanted and charmed by the women that came here to enlighten us. Many of

them have grown gray in the service of womanhood, every silver hair in their heads being a decoration of honor for the principle they fought for, and the conscientious manner in which they discharged that duty, and I honored and admired them for it. They have done more; many of them have been in this Assembly Chamber as frequently as I have been, regular daily attendants, aye, even at the evening sessions. I say that these ladies sacrificed their homes, their husbands, their brothers, their sisters, their sweethearts and their children, in the conscientious endeavor to show their earnestness of purpose, and their desire to achieve the object they had in view.

But, notwithstanding all that, they do not represent all the women. There are a few ladies even within the State of New York, who are not here in person, nor by petition, clamoring or asking for the right to vote. And the assumption is a reasonable one, that those who are not here by petition or in person have no desire to knock at the doors of this chamber and ask for the privilege to vote. I may be asked, why should women not be allowed to vote; and I would answer, first, that no woman that was near or dear to me would I want to hear of having gone to the polls over in New Jersey, at an election where the ladies voted and participated in the unseemly wrangle that took place there, resulting in some violence. I say that we men who really admire woman for her worth, for her sweetness, for the gentle influence that she brings into the home circle, will stand here battling against her right to cast the vote and to participate with us at the polls on election day. Why, sir, there is a proposition now before us, urged with a great deal of force, to compel the educated voter to come to the polls. Sir, the so-called refined American citizen finds it so obnoxious to come to the polls that it has been deemed necesary to introdce a law here to compel that man to come to the polls, or find some way of punishing him for a failure so to do. And it seems to me that when men fear to go to the polls, women ought not to go.

Now, I have another very serious objection, and that is, if we grant suffrage it must be universal. We are now suffering in every State in this Union from the evil effects of a pauper and ignorant vote. These men have that vote, and no Constitutional Convention nor the citizens of any State will ever be able to take that vote away from them except by a revolution. Now, if we allow the women to vote — and we have the figures here from the ladies themselves claiming seventeen or eighteen thousand more women voters in this State than men — I say we double that evil, and we endanger the stability and safety of the State. Now, will the advocate of

women suffrage say: "Well, then affix a qualification to our right to vote; make it intellectual, or property, if you please." I say that the man who would do that would degrade woman, because if the colored voter in the south or the ignorant voter in the north without property has a right to vote, why should we ask intelligent women, possessed of property, to have that qualification, and unless that qualification should be made then the suffrage would be universal and this ignorant vote, if you please, this pauper vote, if you please, would be doubled and the State would be at the mercy, not of its best, but probably of its worst citizens.

Again, the argument is continually heard, taxation without representation. I know of no weaker argument. Paying taxes has nothing to do with voting. There are millions of people that vote that never pay one dollar of taxes. A tax is not imposed to vote; taxes are paid for protection to life and limb and property, and for no other purpose. And if there are women possessed of large means, and they pay taxes, they only do what men do who possess property.

And then again, if woman received the right to vote she must take upon herself and assume all the duties of citizenship. I am not going to argue the question of force, the ballot and the bullet. I do not want her to carry the gun and fire the bullet, and I hope that she does not want the ballot, or if she does, that she will never receive it. I will not argue the question of physical force and power, but I will say this: If you enfranchise the woman she must assume many of the duties of citizenship. She will be entitled to every office in the gift of the people. We will see her sweet face and refining influence on the bench in our Supreme Court, or occupying a chair when the next Constitutional Convention meets, and probably as satisfactorily, sir, as you or I could discharge that duty. (Applause.) But the time is not yet ripe. We must hold on to the reins of government, not for our own sake but to protect woman against herself.

I have spoken at greater length than I intended. In conclusion, I will take the liberty of calling attention to something that I heard and with which I disagreed at the time. It came from the lips of a very distinguished and admirable lady who spoke here. She told us, in answer to an inquiry, I think, of our distinguished friend, Mr. Bigelow, how she explained it that so many women were arrayed against woman upon this question. I thought the answer was uncharitable, because it was that they were like the slaves; they were subjected to the influences of their husbands; they were dependent beings, and that those who are dependent must obey and cannot assert themselves. Therefore, the ballot was to lift them

from this condition of dependence to one of independence. And you will remember how graphically the lady illustrated the argument by reciting an anecdote of the colored man on the farm of Henry Clay. Now, I say that that is not the condition of woman, whether she has the ballot or not, or whether she asks for the ballot or not. It is a mere difference of opinion between one class of women who say: "We do not want the ballot," and another class who say that they desire it, but I say that an American woman is and always has been and always will be free, and it is an insult to American women to designate any class of them, because they differ one with the other, as slaves.

Another thing I heard which impressed me very astonishingly, and that was a statement as to an occurrence of a minister in Troy, and the visit of a lady to the Governor of this State to inform him thereof.* Well that certainly was a most womanly act, to first tell the Governor and then come here and inform us. But there is a moral in that story which impressed me differently than it did many of you, probably, and I want to set it forth here. The lady said that the minister from Troy, after the election troubles, called upon the Governor; that he gave him a deaf ear; that shortly thereafter a distinguished Senator who lives in that same city, called upon the Governor, and he was properly received, and nothing was done. Then this good lady met the minister and he inquired of her why was it that the Governor did not give him a hearing, and she, familiar with the power of the ballot, told him that he had no voters behind him; that no one but women were in his church, and, therefore, the Governor did not heed his voice.

Now, I say that that calls to my mind a danger, a menace to our free institutions. Let the minister preach from the pulpit. Let him administer to my soul and to my spirit, but in the name of God do not again drag the pulpit into politics. Do not join church and State when we are here trying to separate them. I say it with all becoming respect to every man that wears the cloth and preaches from the pulpit, because I admire them in their place, I tell you that that would be one of the greatest dangers that we would have to confront. Leave these men in the pulpit. They are good ministers, useful in their calling. Do not take a useful minister from the pulpit and make of him a very poor politician.

Mr. President, there are others that ought to speak, and I have no doubt will. Before taking my seat I desire merely to re-emphasize the fact that no man in the hearing of my voice, holding his place by the vote of the people, and who is here upon his constitu-

tional oath, should be afraid to cast his vote in favor of this adverse report; and I appeal to you not to be carried away by the argument that it is not a vote in favor of sending the matter to the Committee of the Whole, and then, possibly, to the people for their final determination. We have been sent here to decide this question, and if you believe that woman is entitled to vote, then strike the word "male" from the Constitution here and now, but do not shift a responsibility from your shoulders and throw it upon the shoulders and upon the consciences of the people that sent you here. (Applause.)

Mr. C. A. Fuller — Mr. President, I have, upon this question, endeavored to divest my mind of its prejudices and consider the matter upon its merits, and to foresee the actual workings of the so-called reform; I have read the speech of Curtis in '67, listened to the arguments and pleadings of Miss Anthony, Mrs. Blake and Mrs. Jacobi and the other bright and charming speakers for woman suffrage. Last night I was not indifferent to the power and brilliancy of the effort of the very able advocate of the cause, and still I must confess that I do not believe in the movement; I think that its adoption in this State at this time, or before the organization of the next Constitutional Convention, would be a serious blunder; I know the face value, the ostensible magnitude of the prayers of men and women for the proposed change that would make New York the pioneer among the great States permitting general female suffrage. By request, I presented the Chenango county contingent of petitions. While I did not examine the matter within the covers, I presume that the footings were correct, and that subscribed to the heading of the petition there are some 3,000 names, about equally divided between males and females. While petitions are not to be wholly ignored, and sometimes imply much, every delegate to this Convention knows how easy it is to procure names to a list once started, in particular if it is presented by a pretty woman. I will not assume to characterize the quality of the petitions from other counties, but so far as Chenango county is concerned, from personal knowledge, I make bold to say that it would convey a wrong impression to assume that the number and the names appearing represent the sober, deliberate, intelligent desires of all of the people there recorded. It has come to my knowledge, from the admission of the signers themselves, that many persons whose names are upon that petition do not desire to have the question even submitted to the people. In reply to my inquiry why they allowed their names to falsely sustain the momentous question, the reply has been that it was the quickest and cheapest way to get rid of the

canvasser for names. In my own town I know of names to the petition, where the signers regretted their act, and wished it had been upon the petition against.

It is my judgment that the number of women in most localities who really want the ballot is exceedingly small. The ballot, once granted, could not be confined to the Anthonys, Willards, Blakes and Jacobis. In self-defense it would drag the overwhelming majority of women, who protest against the imposition of this new duty, away from their homes and business, into the caucus, the convention and to the polls. To extend the franchise as demanded would, in the great centres of population, where now the chief menace to the purity and integrity of elections exists, add a large contingent to the absolutely corrupt and purchaseable vote. I shall be apprehensive of the day when in these cities all sorts and conditions of women, over twenty-one years of age, may go to the polls and help determine the personnel of the city government. The ballot, in my judgment, would not advantage the worthy women. As it is, in every good way, their interests have been and are cared for, advanced and promoted. All avocations are open to them (except as policemen and soldiers). As to property interests, they stand equal, or with special advantages in their favor. They are not differently taxed. Men are, as a rule, in their conduct towards women, fair, generous, courteous, chivalrous. They will fight for and protect them; they revere, honor and love them; they regard them in their special spheres as their equals or superiors. It would tend to change this benign condition and adjustment for women into the fierce, bitter fight of political contest; quarter would not be asked or given; once arrayed on this or that side of the fighting line, the women would hurrah with the victors and wear their share of the scalps of the enemy taken in battle, or they would abide in the camp of the defeated, crushed and disconsolate.

This experience would not promote the development of that which makes women most lovable and influential. Now she has a mighty power in shaping men and measures. It is my deliberate judgment, good for what it may be worth, that voting would not enhance the power, best influence or happiness of a woman, but, on the contrary, would vex, harm and oppress her. As I would vote against the proposition in Committee of the Whole, I believe it proper to attempt to defeat the measure here and now.

Mr. Cassidy — Mr. President, I have no desire to entertain or dazzle this Convention with sentences braided out of sunshine, or to play hide and seek with its honor, as did my friend, Platzek, who

is a member of the Committee on Indian Affairs, but I do desire to speak briefly on this question.

In what I shall say I do not expect to enlighten any member of this Convention. I speak as the farmer boy whistles, merely for my own amusement and satisfaction. I believe, Mr. President, that every reason that ever has been advanced or ever can be advanced why men should vote, can be advanced with equal power and force why women should vote. (Applause.) But I do not believe all men should vote. I believe that the monumental blunder of the nineteenth century was made when the elective franchise was given to all male citizens. Do you ask me then how I can consistently support a measure giving the franchise to all female citizens. My answer is this: That, while a monumental blunder was made in granting the elective franchise to all male citizens, a greater blunder would have been made had it been denied to all male citizens. And so, Mr. President, while I myself am in favor of an educational qualification for female citizenship rather than to say that the noble women of this country shall not have the elective franchise, I am in favor of giving it to all; for, if forced to choose, I would rather do wrong to some than to do an injustice to many. I do not believe that this Convention ought to raise a barrier against citizenship that will prohibit all women from ever exercising the right of the elective franchise. If you say that she shall have $10,000 worth of property, it is possible for her to qualify herself and fulfil the requirements of citizenship. If you say that she shall have the culture and brain of a Webster, it is still possible for some women to pass even beyond that limit, and be qualified for citizenship. But when you say that a person must be a male citizen before he or she is qualified for citizenship, you have raised a barrier over which no woman, however qualified she may be, can ever pass. (Applause.)

I believe that the elective franchise should be granted to our wives and our sisters and our mothers, because I believe in an educated and patriotic motherhood. I believe if society is ever to be regenerated and uplifted it is to be regenerated and uplifted through an enlightened and patriotic motherhood. This nation is in need of educated and patriotic mothers. I believe that when Johnny comes home from school perplexed with the problems of civil government or political economy, we should make it possible for him to go to his mother and receive some information. The last person that a boy or a girl ought to be ashamed of in this world is his mother, especially if that shame is due to ignorance on her part. She ought, at all times, to be in sympathy with her children and able to give them information and education; and for this reason I

believe that the elective franchise should be conferred upon the mothers of this country. I believe that the elective franchise should be given to women, because I believe that the home is the unit of civilization, and that the home finds its protection in the mothers and wives of this country. Under all government is society, and under society is the home, and the home is made possible by the sanctities of womanhood. And unless woman is given the power to protect the home and to make potent the sanctities of womanhood through the ballot we have robbed her of half her usefulness. When she has made home beautiful she has beautified and exalted society, and when she has uplifted and exalted society she has purified and exalted government. And for those reasons, Mr. Chairman, I believe that the right of elective franchise should be conferred upon our women. I know that those who take this position are called sentimentalists. I have reluctantly expressed my opinion this evening because of the fear that I should be called a sentimentalist, but, Mr. Chairman, rob life of its sentiment and you have taken from it all its beauty and aroma.

I believe, Mr. President, that if we give to woman the right to vote, the darkness which sometimes overshadows our national life will disappear, and that under a clearer sky and purer atmosphere our national life will grow stronger and nobler, sanctified more and more, consecrated to God and to liberty by those who fall in the strife for the just and the true. (Applause.)

Mr. Kerwin — Mr. President, unlike some of the delegates who have spoken heretofore, I rise to say that I believe in voting for this question not merely to get it before the people, but I think it is right to advocate the question, because I believe in it honestly, that it will tend to purify the ballot of this State. (Applause.)

Mr. President, I sat here to-night and listened to the members of this Convention who say that the signers of certain petitions here merely signed them to get rid of the people who presented them. Mr. President, I will state in relation to the city of Albany that there are twenty-four organizations represented in the Central Federation of Labor in Albany to which this question was sent for a referendum vote, and one question that came back with the unanimous vote, the unanimous support of everyone of the twenty-four organizations was that of universal suffrage for the woman. (Applause.)

Mr. President, I have heard it stated upon this floor to-night that women cannot go to war and into the battlefields. I ask the delegates in this Convention who did better work from 1862 to 1864

than the noble women of this country, who went in and did everything in their power on the battlefield?

Mr. President, I do not propose to detain the Convention any longer. I do not propose to usurp its time, but I feel for the working people of the city of Albany, who asked for my nomination and who sent me here as their representative, that the question most important and uppermost in their minds was that of universal suffrage.

Mr. President, after listening last night to Mr. Lauterbach, and listening to all the speakers down to Mr. Cassidy to-night, I believe the ground has been fully covered. All I desire to say is that I heartily indorse this amendment, not because I believe in getting rid of it and sending it to the people, but because I believe it necessary and it is right. (Applause.)

Mr. Griswold — Mr. President and gentlemen of the Convention, there is one question that has been raised here, and that is that whatever may be the views of individual delegates, at all events this question should be submitted to the people to determine. That involves the duty of the delegates who compose this Convention. We are sent here to perform certain duties, and as I understand the principle of our duty here it is to examine the various propositions that may be presented to the Convention, and then select certain ones to be embodied in the proposed Constitution to be submitted to the people and to reject others. Now, those of the minority who come to this Convention with propositions however wild, the same argument can be used in respect to them. Oh, submit it to the people. Surely you can submit it to the people. Do not determine it yourselves, but submit it to the vote of the people. That certainly is plausible upon its face, and yet I submit that it is not the true rule of action for this Convention. I submit that the delegates to this Convention were selected from all over the State to here perform certain duties, among which is to present to the people of the State such propositions as the majority of this Convention shall approve. Otherwise, you would have a hundred or two hundred different propositions to go to the people upon which it would be impossible to vote intelligently. And as I understand the rule upon which this Convention is to act, it is that only such propositions shall be submitted to the people as a majority of this Convention decide ought to pass into our organic law. With that understanding, as I believe it is, when we submit a proposition to be adopted, it stands as recommended by the majority of this Convention, and, therefore, I repudiate the rule of action that has been suggested here that it shall be submitted to the people, and thus allow dele-

gates to divide the responsibility that devolves upon them under their oaths of office.

Now, I believe that every delegate here is sincere upon this question. I believe this is a most important question, and should be treated seriously by every member of the Convention. I recognize the fact that the females of this generation are to be the mothers of the next generaltion. I recognize the fact that if you degrade and demean the females of this generation it so far tends to degrade and demean the people of the next generation. The females of to-day are to be the mothers not only of the female but of the male people of this nation. I believe sincerely that this proposition to give to the female population of this State the right to vote is one wrong in principle, radically wrong, one opposed to the natural laws of creation and of the Almighty who made them. With the various minds of the people as they are constituted, it would seem that there is no proposition so radical, so wild, that if you can find a few individuals to agitate and preach it with earnestness and fervor, it will find some followers.

Now, there are two classes of women. They may be classified as, first, the matrons, the mothers, of whom I will have a word to say hereafter, and who it is claimed should have the right of suffrage. The other class is the young women, the women who labor and who have no one to care for or to support or to maintain; that they should have the right of suffrage. I have asked a few the question: Do you desire the right of suffrage? Yes. Well, why? One says, I want to vote so that I can get the same wages that a man gets in the various employments. Another lady, who was here from Wyoming, wanted the right of suffrage to that class because they were engaged in the sweat shops, I think she called them, and only earning three dollars per week.

Now, how are they going to regulate wages by voting? Do you expect by law to fix the price that you shall receive for your wages? Do you expect to compel your employer to pay a certain price? Do you expect to deprive him of the right to employ those that he sees fit? No one can answer it.

There is another class that they say ought to have the suffrage, and that is the taxpaying women; and a statement has been brought in of quite a number of taxpaying ladies of the counties of Albany and Rensselaer. Of course, it is not material that their fathers or brothers died, that is not material at all. But where is the grievance on the part of the taxpaying ladies? Is anyone taxed one farthing more than anybody else in proportion to their property? Is anyone taxed any more than they would be taxed if they voted?

No more. Oh, but it is the principle of the thing, taxation without representation, like that great and good man, referred to by one of the speakers, Thomas Jefferson, who wrote in the Declaration of Independence, among the grievances against England, that we were taxed without representation. Now, an ordinary legal mind would say when that document was issued that we supposed, according to history, that it was a political document. It was a political document, written in the distress of the weak colonies which were likely to be crushed by the overwhelming power of England, a political document sent forth to influence France, and Spain, and Portugal, and the rest of the civilized world. Did that great and good man, when he wrote that, think that it applied to woman suffrage? If he did he was a wonderful hypocrite, because he ought to have gone home and set his wife free and given her the right to vote. But this is a representative government, as every one must be, except one that is governed by a monarchy or an oligarchy. I come here to-day to represent whom? I represent those that voted for me in my district. Nearly an equal number voted otherwise, and yet I represent one as much as the other. Here is a Convention to-day with a majority of one political party, elected by a small majority over the other. That party controls every question here that it sees fit, and it represents not only the members of that party but the opposing party that voted directly against it.

Why, it is said taxation without representation. Can't the father or the husband, the brother or the son, represent the wives, the mothers, the daughters and the sisters, and do they not as legitimately represent them as I represent those who voted against me, or as the majority in this Convention represent those who voted against it? There can be nothing in that argument, which has been harped over and over, of taxation without representation.

Now, then, what I object to, and what I will never consent to vote for, is to degrade and demean the womanhood of this State. I believe it will do that. I believe it takes them out of their proper sphere, and that it is not for their own good; and instead of these gentlemen standing here as the champions of the female sex, I insist upon it that those who are opposed to female suffrage and to dragging them down are the real champions of womanhood in this State. Do members of this Convention believe that it is necessary for their wives, their sisters and their mothers to cast a ballot in order to be protected in all their rights? Do they claim that would do it? I know that some of these woman suffragists are treating this matter as an irrepressible conflict; that man is the natural enemy of woman and that there is an irrepressible conflict between

the two sexes. Why, you cannot keep them apart after they are fifteen years old. (Applause and laughter.) I certainly am serious myself, whether this Convention is or not.

There is another class of women. In the eloquent, elegant and classic language of one of these female advocates of suffrage, it is called the cow-women. That is because they are domestic, docile, non-combative, acquiescing in the advice of the husband. That is because they are matrons. Why, sir, in this whole broad land, in the rural districts, the hamlets, the villages and the cities the matrons of our people are found. We must look for the majority of any class when we legislate for them; and to gratify a small minority, as I maintain they are, I object to having that other class, equally and a great deal more important, dragged down and degraded. They say: "Are we not as good as negroes? Are we not as good as Polanders, Hungarians and all the rough elements that go to the polls? Are we not as good as they?" Yes; you are as good as they, and a hundred times better. Better than any of them, and we don't propose to drag you down to their level, nor to permit you to go there if you want to. (Applause.)

I say some of these women designated by some of these lady suffragists are all over this land. They are caring for their children; they are educating and giving the first moral impressions to them. They are instructing the girls. They are the queens of the household and the home, making each place a little heaven.

Now, I do not propose to be one, by my vote, that shall drag down these women at the solicitation of a few, by which this Convention has been greatly deceived and misled, in my judgment, and I venture to say that upon second, serious thought, at least half of those who have signed these petitions would vote against it. I know it is so in my district. The time is not yet ripe for this radical change in this country, and I think we should be wrong if we make it now, a wrong little less than a crime. That being my opinion, I shall vote to sustain the report of the committee. (Applause.)

Mr. Lester — Mr. President, it is not my purpose, sir, to make any extended argument upon the merits of this question, which has already been so exhaustedly discussed in this Convention. Yet it is a subject which I recognize as one of such great importance that I deem it due to myself to defend my position in regard to it. The question has been frequently pressed upon my attention during many years.

In fact, since the last Constitutional Convention in this State, when two of my relatives sitting in that Convention gave their earnest support and their votes to the proposition that the women

of the State should vote — one of them making, in the Convention of 1867-8, the most finished and powerful argument in its favor on record prior to the able arguments that have been heard in this House within the past forty-eight hours — this speech was lately printed and circulated as a campaign document among the members of this Convention by the advocates of female suffrage; notwithstanding these circumstances that seem to indicate my action upon the question, I am constrained by strong convictions as to my duty to break through their influences and to assume a contrary attitude. I cannot believe the time has arrived for such an amendment as that which has been proposed. I cannot believe that it is the duty of this Convention to go beyond the recommendation of such amendments as the Convention believes are demanded by the present conditions of the State. I cannot believe that this Convention was intended to be a device for ascertaining the sentiment of the public upon questions of public policy. I cannot believe, sir, we are here to launch the government into a sea of untried political experiments. I do believe that there are certain necessities in the direction of constitutional amendment, principally in matters of detail, for which the people of the State have called us together. Let us attend to these necessities and return to our homes, and the commendation of the people will follow us. Let us build a new foundation out of political theories, however substantial they may appear to us, that have not been subjected to the test of experience and endeavor to substitute this foundation for that upon which the prosperity of the last half century of our existence has rested — and the people will turn from this Convention and all its work with distrust, and stamp it with their condemnation at the polls. I am in favor of the report of the committee and hope that it will be sustained.

Mr. Goodelle — Mr. President, we were very much in hope that this discussion could be brought to a close this evening and a vote be taken upon it, but I am aware that there are some gentlemen who desire yet to be heard, and the probability is that it would be at an exceedingly late hour that we should go to a vote this evening. I, therefore, at this time desire to make this motion — that the discussion upon the question now before the House and the vote thereon be taken on Tuesday evening next, after the close of discussion. I do not desire to have this understood to be a motion for adjournment at this time, because if other gentlemen desire to speak, I shall be very glad to have them, and they may use as much time this evening as possible; but I think it well at this time to take

the sense of the Convention upon the proposition which I have made.

The Chairman put the question on Mr. Goodelle's motion, which was determined in the affirmative.

Mr. Kellogg — Mr. President, I am compelled to ask consent at this time to be excused from attendance at the Convention to-morrow. The reason I ask it now is that I have an important message which calls me to my home, and I shall have to take the eleven o'clock train.

The Chair put the question on the request of Mr. Kellogg to be excused, and he was excused.

Mr. T. A. Sullivan — Mr. President, I have only a few words to say on this subject. I desire to say them now. In listening to the able, interesting, and I may say dramatic, presentation of this question in behalf of the suffragists by the gentleman from New York last evening, I was attracted by a statement he made with respect to the petitions that have been presented to this body. Let me quote. He used these words: "What is their petition, that you, having the power to destroy the rights of women, should not exercise it? You have had the power from time immemorial. You have exercised it in your own way and your own fashion. It has been consistently exercised against the rights of women."

Now I, for one, protest against any such sentiment. It is true, that under the common law, when her personal rights, the rights of her property, the rights and privileges of her person and of her children, were largely, almost absolutely, under the sway and the authority of her baron or her guardian under that law which almost confiscated all her personal possessions, under that law which subjected her person to corporal punishment by rods and switches in the hands of her guardian and her husband, true woman had much to complain of. Under that law the great Sir William Blackstone said, after reviewing all these restrictions and disqualifications, that they were intended, not for her harm, but for her protection and benefit, and he then adds by way of rhetorical period: "So great a favorite is the female sex of the law of England."

But, sir, no longer is woman wronged in her possessions or restricted in her personal freedom and privileges, and no longer is her virtue exposed to the slanders of malignity and falsehood, for he who then with impunity proclaimed the pure maid or chaste matron to be a meretricious or incontinent person, now falls within the animadversion of our temporal courts. Sir, no longer in our State is womankind hampered or wronged in her worldly possessions.

No longer are her personal rights and privileges restricted. I say now that no class, no number or form or manner of persons or of rights or interests are so well, so fully, so liberally, so ably guarded and surrounded by the protection of the law, not only in its letter, but in its spirit, interpretation and administration, as is the law in relation to the proprietary and personal rights and privileges of womankind; and, sir, I say now, and challenge any controversy, than womankind no greater favorite is known to the laws of the State of New York. In behalf of my district, the Thirtieth Senatorial District of this State, I will say that almost the unanimous sentiment of the voters of that district is against this movement, against submission to them; and I say this as a respecter of woman, as a lover of woman. The gentleman asks that we submit this question to the jury. What jury, pray you? As I understand the principles of democratic government, it is government by the majority. The will of the majority is made manifest through the exercise of the ballot, the suffrage, and one of the greatest evils that we have to contend with to-day is that citizens — aye, citizens, the representatives of historic families — will not, do not enter into the spirit of the duty of that privilege, and do not exercise it. Now, sir, what are we about to do? We are to impose that duty — that moral duty — would that I might say that it was legally compulsory — upon a vast number of persons; and do they want it? Do a majority of the women of the State of New York to-day come here and demand of us that they be given this privilege and that we impose upon them this duty? I say I cannot believe it; and, sir, if they do not, we have no right to impose it, and whatever might be the result, if this question were submitted to the woman's constituency that I represent, if I read their heart aright, instinct tells me that it is noble and true. I confess that the range of my intellect is too narrow to know woman's mind, but I say if this question were submitted to the votes of the constituency that I represent, and they should vote upon it at the next election, it would bode your cause no good. Do you wish to submit this question in this manner? If you have truly the purpose of acquiring for woman the right of franchise at heart, do you want to risk it upon this hazard? Do you want upon the record the verdict of the great State of New York, that will be overwhelmingly against you? If you do, there you stand, and this record will ever stand before you wherever you attempt to secure this privilege, no matter in what field; the great Empire State will stand — I feel it, I know — four-fold against you. For this reason, and in behalf of my constituency, I must support the report of this committee, not only

against this Convention's granting the right to woman to vote, but also against submitting it to the vote of the people.

Mr. Mereness — Mr. President, upon a question which has been the subject of so much oratory, it is with great hesitancy that I arise to take up any of the time of this Convention by a contribution to the literature upon this subject, which, I am convinced, will probably not influence the vote of any delegate upon this floor. And yet, sir, as the discussion is so open upon this question, I suppose that it is very appropriate that those who feel called upon to speak are at liberty to do so.

Now, sir, the first great subject that seems to be at the threshold of all this discussion, is the subject of the petitions which have been presented to this body. I am not here to assume that the petitioners are acting in bad faith. If I understand that question correctly, there are some 300,000 actual petitioners upon this subject. We are told that in addition to that there are organizations represented here to the amount of several hundred thousand more; but as to whether those organizations are also included in the written petitions we have no evidence; so that at the threshold of this discussion we are unable to say how much repeating has been done in the interest of this movement. So far as I am myself concerned, sir, in the county that I have the honor to represent, we have at least 15,000 adult persons. I believe, if I am correctly informed, it is claimed that there are some 1,100 petitioners out of that 15,000. With the industry that has been shown by the solicitors of signatures, I am bound to assume that nearly every adult within my county has been asked by some fair damsel, or otherwise, to sign a petition, and as there is only one in fifteen recorded in favor of the movement, I think that I can best represent my constituency by voting in favor of this report. In addition to that, sir, I have seen the names, as far as I have examined this little petition from our county, of a number of gentlemen who have told me privately that they did not want woman suffrage, but that when the petition was presented to them they had no time to argue with the fair canvasser, and so concluded that it was easier to shirk the matter off on us at this Convention. Mr. President, I have the utmost respect for any sincere believer in the doctrine of woman suffrage. If the arguments in favor of that doctrine have convinced the mind of a fair-minded man or woman, I have the utmost respect for his or her opinion, and would be always glad to see them stand up and defend the principle. But, sir, with all due respect to some, who I fear are members of this Convention, I have no sympathy with those

who are absolutely opposed to the proposition and intend to shirk it off on to the people.

Mr. Cassidy — Mr. President, may I interrupt the gentleman for a moment?

Mr. Mereness — Mr. Cassidy will have abundant time, I trust, and I think this is not a catechism ——

Mr. Cassidy — I simply want to ask a question.

Mr. Mereness — I decline to give way to the gentleman at the present time. A little later on I shall be glad to be catechised by him or any other gentleman.

Mr. President, while I say we ought not to assume that these petitions are presented in bad faith, I think that we, as reasonable men, should apply our experience to the subject of petitions generally, and when we have arrived at a conclusion upon that subject, we should give them such due weight as we think they are entitled to receive.

Another fact so far as the question of petitions is concerned, Mr. President; there is no petitioner represented in this Convention upon this subject who has any official responsibility upon that subject. On the other hand, every delegate in this Convention is charged with official responsibility, and while they come to us with a siren-like voice and say, " Please, please let us submit it to the people," if we vote to submit, how long will it be, fellow-delegates, before these fair ladies will go out to the people and say, " Oh, those 170 representatives of the great Emipre State, comprising a large portion of the intelligence of the State, and all, or nearly all, of the male virtue of the State, have adopted this solemnly, and in the discharge of their official duty they have decided that it is wise to put into the Constitution of this Emipre State a provision opening the door to a million and a half of new voters, and, therefore, you people who do not know as much as the delegates, have no business to set up your judgment against theirs, and, therefore, you must adopt it?" Now, sir, the question, as it occurs to me, is this — whether upon this showing we are to add to the electorate of this State a million and a half of voters, without any assurance, or without any evidence, except such as rhetoric affords, that there is to be any improvement in the quality of that electorate. Mr. President, it is with some hesitancy that I refer to a very specious argument, as I regard it, upon this subject — because when this point is made a great many gallant gentlemen say: " Oh the women are a great deal more honest than the men, and, therefore, if you let them vote, the quality of suffrage will be very much improved." I am not here

to raise any question as to the honesty or the virtue of woman; but I am here to say that I believe that God has implanted in man as many of the virtues and good qualities as he has in woman, and I do not say that he did any more. Now, sir, they have had female suffrage in a number of places. They have a practical test; and has anybody presented a scintilla of proof that in those places where female suffrage has obtained women are any better off, or that government is any better off, than it is in the State of New York? If any such evidence as that has been presented I have not heard it read, and I have listened, sir, to every oral argument that has been made upon this subject on this floor; and I have read — my time has been limited and I could not read them all — but I have read acres of argument in favor of the movement. But they say that the argument is all in favor of the proposition. Why, Ignatius Donnelly has written a lengthy argument upon the subject of Bacon and Shakespeare. He has woven beautiful theories to the effect that there never was such a man as Shakespeare, as we know of. But has he convinced anybody that there was not? Col. Robert G. Ingersoll has held thousands and hundreds of thousands of people in thraldom, I may say, if that is a proper word, upon the proposition that there is no God. But has he established the proposition? His argument is beautiful, so far as rhetoric is concerned; but it fails to convince. Now, sir, I will not attempt to answer the very eloquent gentleman who opened the argument upon the side of the women on this question. I would not attempt, sir, to arrogate to myself any such distinguished ability as to be able to do that; but I was a little surprised that he was not able, or was not willing, to concede that people who did not believe with him, were actuated by good motives, and that possibly there were some things which appealed to us so far as our judgment is concerned. Sir, the wife has charge of the household. If the human race is to be perpetuated in its purity, it is woman that must take care of that; and for one I am not in favor of adding to that burden, the burden of taking care of the politics of the country besides. I think, sir, that I have spent time enough upon this question. I suppose a good deal more could be said, but at this late hour I think it is hardly worth while. I will only say this, that while I disclaim any intention to answer the able argument of the foremost exponent of that measure, if I may be allowed to so characterize him upon the floor of this Convention, I will yield to him nothing in the honesty of my intentions; and if I had a thousand votes upon the floor of this Convention, they would all go to sustain the report of this committee.

Mr. Cassidy was recognized by the Chair.

Mr. Cassidy — Did I understand the gentleman to say that fifteen per cent of his constituency were hypocrites and liars?

Mr. Mereness — If the gentleman so understood me his hearing must be very defective.

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

Mr. Mereness — Yes; I am very willing to furnish entertainment for Mr. Dickey. He seems to need a little.

Mr. Dickey — I would like to ask the gentleman how many people who live in his district have told him that they lied when they signed that petition for woman suffrage.

Mr. Mereness — I am very happy to say, sir, that I represent a constituency to none of whom the term used by the gentleman applies.

Mr. Dean — Mr. President, while there is a sufficient number of people here to carry the motion, I move that the Convention do now adjourn.

The Chair put the question on the motion to adjourn, and it was determined in the negative.

Mr. M. E. Lewis — I desire to send to the Clerk's desk and have read an article clipped from a daily newspaper of this date, bearing upon this question.

Mr. Cassidy — I object to that, on the ground that it assumes that what you see in the newspaper is truthful; unless the gentleman can verify the truthfulness of the statement, I object to having it injected in here.

Mr. Moore — I object to it — I rise to a question of privilege.

The Chair — The Secretary will read the article. It may save us a long speech. We will allow this to be read.

The Secretary read the following extract offered by Mr. Lewis:

"MARRIAGE AND POLITICS MIXED.

"MINNEAPOLIS, Aug. 9.— A paper published at Forman, N. D., brings out a romantic incident in connection with the nomination by the Republican State convention of Miss Emma F. Bates, of Valley City, to be State Superintendent of Schools.

"Miss Bates had charge of her own canvass for the nomination and found formidable opponents in John H. Devine and Prof. J. H. Holland. She was able to sidetrack the latter by making herself solid with the Young Men's Republican League. She then entered

into negotiations with Mr. Devine, first demanding unconditional surrender. This he refused.

"After further negotiations, it is said, he agreed to pull off the track provided she would, if elected State Superintendent, make him her deputy, and marry him into the bargain. After some deliberation, she agreed to do this, provided he would stump the State for her. This was also agreed to. As he is a powerful speaker, Miss Bates is conceded to have made the shrewdest political deal yet known."

Mr. Cassidy — Mr. President, I move a vote of thanks of this Convention be extended Miss Bates.

Mr. M. E. Lewis — I move that the Convention do now adjourn.

Mr. Cochran — I do not understand that the President rules the motion to adjourn to be in order before any other business has been transacted.

The Chair — The Chair does not understand that the motion to adjourn was seriously meant.

Mr. Maybee — If it is not, I make a motion to adjourn, and ask for a rising vote. I think the lateness of the hour indicates the necessity of an immediate adjournment.

The Chair then put the question on Mr. Maybee's motion to adjourn, which was determined in the affirmative by a rising vote — 46 to 32.

Friday Morning, August 10, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber at the Capitol, Albany, N. Y., Friday, August 10, 1894.

President Choate called the Convention to order at ten o'clock.

Prayer was offered by the Rev. A. Kennedy Duff.

Mr. O'Brien moved that the reading of the minutes of Thursday, August 9th, be dispensed with.

The President put the question on the motion of Mr. O'Brien, and it was determined in the affirmative.

Mr. Hedges — Mr. President, Mr. Arnold, last evening, received a dispatch summoning him home unexpectedly, and he requested me to ask that he be excused for to-day.

The President put the question on granting leave of absence to Mr. Arnold, and it was determined in the affirmative.

The President — Mr. Vedder also asked to be excused for to-day.

The President put the question on granting leave of absence to Mr. Vedder, and it was determined in the affirmative.

Mr. Durfee — Mr. President, I will be detained from the sessions of the Convention, on affairs of importance on Tuesday, and possibly Wednesday, of next week, and I ask for leave of absence on those days.

The President put the question on granting leave of absence to Mr. Durfee, and it was determined in the affirmative.

Mr. Durnin — Mr. President, I ask to be excused for four days, beginning with Tuesday of next week.

The President put the question on granting leave of absence to Mr. Durnin, and it was determined in the affirmative.

Mr. Cornwell — Mr. President, I ask to be excused for the day.

The President put the question on granting leave of absence to Mr. Cornwell, and it was determined in the affirmative.

Mr. Chipp — Mr. President, I would like to be excused during next week.

The President put the question on granting leave of absence to Mr. Chipp, and it was determined in the affirmative.

Mr. Bigelow — Mr. President, I would like to excused after Wednesday for the rest of next week.

The President put the question on granting leave of absence to Mr. Bigelow, and it was determined in the affirmative.

Mr. McKinstry — Mr. President, Mr. Pool, of Niagara, received a telegram last evening summoning him home on account of illness in his family, and he would like to be excused to-day, and possibly next Tuesday.

The President put the question on granting leave of absence to Mr. Pool, and it was determined in the affirmative.

The President — Mr. Lauterbach asked to be excused from attendance to-day.

The President put the question on granting leave of absence to Mr. Lauterbach, and it was determined in the affirmative.

The President — Memorials and petitions are in order. Are there any communications from State officers? Notices, motions and resolutions are in order. The Secretary will call the districts.

Mr. A. H. Green — Mr. President, I desire to move that the constitutional amendment (No. 374) proposed by me respecting the

reporting on certain classes of money, which was referred to the Special Committee, be taken from that committee, and referred to the Committee on State Finances.

The President — Has it yet been reported by the Special Committee?

Mr. Green — It has not. I suppose the committee will not approve of its being printed, and I desire to have it go to the other committee.

The President — Under the rules, the Chair considers the motion not in order until that committee has been heard from. I believe the report has been prepared, and your motion should be deferred until then.

Mr. Green — I supposed it to be perfectly in order to transfer it from that committee to another.

The President — The Committee on Rules has the power to determine what disposition shall be made of it, or, at least, of reporting their determination. I suppose it will be perfectly in order to transfer it from that committee to the other.

Mr. Green — I supposed it would be in order. I understand the Special Committee do not propose to have the amendment printed.

The President — Will Mr. Green postpone the matter until Mr. Brown, the chairman of the Special Committee, comes in?

Mr. Rowley offered the following resolution:

R. 166.— Resolved, That one thousand copies of the table of statistics, submitted by E. C. Rowley, be printed for the use of the Convention.

Mr. Rowley — Will the Secretary please read the communication accompanying the resolution?

The President — The Secretary will read the communication.

The Secretary read the communication as follows:

"*To the Constitutional Convention:*

"The undersigned has the honor to submit herewith a table of statistics, which he hopes will be useful to this Convention. The table contains the following information:

"*First.* The cost per M. paid by each county in the State for printing official ballots at the last general election.

"*Second.* The number of ballots provided by each county.

"*Third.* The cost per page for printing the proceedings of boards of supervisors in each county of the State.

"*Fourth.* The number of pages contained in each book of supervisors' proceedings.

"*Fifth.* The number of copies of book of supervisors' proceedings issued by each county.

"Totals and averages are given and the figures are believed to be accurate. Behind every figure there is a written voucher and a responsible name.

"The work was originally undertaken for the board of supervisors of Columbia county, but is now submitted to this Convention in compliance with the urgent request of many of the delegates who have examined the table.

"Respectfully,

"EDWARD C. ROWLEY."

The President put the question on Mr. Rowley's resolution, and it was determined in the affirmative.

Mr. Moore — Mr. President, are memorials in order now?

The President — They can be received, if without objection.

Mr. Moore — I do not know, Mr. President, but what there is something of this kind in, but I have received a request to present a memorial from the Flushing Village Association as to a proposed amendment to the Constitution in regard to pool selling. I do not know whether one has been received or not.

The President — There is one received and referred to the Committe on Powers and Duties of the Legislature, and yours will take the same course.

Mr. E. R. Brown — Mr. President, I desire to offer a resolution.

The President — The Secretary will read the resolution.

The Secretary read the resolution as follows:

R. 167.— Resolved, That after August 15 sessions of the Convention shall be held every day of the week, except Sunday, and that the sessions commence at ten o'clock A. M., and at three o'clock and eight o'clock P. M., except that no session be held on Saturday evening until further ordered.

The President — The resolution is open for consideration.

Mr. Bowers — Mr. President, I make the point of order that it should go to the Committee on Rules. Rule 56 is: "All proposed action touching the rules and orders of business shall be referred, as, of course, to the Committee on Rules." This does touch the order of business, and I submit that it should go to the Committee on Rules before it is submitted to the House for adoption.

The President — The point of order is well taken. If Vice-President Steele will be good enough to take the chair, the Committee on Rules will meet immediately. The Committee on Rules will please withdraw to the President's room.

Second Vice-President W. H. Steele took the chair.

Mr. Hill — Mr. President, I move you that the number of copies of the report made by Mr. Rowley be two thousand, instead of one thousand, as provided by his resolution just passed by the Convention. It contains a list of the cost of election expenses in the different counties in this State. It seems to me that we ought to have two thousand in number, instead of one thousand, as contemplated by his resolution.

The President put the question on the motion of Mr. Hill, and it was determined in the affirmative.

The President *pro tem.*— Reports of committees are in order. The Secretary will read the list of standing committees.

The Secretary proceeded to call the list of committees.

Mr. Barhite (for Mr. Vedder), from the Committee on Legislative Powers and Duties, to which was referred the proposed constitutional amendment introduced by Mr. W. H. Steele (introductory No. 322), entitled, "Proposed constitutional amendment to amend section 16 of article 3 of the Constitution, as to restriction of private and local bills," reports that it is the desire of the committee that this be considered in connection with bill No. 214, and report in favor of the passage of the same.

The President *pro tem.*— The question is on agreeing with the report of the committee.

Mr. Hawley — That report merely expresses a desire, as I understand it, of the committee that this bill, which is favorably reported, should be considered in connection with another. Doesn't it go to the Committee of the Whole?

The President *pro tem.*— The Chair understands it is to be considered in connection with another proposition.

Mr. Barhite — It was simply the opinion of the committee that, as this amendment amends the same section as another amendment, which is in Committee of the Whole, the one should be considered in connection with the other. The report, as I understand it, simply goes to the Committee of the Whole. That was reported to this Convention in order that it might understand that the committee was not inconsistent in its reports.

The President *pro tem.* put the question on agreeing with the

report of the committee, and it was determined in the affirmative, and the proposed amendment was committed to the Committee of the Whole.

Mr. Barhite (for Mr. Vedder), from the Committee on Legislative Powers and Duties, to which was referred the proposed constitutional amendment, introduced by Mr. Roche (introductory No. 99), entitled "Proposed constitutional amendment to amend article 3 by the addition of a new section prohibiting the Legislature or any division of the State from granting pensions to any civil officers or employes not, however, including existing police and fire department pension funds," reports in favor of the passage of the same, with some amendment.

The President *pro tem.* put the question on agreeing with the report of the committee, and it was determined in the affirmative, and the proposed amendment committed to the Committee of the Whole.

Mr. Hawley, from the Committee on Corporations, reports an original constitutional amendment.

O. 377.—"Proposed constitutional amendment to amend article 8 of section 1 of the Constitution, relating to corporations," and in favor of the passage of the same.

The President *pro tem.*— The question is on agreeing with this report.

Mr. Hawley — I do not understand that to be the question. I understand the rules to be that the proposed amendment shall be read and it goes to the Committee of the Whole, as a matter of course.

The President *pro tem.*— That is correct.

Mr. Becker — I call for the reading of the amendment.

The Secretary read the proposed amendment, and it was referred to the Committee of the Whole.

Mr. Lester — I would like to ask the President whether he considers that the adoption of the report of the committee, in respect to the proposed amendment of Mr. Roche, abolishing pensions, which has been the subject of discussion in this Convention for several days, has now been adopted by the vote in the affirmative of a single member of this Convention?

The President *pro tem.*— The Secretary informs the Chair that it has only gone to the Committee of the Whole to be considered there.

Mr. Goodelle, from the Committee on Suffrage, to which was recommitted the proposed constitutional amendment, introduced by Mr. Hill (introductory No. 183), entitled, "Proposed Constitutional amendment to amend section 5 of article 2 of the Constitution, relating to the manner of elections," reports in favor of the passage of the same, without amendment.

Mr. Moore — I ask that the amendment be read.

The Secretary read the amendment.

Mr. Goodelle — Perhaps I should say that this proposed constitutional amendment is a proposed constitutional amendment that has been and is now in the Committee of the Whole, has been before the Convention and several amendments proposed and referred back to the Committee on Suffrage. The Committee on Suffrage have reported it back now in its original form, adopting none of the amendments, and it stands precisely as it stood, leaving it on general orders, as it was when referred back to the Committee on Suffrage.

The President *pro tem.*— If there is no objection, the proposition will retain its place on general orders.

Mr. Foote — I desire to offer at this time a resolution.

The President *pro tem.*— The Secretary will read the resolution.

The Secretary read the resolution as follows:

R. 168.— Resolved, That four additional members be added to the Committee on Revision and Engrossment.

Resolved, That such committee be authorized to have all engrossing done by typewriting.

Mr. Foote — It is evident that the work to fall to the Committee on Revision and Engrossment from this time on will be considerable. That committee, as now constituted, consists of only seven members. We believe that, in view of the importance and volume of its work, the number should be increased. We also believe that, in the interest of the accuracy of its work, its reports to the Convention should be in typewritten form. Hence the resolution submitted.

The President *pro tem.* put the question on the resolution, and it was determined in the affirmative.

Mr. Abbott — Doesn't that necessarily go to the Committee on Rules under the rules of the House?

The President *pro tem.*— Not necessarily to the Committee on Rules. The Convention have it in their power and are themselves a Committee on Rules.

Mr. E. R. Brown, from the Select Committee on Further Amendments, to which was referred the proposed constitutional amendment, introduced by Mr. A. H. Green (introductory No. 374), entitled " Proposed constitutional amendment to amend article 8 of the Constitution, in relation to the reports of public officers," reports that the same has been found to refer to the subject already under consideration by the Committee on State Finances and Taxation, and has, therefore, been transmitted, without printing, directly to said committee for its information, under rule 73.

Mr. A. H. Green — I now renew my motion to have that amendment transferred to the Committee on State Finances.

The President *pro tem.*— It will take that course.

Mr. Francis — The chairman of the Committee on Preamble and Bill of Rights requests that the committee be discharged from the further consideration of proposed constitutional amendment No. 365 (printed No. 377), introduced by Mr. Church, and that it be referred to some appropriate committee. It is to amend article 6 by adding thereto a new section.

The President *pro tem.*— Mr. Francis will please send that report to the desk. The Secretary will read it.

The Secretary read the report as follows:

" The chairman of the committee requests that that committee be discharged from the further consideration of proposed constitutional amendment No. 365 (printed No. 377), introduced by Mr. Church, and that it be referred to some appropriate committee."

The President *pro tem.*— The question is on agreeing with the report of the Committee on Preamble and Bill of Rights as to proposed constitutional amendment No. 365 (printed No. 377), and discharging that committee from the further consideration of that proposition by referring it to the appropriate committee. If there be no objection it will be referred to the Judiciary Committee. There being none it is so referred. Unfinished business of general orders. The Secretary will call.

The Secretary called the general orders as follows:

General order No. 6, introduced by Mr. Alvord, to amend section 7 of article 7, relating to Salt Springs.

Not moved.

Mr. Cochran — Mr. President, my recollection is that the city article was made a special order for this morning, to go at the head of the calendar.

The Secretary called general order No. 5, report of Special Committee on Transfer of Land Titles.

Not moved.

General order No. 7, introduced by Mr. Holls, relative to enforcing the duty of voting.

Not moved.

General order No. 14, introduced by Mr. Mereness, to amend article 3 relating to public officers.

Mr. Mereness — I understand, sir, that the order was that the cities article be placed at the head of general orders of all kinds.

The President *pro tem.*— The Chair will inform the gentleman that this is unfinished business. We have not arrived at the regular calendar of general orders.

Mr. Mereness — Isn't this general orders?

The President *pro tem.*— Unfinished, as well as any other.

Mr. Cochran — Mr. President, my recollection is that we did not finish the report of the Cities Committee by any means, and, I think, it takes its place under the head of unfinished general orders.

The Secretary called general order No. 16, introduced by Mr. Vedder.

Not moved.

General order No. 13, report of the Committee on Cities.

Mr. Jesse Johnson — Mr. President, I move that the Convention go into Committee of the Whole on general order No. 13.

Mr. Church — Mr. President, before the motion to go into Committee of the Whole is put, I would like to ask Mr. Johnson to withdraw the motion to go into Committee of the Whole for one moment.

Mr. Johnson — I am willing to do so.

Mr. Church — I desire to call the attention of the President to proposed constitutional amendment No. 364 (printed No. 377), just reported back to the Convention by the Committee on Preamble and Bill of Rights. The reference of that amendment to the Committee on Preamble and Bill of Rights was evidently a mistake. The amendment was referred to the Special Committee and by them referred in the ususal way to the Committee on Industrial Interests, which now has the amendment under consideration. I understand that it is now referred to the Judiciary Committee.

The President *pro tem.*— The Chair would inform the gentleman that by misunderstanding that reference was made. Do I understand that that is already in the Committee on Industrial Affairs?

Mr. Church — Yes, sir, and is being considered by that committee.

The President *pro tem.*— The Secretary will so note, and the reference made this morning will be changed to the Committee on Industrial Affairs.

Mr. Jesse Johnson — I now renew my motion.

President Choate resumed the chair.

The President — Mr. Root from the Committee on Rules offers the following report:

Mr. Bowers — May I ask what order of business we are under?

The President — The order of business — Mr. Steele has the Convention gone into Committee of the Whole?

Mr. Steele informs me that a motion is pending to go into Committee of the Whole on the report of the Cities Committee.

Mr. Root — Mr. President, I am instructed by the Committee on Rules to report the following resolution:

R. 169.— Resolved, That after August fifteenth sessions of the Convention will be held every day in the week, except Sunday, and that the sessions be held from 10 A. M. until 1 P. M., from 3 P. M. to 5 P. M., and from 8 P. M. to 10 P. M., unless otherwise specially ordered by the Convention, except that no session shall be held on Saturday evening.

I am instructed to say that one member of the committee dissents from this report, believing that there should be a qualification to the effect that no final vote be taken on either Saturday or Monday, and one other member dissents from the report, believing that there should be no session on Monday afternoon until the evening.

The President — This resolution, reported by the Committee on Rules, is open for consideration.

Mr. Cochran — Mr. President, I desire to move an amendment that this Convention sit but five days in the week, and that on Monday we meet at 8 P. M. and adjourn on Friday at the close of the afternoon session.

Since the opening of this Convention I have endeavored, sir, to attend faithfully to all the duties of my position as a delegate, and I feel, sir, that with others of this Convention, who have also faithfully attended to their duties, we might have been consulted, with reference to what sessions we should hold. If

there had been any intention upon the part of any delegate or delegates to obstruct the business of this Convention, the members of the majority party might have been justified in going into a caucus to determine what days we should sit. But I submit, sir, that while we are all attending to our duties here, we are entitled to be consulted before any caucus is held which will bind the votes of members as to what days we shall sit in this body. I have endeavored to learn why this matter should be brought up in a caucus of certain members of this Convention before it was submitted to a vote here, and I am forced to the conclusion that it is because it is an unjust rule; that they sought to bind the votes of members so that when it came into the Convention they could not vote according to the dictates of their consciences. We are not and have not been, since the opening of the Convention, sitting here and devoting out time, as we should, to its business. There are members of this Convention that leave this hall at 1 o'clock and do not do anything until 8 o'clock in the evening. They do not do any of the committee work. Why can't we meet earlier in the morning and meet in the afternoon, and meet earlier in the evening and stay later? I have never voted for an adjournment since I have been here and I never will. I submit, sir, that the days we are here we should devote fully to the business of the Convention, but we should not be brought here on days that we cannot faithfully give. We owe a duty to the State to attend to the business of this Convention, but we also have a duty that we owe to ourselves. There are members of this Convention who must, of necessity, return to see that their business and their families are kept in proper order and condition, and, I submit, sir, that we should not at this time adopt a rule that will keep the members in this city from now until the Convention adjourns. If we adopt the rule which is reported here by the Committee on Rules, it will be almost impossible for members to leave this city until this Convention adjourns on the fifteenth of September, or the first of October, or whenever it does, and I submit, sir that that is unfair, and I offer the amendment that I have for that reason.

Mr. Moore.— Mr. President, I hope the members of this Convention will be consistent with their former vote. Sometime ago when this matter was brought up, I made a motion that we sit on Monday evening, as the Legislature does, and the Convention voted me down, and it down, by a large majority, and I hope the Convention will remember their attitude upon that matter and vote down this resolution of Mr. Cochran.

Second Vice-President Steele took the chair.

Mr. Choate — Will the Convention lend me its ear for five minutes that I may set before them what is deemed the absolute necessity for the rule now offered? It is offered by those who have deemed themselves, in large measure, responsible for the conduct and completion of the business of the Convention within the time prescribed by law. And I take to myself a large share of the responsibility in having initiated and brought to its present form this resolution in the discharge, the conscientious discharge, of my duty as President of this Convention. In the first place, I deem it a necessity that the business of this Convention shall be concluded on the fifteenth day of September, as prescribed by law, in justice to the people of this State who will have but seven weeks from that time to the day of election on which it is to be passed upon, to learn what our work has been, to consider it and to determine in their own minds whether they will support or defeat it. We have now been in session a little more than three months. The great work of the committee has been, in substance, completed. There now remain but five weeks from to-morrow for the conclusion of our labors. Everybody acquainted with the history of previous Conventions knows perfectly well that, at least, one week at the end must be taken in the final work of revision, of reading, of final consideration of the actual form of the matter to be submitted to the people, and that leaves but four weeks in which to perform the immense labors that still rest upon this Convention in bringing the substance of its work to a conclusion. Four weeks; twenty-four days; by this rule prescribed, seven hours a day, about one hundred and sixty-four hours in all, for the consideration of all these important questions. Only three amendments to the Constitution, and those of a comparatively trivial character, have yet been brought to the order of third reading, and those now lie upon the table under your order awaiting the further conclusion of labors of committees in respect to the same subjects involved in them. Now we have had an experience in this present week of the amount of discussion absolutely necessary for the consideration of a single important subject, of a single important amendment; I mean that of the Committee on Cities. That, gentlemen, is only one of six or eight subjects of grand and first-class importance which are yet to be considered. The reports of five, six, seven or eight very important committees are yet to be received. The Convention is not in possession of what they intend to propose. In my judgment, take it for what it is worth, it is an absolute impossiblity for the labors of this Convention to be completed within the time prescribed by the law, unless this resolution is adopted in its full force

without any diminution. I know how inconvenient it is to everybody connected with the Convention — to nobody more than myself. I know how urgent private affairs of gentlemen are. In respect to most of them, how their professional duties assumed, if you please, before the formation of this Convention, press upon them. But no matter for that, gentlemen, we have undertaken this duty. We are bound to discharge it, and we owe every day and every hour to the State, and it is my conviction that we shall be false to our duty, if we now, from this time forward, from the fifteenth day of this month, do not give up ourselves wholly to this work, leaving our families to take care of themselves and our affairs to take care of themselves and our clients to take care of themselves. We have taken an oath. We have proceeded leisurely. We have endeavored, I believe, to do our duty up to this time. But now comes the crowning part of our work; the consideration, the final framing, the decision upon each of these important questions. Will we be true to our trust or not? That is the question, and the only question presented by this resolution. I say, let us leave everything else behind and devote ourselves to the discharge of our sworn duties here. (Applause.)

Mr. Dickey — Mr. President, I call for the ayes and noes upon this question.

Mr. Maybee — Mr. President ——

Mr. Dickey — I give way to Mr. Maybee.

Mr. Maybee — Mr. President, I hope the report of the committee will not be concurred in. If the sessions proposed for Monday forenoon and Saturday afternoon should be eliminated from this resolution, there would be some sense in the proposition. If the report of the committee is concurred in in every particular, if we are to have these extended sessions, beginning early Monday morning and lasting until Saturday evening, there will be some more funerals to attend. I do not believe that there are many members in this Convention whose physical endurance is equal to the strain that is sought to be put upon them. Whoever is responsible for the present condition of the work of this Convention I do not know. I do know that, at least, a week of our time has been taken up by members of the Convention who have simply risen to their feet to tell us how valuable our time was and how it ought not to be wasted. I know that, at least, two weeks of the time of this Convention have been spent on unimportant questions of printing and other minor matters, immaterial wrangles upon minor questions that ought to have been disposed of

with comparatively little debate, so as to give room for the more important subjects that demand the consideration of this Convention. But where the responsibility may rest for the present condition of our work, it is, perhaps, now useless to inquire. It is true that but little time remains for us, but it seems to me that a more adequate and efficient remedy for the condition of affairs we are now in would be to limit debate upon the subjects that will come before the Committee of the Whole. It is apparent that the physical endurance of the delegates is not adequate to the strain that is sought to be put upon them, leaving out of consideration the demands of their business, the demands of their families, and the necessity that exists for many delegates to be at home over Sunday. This report might be modified by leaving out the Monday forenoon and the Saturday afternoon sessions, and, I think, in that form it would be satisfactory to the delegates, but in the form it is now proposed I hope it will not be concurred in.

Mr. Blake — Mr. President, with the most profound respect for the judgment and opinion of our illustrious and honored President, I am still constrained to say, sir, that I am opposed to the adoption of this rule. I do not think that any real necessity exists for its adoption. Nine-tenths of the work of this Convention has already been done, and the danger is that the members may lose their heads and become panic-stricken and stampeded by imaginary fears. If the female suffrage question can be disposed of in three evening sessions, there is no other question before this body that will occupy an equal time, and I believe that there are not five subjects to come before this Convention that will occupy the time that that subject has occupied in discussion; and, I believe, furthermore, that much of this fear is founded in the apprehension started by injudicious statements made upon the floor of this Convention.

I confess that the Convention has suffered somewhat by injudicious and ill-advised utterances upon this floor — statements made by gentlemen actuated by the best of motives and very praiseworthy efforts, in the main, and, doubtless, actuated by the desire to stimulate the Convention and its committees to greater activity, who have declared again and again that this Convention was not faithfully and diligently attending to the purposes and objects of its creation; and that the work was not progressing with sufficient speed. Much of this sort of talk has been indulged in, Mr. President, and I think it was altogether thoughtless, but I think it has affected injuriously the reputation of this Convention, collectively and individually. The representatives of the public press here have

accepted these utterances for the truth, as they well might do, and they have given them the widest possible publicity, so that the Convention did for a time suffer in the public esteem. But, Mr. President, I am sure every gentleman here has seen in the press these statements that the Convention frittered away its time; that it accomplished nothing; that it adjourned without finishing its work, and that has lowered the Convention in the esteem of the public. Now, I have not had the honor of being a member of other Constitutional Conventions. There are gentlemen here who have been members of the previous Constitutional Convention, and I put it to them whether this Convention will not successfully compare with it, stand the test of comparison in the amount of work which has been accomplished in the time that it has been sitting here, that this Convention has not been negligent and has not wasted its time. It has been faithful in every respect. Every gentleman knows that the work of this Convention has largely been done in committees and they have endeavored to sift from the large amount of chaff introduced here (pardon me, gentlemen, I have introduced some of that chaff myself, it seems, in the judgment of the Convention), the few grains of golden wheat to be submitted to the people for approval. I trust, sir, that the work of this Convention will not fall. I trust, sir, that it will stand as a monument, which will endure when marble and brass have crumbled away; that it will stand as a monument of the diligence and zeal of this body; but, if it shall fall, let it not be stabbed to death by libel and slander, which not only belittle the work of this Convention, but stabs the reputation and character of every member. I trust, therefore, that the members of the press here will, at least, now do us this tardy justice, and acknowledge that this Convention has been engaged from the first to the last in the work delegated to it by the people of the State. Now, sir, is there any reason why we should impose upon ourselves this hardship? Why may we not sit Monday evenings and three sessions each day for four days additional? We are swinging from one extreme to the other. Why, we might have sat two sessions a day two months ago. The Convention did not deem it necessary. Now the gentlemen are losing their heads. There are no important measures to come before the Convention, in my judgment, but the judiciary article, and the apportionment measure, and the cities amendment. There is not one that may not be discussed in two sessions, amply discussed. Do not let us put upon ourselves this terrible hardship without any necessity. That is all I have to say, Mr. President. If it were necessary to be here every day of the week, I, for one,

and I think every gentleman in the Convention would sit here; but I fail to see the necessity for it, and it seems to me that we may transact the business and transact it long before the fifteenth of September by sitting here four days in the week, three sessions each day, and have a session Monday evening, if you please. Every gentleman can be here for Monday evening. There is no occasion for keeping ourselves away from our families and our homes without real necessity.

Mr. Titus — Mr. President, I hope the gentlemen of this Convention will stand by the committee in this rule reported. (Applause.) The members of the majority of the Convention are responsible for the work. They have the chairmen of the different committees and they know the work that is before them, and I think it is the duty of the minority to sit here, day in and day out, until the fifteenth of September, but, Mr. President, I will make an amendment to the amendment that I think will satisfy everyone here, and that is that the Monday session shall commence at two o'clock. That gives us an opportunity to be with our families on Sunday, and we can take an early morning train and be here at two o'clock. I hope the gentleman from Kings (Mr. Cochran) will accept my amendment, and I call for the previous question.

It has been suggested that I make it three o'clock on Monday afternoon. That will give us time to get here.

Mr. Cassidy — Mr. President, the previous question has been moved.

Mr. Mulqueen — Mr. President, I rise to a point of order. My point of order is that the gentleman having obtained the floor to make a speech, cannot, while obtaining the floor for that purpose, make a motion for the previous question which will deprive other gentlemen of obtaining the floor for the same purpose.

Mr. Root — I think there must be an error as to the previous question being moved. The gentleman from Orange (Mr. Dickey) called for the ayes and noes on the main question.

The President *pro tem.*— The Chair is informed that Mr. Titus moved the previous question.

Mr. Choate — I appeal to Mr. Titus to withdraw his motion. This is a very important question, and I think everybody should be heard upon it.

Mr. Titus — Mr. President, I withdraw the motion, with this explanation. I made the motion in order to get to business, so as not to fritter away our time on this rule.

Mr. Cochran — With the permission of the Convention, I will accept the amendment of the gentleman from New York, and make it 3 o'clock on Monday.

Mr. McKinstry — Mr. President, there are not many delegates here who come so many miles to attend this Convention as I do; not one who will be more inconvenienced by this rule. I was not present at the caucus, and I might claim that I was not bound by its action. On due consideration I believe the committee is right and I hope their report will be adopted. There are not many delegates here who do not work six days a week when they are at home, and, if they can do that at home, they can do it here. If it kills anybody or exhausts anybody, it can be changed. Let us try it. I would like to call the attention of the Convention to the saving clause in this resolution, and that is, it says, "unless otherwise specially ordered." Now, if we find on Saturday morning that our work is so advanced that a session is not necessary Saturday afternoon or Monday morning, it is in our power to omit these days, but let us have the standing rule as it is reported.

Mr. Tekulsky — Mr. President, I would like to have the report read with the amendment attached so that we can understand it.

The Secretary read the resolution as amended.

Mr. Cochran — I did not say no session after 3 P. M., but to adjourn after the afternoon session on Friday whatever time that might be. It might be 5 o'clock. In other words, that we would hold two sessions on Friday.

Mr. Osborn — Mr. President, I desire to second the principal motion before this Convention, and, as I believe, its passage to be predestined and foreordained, I wish to make a few remarks of an historical, rather than of a practical character. Eleven weeks ago last Tuesday the majority of this body announced that it assumed the exclusive control of every committee. There has been, up to last Tuesday, no report submitted to this Convention and brought up for its consideration on any one of these principal subjects for the business of the Convention outlined in the admirable opening address of our President. All those amendments, which have been considered in the Committee of the Whole, all those which have not had adverse action, have been recommitted to the committee from which they emanated, with the exception of three. The negligence, the delay of the committees of this body is the responsible causes of the present condition of our business. I believe, Mr. President, that the time is scant for us to continue

our business and to conclude it within the time fixed by law, and, while I regret that we find ourselves in such a position that it will be necessary for us to consider these important topics, with minds jaded by constant effort, I believe it is an absolute necessity. And I wish, in closing, to make one further statement, that there has been no dilatory motion arising from this side of the House; that up to last Tuesday there have been but two extended speeches arising from this side of the House, and that those two speeches were justified by obtaining more than fifty-five votes in this Convention. The responsibility for the present condition of affairs does not rest with us. For my part I desire to go on and assist this Convention in every possible way, but I think that it should go on the records of this Convention that we stand here to-day without having taken a part in what was declared by one of the leading members of the majority of this body to be the position of our members, a desire to delay and obstruct the proceedings of the Convention. (Applause.)

Mr. Smith — Mr. President, it is vain to cast reflections upon the past. I am ready to believe, and do believe, that every member of this Convention has acted in absolute good faith in the discharge of his duties as a delegate to this body. I am glad of this opportunity to commend this resolution and to indorse the remarks of the President upon it, in respect to the necessity that is now pressing upon us. I doubt not that there are members of the Convention whose business interests and whose duties pertaining to the social affairs of life would make it inconvenient for them to attend all the sessions of the Convention to be held under this resolution; but we must bear in mind that the Convention has displayed great liberality in granting excuses. If any gentleman finds that his business exigencies or the duties to his family are such that he must be away he can be excused, the consideration of the subjects before the Convention can be continued, and any member who has not been present can, on his return, read the debates and gather up instantaneously the drift of the arguments that have been presented on the matters under consideration. It is not necessary that every delegate should be present at every session. We have about one hundred and seventy members. I believe that the President of this Convention could appoint a committee of twenty-five members who could revise and amend the Constitution and make it satisfactory to the people of the State. It is, of course, a gratification to every member to be present and participate in the proceedings, but he does participate, in his absence, by his study and his reflections upon the problems before us, and by the contributions he

makes on his return. I hope, therefore, Mr. President, that the resolution will pass.

Mr. Crosby — I rise, sir, to speak in favor of the report of the committee; but in doing so it seems to me that it is proper to say, as a member of the majority of this Convention, that so far as the minority upon this floor is concerned and their action in each and every committee of which I am a member, there has been no apparent organized opposition or determination to delay the business of this body. It has been truly said that the committees are largely responsible for the delays of the business of this Convention. It is my misfortune to be a member of a committee (to me one of the most important committees of this Convention) that has to do with the fair, just, legal and equitable distribution of the Legislature throughout the State of New York and the principles upon which it should be organized. It is my misfortune that my committee has not prepared a report — is not ready to prepare a report — and as the business goes on, when the fifteenth day of September is reached, it will be as far from preparing a report as it is to-day. I stand here insisting that with the tendency to discuss every question upon the floor of this body in the Committee of the Whole, with the disposition to wear out this Convention, the only relief that we can have is to so work this body that the gentlemen that are making the long speeches, the gentlemen that are delaying the reports of committees, will understand that the only relief they can get is to get down to straight, honest work, and then we can have a reasonable time to adjourn each day for rest and recreation. I hope that the resolution of the Committee on Rules will be adopted unanimously. (Applause.)

Mr. Griswold — Mr. President, as one of the minority of the committee which reported this resolution, I wish to say that I acquiesced in that resolution for two reasons: one, because it has seemed to me for some time that it was an absolute necessity that this Convention employ all the time at its disposal in discharging the duty which we were sent here to perform. It may be inconvenient and we probably, all of us, would be glad if we could have a rest on Saturday as we have had heretofore, but it has become an absolute necessity, and whatever may be said, I predict that the result and time will show that we have no time to spare of the working days that are left. It is an absolute necessity that we stay here from now on.

Another reason that I would suggest to the members of this Convention belonging to the party that I belong to is that I think it is reasonable to place upon the majority of this Convention that con-

trols it the responsibility, and at the same time we should put no obstruction upon business. I propose to aid them to the extent of my power in presenting a Constitution as good as can be made by this Convention, reserving the right, however, if there shall be anything partisan about it and that I think is wrong, to object to that when the time comes. I am in favor of this resolution because it is a resolution of necessity, as time will prove.

Mr. Gilbert — I think, Mr. President, that there has been, on the part of this Convention, an honest and an earnest purpose to do its work with thoroughness and all reasonable dispatch. I have had no sympathy whatever with the criticisms that have been made upon its work. I believe they have arisen chiefly ——

The President *pro tem.*— Will the gentleman pause for a moment? The Chair can but remark to the Convention that it is very doubtful to the Chair who is addressing the Chair, or who is talking the loudest in the Convention. As the Chair understands this matter, it is a very important subject to every member of the Convention. It refers to the honor and success of the Convention, not only to its reputation throughout the State, but to the expedition of the business of the Convention. It is no more than courteous that when gentlemen desire to have their opinions heard, they should be accorded a reasonable freedom from every disturbance so that they can be heard. Now if the Convention will remain in its present good order, the gentleman will proceed. Otherwise I will ask the gentleman to delay until the Convention is ready to hear him. The gentleman will proceed.

Mr. Gilbert — What I have said about the character of the Convention's work, in my judgment, applies throughout without stopping at any lines between minority and majority. I heartily indorse what was said as to the unobstructive and helpful character of the work done by the minority. Now, Mr. President, I myself have serious doubts as to the wisdom of pressing the work of the Convention in the manner proposed by this resolution. There is a limit to what men can do. We have reached the point where our decisive work is to be done, where our final judgment is to be exercised, and it is of the utmost importance that our judgments should be in the best possible condition for its exercise. Mr. President, I commend and sympathize with the desire on the part of this Convention to do its utmost to expedite its business and to do it well. In this spirit I believe that this resolution has been offered. I believe it is offered solely for the purpose of getting our work done at the earliest practicable moment without interfering with

its quality. I believe that is its purpose. I differ with them as to the propriety of holding so many sessions, but I am willing to subordinate my judgment as to that and give it a trial, and if the trial shall prove that we are undertaking to work too many hours a day in the Convention and leaving too little time for study and reflection and consultation the Convention will correct the error, and if those who are with me are in error, then we will be corrected too. I shall, therefore, support the resolution as it comes from the committee.

Mr. Root — Mr. President, I am one of those who believe, although the gentleman from Dutchess (Mr. Osborn), was quite correct in saying that those whom he calls the minority upon this floor had not as yet been obstructive, there is no occasion for his excusing either himself or his associates, because the gentlemen of this Convention upon both sides of the political line have done faithful and effective work in committee and in Convention since the Convention commenced. I believe, sir, that the committees have faithfully and assiduously prosecuted their work; that the delays in the making of their reports have been solely for the purpose of endeavoring to faithfully perform their duty, in reaching a unanimous or as nearly as possible a unanimous conclusion. I think their time has been well spent and that the results of our further deliberations will show that it has been well spent. I think that these remarks apply as well to the committee to which the gentleman from Delaware (Mr. Crosby) belongs as to any other committee of this Convention. But, sir, the question now is on the adoption of this resolution as to our future labors. It seems to me, sir, that there has been a full expression of the sentiment of the members of the Convention upon that subject, and I hope I will not be deemed as unduly cutting off debate if I do as I now do, move the previous question.

The President *pro tem.* put the question, "Shall the main question now be put?" and it was determined in the affirmative.

Mr. Becker called for the ayes and noes on the main question, and the call was supported.

The President *pro tem.*— The question is on the amendment of Mr. Cochran, as amended by Mr. Titus, and those amendments follow the main question.

Several members asked for the reading of the amendment.

The President *pro tem.*— The Secretary will read the amendment. The Chair understands that there is but one amendment, Mr.

Cochran having accepted the amendment of the gentleman from New York (Mr. Titus).

Mr. Holls — I rise to a point of order. I understand the ayes and noes were only called for on the main question and not on the amendment.

The President *pro tem.*— The Chair understands that the amendment cannot be strangled in that way. The amendments that were offered followed the previous question by a rule adopted in the Legislature when the first Vice-President was a member of that body, many years ago.

Mr. Holls — Cannot we have the vote by a rising vote?

The President *pro tem.*—That is at the option of the Convention.

Mr. Veeder — Mr. President, it has been the understanding about this chamber that there were two amendments pending, and for that reason another very important amendment, which my colleague from New York desires to offer, has not been submitted, and if it is the ruling of the Chair that but one amendment is now pending, I submit that we have been misled and that we should have the opportunity to present another amendment, which I think is of vital importance, for if this Convention determines to hold continuous sessions and proceed with business, we want some business before us, and to have that business, we must have committee reports.

The President *pro tem.*— The gentleman may be correct. There is possibly another amendment.

Mr. Veeder — What is the situation then?

The President *pro tem.*— Who was the gentleman who offered the last amendment?

Several members — Mr. Titus.

The President *pro tem.*— That was accepted by Mr. Cochran, and it becomes a part of Mr. Cochran's amendment. There is only one amendment then and the Chair is correct.

Mr. Veeder — I desire to ask permission to amend further.

The President *pro tem.*— Too late, after the previous question has been ordered, and especially after it is doubly ordered by the ayes and noes being ordered.

Mr. Veeder — I ask unanimous consent.

Mr. Acker — I object.

Mr. Veeder — I hope the gentleman will listen to me one moment; as we are going to order continuous sessions here every

day to do nothing. We have no reports here from committees. The President himself says the matters here reported are trivial. Important matters are kept back.

Mr. Choate — Will Mr. Veeder allow me to correct him by stating that I said that but three amendments had been ordered to a third reading, and those were of a comparatively trivial character.

Mr. Veeder — Well, I mean, in substance, the prevailing character of the propositions submitted to us then.

Mr. Dean — I rise to a point of order.

Mr. Alvord — I ask permission to ask the Chair whether or not we are under the operation of the previous question.

The President *pro tem.*— We certainly are.

Mr. Alvord — I, therefore, call for the enforcement of the usual order.

Mr. Veeder — I am endeavoring to convince the gentleman why he should withdraw the previous question.

Mr. Alvord — The previous question has been ordered by the Convention and he cannot withdraw it.

Mr. Veeder — Of course, whatever the gentleman from Onondaga, Mr. Alvord, says, is all right; but is it not in order, Mr. President, to move a reconsideration of the previous question?

The President *pro tem.*— The Chair does not know of any rule by which the motion, having been carried, and the ayes and noes ordered, can be reconsidered.

Mr. Veeder — No, no; the ordering of the previous question.

The President *pro tem.*— The previous question has not been reconsidered.

Mr. Veeder — I make that motion, that the motion adopting the previous question be reconsidered. I voted for it, Mr. President, believing there were two amendments pending.

The President *pro tem.*— The Chair is of the opinion that the gentleman is in error as to his views with respect to two amendments and in the understanding of them. The ayes and noes having been called for, the Chair, unless overruled by the Convention, must insist that the ayes and noes must be called on the amendment as it stands before the Convention at this moment. The Secretary will call the ayes and noes upon the amendment of Mr. Cochran, as amended by Mr. Titus, and accepted; and the Secretary will read it, so that the Convention will have full knowledge of what it is voting on.

The Secretary again read the amendment, and proceeded to call the roll.

Mr. Titus — Mr. President, I will ask to be excused from voting, and briefly state my reasons. When I offered this amendment, which was accepted by the gentleman from Kings, my amendment was simply to amend the report of the committee by making it three o'clock on Monday instead of ten. I see that as read here it is not as I intended it and as I thought the motion would be put. I, therefore, withdraw my excuse and vote no.

Mr. Durnin — Mr. President, I desire to ask how I am recorded.

The President *pro tem.*— Mr. Durnin is recorded in the affirmative.

Mr. Durnin — After listening to the speech of my friend, Mr. Titus, in whose wake I followed, I desire also to be recorded in the negative.

Mr. Mulqueen — For the same reason I ask to have my vote changed from the affirmative to the negative.

Mr. Deyo — I understood Mr. Titus's amendment as he stated it. I, therefore, wish to change my vote from the affirmative to the negative.

Mr. Cochran — Mr. President, it might appear, from the very scant vote this amendment has received, that it originated in my own mind and was not supported by the members of this Convention. I desire to say, however, that it was not my own invention, but was the united effort of many of the delegates who have now changed their votes. I feel, therefore, sir, perfectly justified in asking to have my vote changed to the negative.

Mr. Schumaker — How am I recorded, Mr. President?

The President *pro tem.*— Mr. Schumaker is recorded in the affirmative.

Mr. Schumaker — Well, I don't wish to change my vote. I was asked to vote that way by my friends, and I am going to stick to it. (Laughter.)

Mr. Cochran — Mr. President, if I may have the indulgence of the Convention one moment longer. It is apparent that we are only wasting time by having a roll call, and I ask that this vote be made unanimous in favor of the report of the committee.

The Secretary then completed the calling of the roll, with the following result:

Ayes — Messrs. Blake, Chipp, Jr., Deady, Faber, Fields, Gibney,

Giegerich, Herzberg, Hotchkiss, Jenks, Kerwin, Maybee, Meyenborg, Parmenter, Peabody, Roche, Rowley, Schumaker — 18.

Noes — Messrs. Abbott, Acker, Ackerly, Allaben, Alvord, Baker, Banks, Barhite, Barnum, Barrow, Becker, Bigelow, Bowers, E. A. Brown, E. R. Brown, Burr, Cady, Carter, Cassidy, Church, G. W. Clark, H. A. Clark, Cochran, Coleman, Cookinham, Countryman, Crosby, Danforth, Davenport, Dean, Deterling, Deyo, Dickey, Doty, Durfee, Durnin, Emmet, Floyd, Foote, Forbes, Francis, Andrew Frank, Augustus Frank, Fraser, C. A. Fuller, O. A. Fuller, Galinger, Gilbert, Gilleran, Goeller, A. H. Green, Griswold, Hamlin, Hawley, Hecker, Hedges, Hill, Hirschberg, Holcomb, Holls, Hottenroth, Jacobs, J. Johnson, Kinkel, Lester, Lincoln, Lyon, Manley, Mantanye, Marks, Marshall, McClure, McDonough, McIntyre, McKinstry, C. B. McLaughlin, J. W. McLaughlin, Mereness, Moore, Morton, Mulqueen, Nichols, Nicoll, O'Brien, Ohmeis, Osborn, Parker, Parkhurst, Pashley, Phipps, Platzek, Powell, Pratt, Putnam, Rogers, Root, Sandford, Spencer, Springweiler, A. B. Steele, W. H. Steele, T. A. Sullivan, Tekulsky, Tibbetts, Titus, C. S. Truax, Tucker, Vogt, Wellington, Whitmyer, Wiggins, Williams, Woodward, President — 114.

Mr. Bowers — Has the vote been announced, Mr. President?

The President *pro tem.*— One hundred and fourteen noes; eighteen ayes. The amendment is evidently lost.

Mr. Bowers — I offer an amendment to the resolution as follows ——

The President *pro tem.*— An amendment cannot be received at present, under the operation of the ayes and noes as ordered by the Convention.

Mr. Bowers — Mr. President, I make this point of order. Rule 57 says that the yeas and nays may be taken on any question whenever so required by any fifteen members. The ayes and noes that were ordered to be taken were on the amendment and not on the original question. We now come to the original question, and I submit that it is in the hands of the house and we have the right to offer an amendment.

The President *pro tem.*— The Chair will state for the information of the gentleman that the motion for the ayes and noes followed upon the motion for the previous question, and it is not admissible.

Mr. McClure — The motion for the ayes and noes preceded the motion for the previous question.

Mr. Bowers — I ask unanimous consent to offer an amendment.

Mr. Alvord — I object.

Mr. Becker — I rise to a point of order. The previous question having been ordered neither debate nor amendments are in order.

The President *pro tem.*— The point of order is well taken.

Mr. Bowers — I appeal from the decision of the Chair, that the previous question, which was moved on the amendment, applies to the whole question.

The President *pro tem.*— The decision of the Chair is appealed from. The question before the Convention is, "Shall the decision of the Chair stand as the action of the Convention?"

Mr. McClure — I rise to a question of information. Does the Chair make this ruling on the theory that the previous question was ordered before the ayes and noes were called for?

The President *pro tem.*— Assuredly.

Mr. McClure — I ask the question because I want to call the Chair's attention to the fact that Mr. Dickey called for the ayes and noes long before Mr. Root called for the previous question. Therefore, the Chair is in error.

The President *pro tem.*— The Chair informs Mr. McClure that the ayes and noes were not called for again by Mr. Dickey; that he withdrew and did not renew his motion. The previous question having been ordered, is positive and absolute, and the question on taking the previous question by ayes and noes having been ordered, that also is positive and absolute, and the Chair has no other way than to follow the rules as established by this Convention. If there are no further questions to be asked of the Chair, the Secretary will call the roll upon the question, which now returns to the original resolution as offered by the chairman of the Committee on Rules.

Mr. Bowers — Mr. President, it is in accordance with the procedure which forbids an opportunity to present amendments, that the Chair should overlook the fact that an appeal had been taken from its decision. At the same time, I do desire to say that I did appeal from the decision of the Chair.

The President *pro tem.*— The gentleman is correct. The Chair was in error for a moment.

The President *pro tem.* then put the question on sustaining the decision of the Chair upon the point of order raised by Mr. Bowers, and it was determined in the affirmative.

The Secretary then proceeded to call the roll on the adoption of the resolution offered by the Committee on Rules.

Mr. Bigelow — Mr. President, I desire to be excused from voting for the present, and I will state my reasons. We have, from the President of the Convention and the chairman of the Committee on Rules a report that this is a question of urgency. There is no man in this Convention, probably, who is in a position to know so much of the condition of our business as its presiding officer, from the nature of his position. There is no reason why we should assume or presume that he has been disposed to exaggerate the urgency in this case. Therefore, as he and his friends are perhaps more responsible for the result of our deliberations and the success of this Convention, than others, he is entitled to have his wishes gratified in this matter, and I think that it is the duty of every man in this Convention to support his call. If, after a few days, or a week or more, we find our business has progressed to such a degree that we can relax our efforts, it is always in our power to stop. I for one always prefer to have my business before me rather than behind me; and when we find we have leisure for Saturdays and Mondays, we are in a position to take it. Meantime, let us get our business in such a state that no one will be afraid of being crowded during the later days of the Convention. I withdraw my excuse and vote aye.

Mr. Blake — Mr. President, I desire to be excused from voting, and will give my reasons. I do not change my views at all as I expressed them a few moments ago, and I believe that time will justify them; but in deference to the judgment of the Convention, which seems to be overwhelming, I yield to that judgment, and I withdraw my request to be excused from voting and vote aye.

Mr. Cochran — Mr. President, the army of the amenders is evidently so badly rattled and running so fast that I am sure I cannot withstand the storm, and I shall have to go with them, sir, and vote aye, in favor of this report.

The Secretary then completed the roll call, with the following result:

Ayes — Messrs. Abbott, Acker, Ackerly, Allaben, Alvord, Baker, Banks, Barhite, Barnum, Barrow, Becker, Bigelow, Blake, Bowers, E. A. Brown, E. R. Brown, Burr, Cady, Campbell, Carter, Cassidy, Church, G. W. Clark, H. A. Clark, Cochran, Coleman, Cookinham, Danforth, Davenport, Deady, Dean, Deterling, Deyo, Dickey, Doty, Durfee, Durnin, Emmet, Faber, Fields, Floyd, Foote, Francis, Andrew Frank, Augustus Frank, Frazer, C. A. Fuller, O. A. Fuller, Galinger, Gibney, Gilbert, Gilleran, Goeller, A. H. Green, Griswold, Hamlin, Hawley, Hedges, Herzberg, Hill, Hirschberg,

Holcomb, Holls, Hotchkiss, Hottenroth, Jacobs, Kerwin, Kinkel, Lester, C. H. Lewis, M. E. Lewis, Lincoln, Lyon, Manley, Mantanye, Marks, Marshall, McArthur, McClure, McDonough, McIntyre, McKinstry, C. B. McLaughlin, J. W. McLaughlin, Mereness, Moore, Morton, Nichols, Nicoll, Nostrand, O'Brien, Osborn, Parker, Parkhurst, Pashley, Phipps, Platzek, Porter, Powell, Pratt, Putnam, Rogers, Root, Rowley, Sandford, Schumaker, Smith, Spencer, Springweiler, A. B. Steele, W. H. Steele, T. A. Sullivan, Tekulsky, Tibbetts, Titus, Towns, C. S. Truax, Tucker, Vogt, Whitmyer, Wiggins, Williams, Woodward, President — 124.

Noes — None.

President Choate resumed the Chair.

Mr. Burr offered the following resolution, which was read by the Secretary:

R. 170.—" Resolved, That the chairman of each committee report on the 16th of August as to the condition of the business before it, and be required to report upon the business before such committee on or before the 21st."

The President — Unless objection is made, the question will be on the consideration of Mr. Burr's resolution.

Mr. Acker — I object.

The President — Will the Convention allow the Chair to state that this seems to be an exceedingly proper resolution, calling for information to the Convention which it ought to have, and to express the hope that the objection will be withdrawn.

Mr. Acker — I will withdraw it.

The President — Objection being withdrawn, Mr. Burr's resolution is open for consideration.

Mr. Burr — Mr. President, it would probably have been more strictly in proper order of procedure if before adopting the resolution which has just been adopted we had inquired as to the business now before the House, and had this report which I have called for by this resolution before the House, before setting the time for the sessions; but it having been set, and the time and the days having been designated for the continuance of the business of the Convention, it seems to me incumbent upon us to hasten the work of the committees; and, for that reason, I think it is proper to call upon the chairmen of committees to report as to the existing condition of the business before them, and that they be requested to report in full upon their business on or before the 21st.

Mr. Bowers — Mr. President, I offer as an amendment to that, that all standing committees make final report on or before the 20th of August. I do not see any reason for taking up time in making reports on the condition of business. I think all the Convention needs is to get the reports in before the 20th, so that we shall be in condition to act upon them.

The President — The Chair understands the substance of your amendment to be already embodied in Mr. Burr's resolution. The Secretary will read that resolution.

The Secretary read the resolution.

Mr. Bowers — The word "finally" report is what I wish in.

Mr. Burr — I accept the suggestion of the word "final."

Mr. Hirschberg — I wish to amend the resolution by substituting the 18th for the 21st, a week from to-morrow, so as to have the reports next week.

Mr. Burr — I cannot accept that, because I do not believe the chairmen will have time in which properly to present the business before them to the Convention.

Mr. Hirschberg — By adopting the 18th, reports may be printed and may be ready for the next week.

The President then put the question on the amendment offered by Mr. Hirschberg, requiring final reports to be made on the 18th, and it was determined in the negative.

The President — The question now is on the resolution as offered by Mr. Burr. The Chair will state that, of course, this resolution will assume that anything that it is not possible to hand in on the 21st, will be received afterwards.

Mr. Alvord — Mr. President, I am in favor of the general purport of this resolution, but I think that we had better, under the excitement in which we are placed at present, agree to some delay. If I make a motion to lay this resolution for the present on the table, I pledge myself, if any gentleman here desires me to, that I will move upon the incoming of the Convention next week, at the earliest possible opportunity, to vote that it be taken from the table. I, therefore, sir, under these circumstances, move that it do for the present lie on the table.

The President put the question on the motion of Mr. Alvord to lay upon the table, and it was determined in the negative.

The President — The question is upon the resolution.

Mr. Bowers — May we have it read again?

The Secretary again read the resolution, as amended by the proposition of Mr. Bowers.

" Resolved, That the chairman of each committee report on the 16th of August as to the condition of the business before it, and be required to finally report upon the business before such committee on or before the 21st."

The President then put the question on the adoption of the resolution, and it was determined in the affirmative.

Mr. M. E. Lewis — Mr. President, at the time of the presentation of the report of the Committee on Rules this morning, a motion was pending that the Convention go into Committee of the Whole upon the report of the Cities Committee.

The President — That is now the question before the House.

Mr. Lewis — I was going to suggest, Mr. President, that instead of taking up that report at this late hour of the day, the matter of the report of the Cities Committee be made a special order for Tuesday morning, immediately after the reading of the Journal.

Mr. J. Johnson — I second that motion.

Mr. Tekulsky — I hope, sir, that that motion will not prevail. We are here now, and let us do our work. This matter was made a special order for this morning, and I hope the gentlemen that are here will stop here and get through with that. We have now had it for a week before us, and the sooner we get through with it the better.

The President — That will require a two-thirds vote.

The question was then put on Mr. Lewis's motion, and it was determined in the negative, by a standing vote — 44 to 28.

Mr. M. E. Lewis — I move that the Convention do now go into Committee of the Whole upon the report of the Cities Committee.

Mr. Holcomb — I move that the Convention do now adjourn.

The President put the question on the motion to adjourn, and it was determined in the negative.

The President then put the question on the motion of Mr. Lewis, that the Convention go into Committee of the Whole, and it was determined in the affirmative.

The President — In the absence of Mr. I. S. Johnson, of Wyoming, who was in the chair on that amendment, Mr. Lincoln will please take the chair.

The President would report as the gentlemen added to the Com-

mittee on Revision and Engrossment, Mr. Bowers, Mr. Durfee, Mr. Deyo and Mr. O'Brien.

Mr. Lincoln in the chair.

The Chairman — Gentlemen of the Committee of the Whole, the question is upon the report of the Committee on Cities.

Mr. Choate — Mr. Chairman, before Mr. Becker proceeds with his opening remarks or whatever else was before the committee, I desire to state that by an inadvertence on my part, in the amendment which I offered, "two-thirds" was written instead of "three-fifths," as I intended — to make the amendment read in substance that the Legislature might, after hearing the mayor, if he assented, pass a law in reference to cities by a majority of both houses, and if he dissented, by a vote of three-fifths of the members of both houses. The gentlemen will be good enough to correct my amendment as printed, changing "two-thirds" to "three-fifths."

Mr. Becker — I had intended, Mr. Chairman, to continue a little further with the discussion of the amendments proposed by the Committee on Cities, but what few remarks I have in my mind on that subject can be postponed. I understand that Mr. Bowers is prepared to say something upon the subject and desires to be heard. I waive my right to the floor for the present, in order to enable him to take the question up if he so desires.

Mr. Bowers — I had no desire to speak — certainly until Mr. Becker has finished. When Mr. Becker has finished I may have something to say. I supposed he had finished yesterday.

Mr. Holcomb — Mr. Chairman, I move that the committee rise, report progress and ask leave to sit again.

Mr. J. Johnson — I would like to learn if there is anyone who desires to be heard in committee on this. The Committee on Cities were quite willing that this should be postponed until Tuesday. We supposed that the temper of the House would not be favorable to taking it up at this hour. As it has insisted that it be taken up at this hour, I think the debate should go on. If there is no one else who desires to be heard, the members of the committee will be heard.

Mr. Bowers — I submit that the gentleman from Brooklyn has no right to take that position. I understand that Mr. Becker yielded the floor temporarily. Now, if Mr. Becker wants to go on ——

Mr. Dean — Mr. Chairman, I rise to a point of order ——

The Chairman — The question is not debatable. The question is

on the motion that the committee do now rise, report progress and ask leave to sit again.

The Chairman put the question as stated, and it was determined in the negative.

Mr. Becker — Mr. Chairman, I had no intention of delaying anything at all. I merely offered to yield as a matter of courtesy, as I supposed, and I am perfectly willing to complete what I have to say on this subject.

The question has been asked in this Convention by many, on and off the floor of the House, why it was that the committee thought it best to vest not only the power of removal, but also the power of appointing the successor of the head of a police department so removed, in the Governor. As I understand those who oppose these measures, they concede that the policy of the State has been for half a century to vest in the Governor the power of removal of certain peace officers, such as sheriffs and district attorneys, and they do not find any very particular fault with the power of removal which this amendment vests in the Governor. Indeed, if I remember correctly — and I trust my friends from New York will take occasion to correct me if I am not right about it — under the Consolidation Act of the city of New York, the power to remove a police commissioner vested in the mayor is even now subject to the approval of the Governor. Am I right about that, Mr. Hotchkiss?

Mr. Hotchkiss — Yes.

Mr. Becker — Mr. Hotchkiss says I am right. Now, the reason why, after considerable discussion of this question, it was thought best to vest, not only the power of removal, but the power also of appointing a successor to the head of a police department, in the Governor, was a very simple, and, to my mind, a controlling, reason. The mayor, under the present provisions of the Constitution of this State, has the power, unless the officers are to be elected in every city of this State, to appoint the officers. There is an express provision that all officers in cities and in towns shall be elected, or appointed as the Legislature may prescribe, by the local authorities. Consequently, the power is in the mayor. We deemed it essential — not for the purpose of preventing any particular exhibition of simian characteristics with reference to Buffalo, which my friend, Mr. Hotchkiss, has termed "monkey," but for the purpose of preventing monkeying in any city of this State; for, if it is liable to occur in one place, it is liable to occur as to another. If one party has seen fit to change the seat of power of appointment, for political purposes, of police commissioner, the other party may do it. And,

I grieve to say, that the party of which I am a member did, years ago — along in the '80's — summarily, by an act of the Legislature, which was approved by the Governor, remove the police commissioners then in office, and provide for the appointment of the new ones. The police commissioners were removed, or some portion of them, a majority of the people being opposed in political faith and belief to the party in power in the Legislature; and that action was cited by the Lieutenant-Governor of this State, who engineered the measure through the Legislature two years ago, changing the power of the appointment of our police commissioners at Buffalo, as a reason and a ground for his taking that action. It was openly stated in the only newspaper — and it happened that there was only one in the city of Buffalo that supported his action, or pretended to support it — and it was openly stated by him that the thing had been done once before by the other party, and he proposed to have a chance at it now. So that what can be done by one party may be done by another. For that reason, inasmuch as the mayor is elected by the people; inasmuch as in most of the cities of this State he has very numerous and responsible powers of appointment; inasmuch as he is the chief executive of the city, and is one whom the people can hold responsible if he appoints improper officials, the committee thought it wise to vest this power of appointment in him, and to provide in set terms that it should not be taken away from him. Now, I do not take it that my friends upon the other side who oppose this amendment, particularly the portions of it which I have discussed relating to the elections and police, make any very special objection to that. Nor do I think if they do make objection to it, that the objection can be well founded. The chief of police should be apppointed by the mayor. Now, then, conceding that proposition, what position would we be in if we gave the power of removal to the Governor, which is also conceded to be a wise measure, if the same mayor who had appointed the man so removed would have the right to turn around as soon as the Governor had made his removal and reappoint the same police commissioner, or another one equally obnoxious?

Mr. Doty — Mr. Chairman, I rise to a point of order. I call the attention of the Chairman to the fact that there is not a quorum in the chamber.

The Chairman — The Clerk will count.

Mr. Mereness — Of what consequence is that in Committee of the Whole?

Mr. M. E. Lewis — I ask for the calling of the roll.

Mr. Mereness — I make the point of order that no call of the House can be had in Committee of the Whole, and the only way to do is to get back into the Convention.

Mr. Choate — Mr. Chairman, I do not wish to impress the official rights of the President upon the Committee, but I call attention to rule 28, which says that if, at any time when in Committee of the Whole, it be ascertained that there is no quorum, the Chairman shall immediately report the fact to the President, who then takes the chair for the purpose of securing a quorum. It seems to be the duty of the Chairman first to ascertain whether there is a quorum or not.

The Chairman — For that purpose I directed the Secretary to count, to ascertain whether there was a quorum present or not.

The Secretary reports that there is not a quorum present.

President Choate resumed the chair.

Mr. M. E. Lewis — I move that a call of the House be had.

The President — Before the call of the House is ordered, the Sergeant-at-Arms is directed to summon into the chamber any member who may not be within at present.

Chairman Lincoln — Mr. President, the Convention has been in Committee of the Whole upon the report of the Committee on Cities: The point being raised that a quorum of the Convention was not present, it was ascertained that there were only eighty members of the Convention present.

The President — The Convention has heard the report of the Chairman of the Committee of the Whole. The President will endeavor to procure a quorum as required by the rules. The Sergeant-at-Arms will please perform his function and report to the House.

The Secretary then proceeded to call the roll, when the following answered to their names as being present:

Messrs. Abbott, Acker, Ackerly, Alvord, Banks, Barrow, Becker, Blake, Bowers, E. R. Brown, Burr, Cady, Cassidy, Chipp, Jr., H. A. Clark, Cochran, Countryman, Crosby, Davenport, Deady, Dean, Dickey, Doty, Durfee, Durnin, Emmet, Faber, Floyd, Foote, Francis, Andrew Frank, Augustus Frank, Fraser, Galinger, Gibney, Giegerich, Gilbert, Gilleran, Goeller, Hamlin, Hawley, Hecker, Hedges, Holcomb, Holls, Hotchkiss, J. Johnson, Kerwin, Kimmey, Kinkel, Kurth, Lester, M. E. Lewis, Lincoln, Lyon, Manley, Mantanye, Marks, Marshall, Maybee, McArthur, McClure, McDonough,

McIntyre, McKinstry, McMillan, Mereness, Moore, Mulqueen, Nicoll, Nostrand, O'Brien, Ohmeis, Osborn, Parker, Parkhurst, Pashley, Peabody, Peck, Phipps, Platzek, Powell, Putnam, Rogers, Root, Sandford, Smith, A. B. Steele, W. H. Steele, T. A. Sullivan, W. Sullivan, Tekulsky, Titus, C. S. Truax, Veeder, Vogt, Whitmeyer, Woodward, President — 99.

Mr. M. E. Lewis — Do I understand, Mr. President, that a quorum is present?

The President — A quorum is present. Mr. Lincoln will please take the chair again. There are ninety-nine members present.

Mr. Lincoln resumed the chair.

Mr. M. E. Lewis — I move that the Committee of the Whole do now rise, report progress and ask leave to sit again.

The Chairman put the question on the motion of Mr. Lewis, and it was determined in the negative.

Mr. Becker (resuming) — Mr. Chairman and gentlemen of the quorum: (Laughter.) This situation was what I contemplated when I asked that the matter be laid over until Tuesday, unless Mr. Bowers wished to be heard. It was after consultation with him and with Mr. Johnson and others that the motion was made, as he himself will state, that the matter be postponed until Tuesday, and I do not now wish to take up the time of the Convention. I know that we accomplished considerable this morning on matters of very marked importance as to the conduct of the business of the Convention. Many of the members have gone home and others desire to go home this afternoon. As it is the last Saturday that they will have to themselves, it is no more than right that they should be allowed to go this afternoon, and I agree with them heartily. For that reason, Mr. Chairman, I now move that the committee rise, report progress and ask leave to sit again.

Mr. Cochran — Mr. Chairman, that motion has already been twice disposed of in this committee, and is not in order until some other business is transacted. If we are here in Committee of the Whole, let us be a Committee of the Whole and do something. If there is no debate to be offered, let them move to strike out or to adopt some section, and we will come to a vote.

Mr. Becker — I would state to the Chair that I did make some remarks, which, I presume, would be, perhaps, by anybody else but the gentleman, regarded as business.

The Chairman then put the question on Mr. Becker's motion to

rise, report progress and ask leave to sit again, and it was determined in the negative.

Mr. McClure — A question of information. How did the gentleman from Buffalo vote in the caucus as to doing business in this Convention — staying here and doing business, or not doing it?

Mr. Becker — I did not hear the gentleman's remarks. I was stating to the Convention the reason why the power of appointment, as well as the power of removal, was proposed to be vested in the Governor. I had already said that it was practically conceded that the power of appointment in the first instance should be in the mayor, and continue to be there and nowhere else, and that it was generally conceded that the Governor should have the power to remove; and at the time the call of the House was ordered I was saying — or it was my intention to say — what earthly use would be the vesing of this power of removal in the Governor, if he did not have the power to fill the vacancy thus created? Because the mayor, if he had not already acted in the matter, he being the appointing power and practically controlling the action of his subordinates, would immediately be likely to reappoint the same man, or one equally obnoxious, if it became necessary to resort to the extreme measure of going to the Governor and exercising the power of removal. That is all it seems necessary for me to say in justification or explanation of this provision of the article. The power of appointment should be coupled with the power of removal in the Governor, during the term of the then mayor, so that the mayor could not reappoint the same man or one equally objectionable.

Passing that branch of the bill, which it seems to me is now sufficiently explained, I want to say just a very few words about the provision of the bill in reference to the separation of municipal or city elections from State and national elections. It seems to me that that is one of the most important features of the bill. From the time that it was first suggested that this Convention should take up the subject of home rule for cities, there has been discussion of that matter in the public press and amongst our people. I have watched very carefully the trend of that discussion and I think I am speaking within bounds if I say that there is not a single responsible newspaper in the State of New York that has spoken at all upon that subject that has not said that it was wise and proper and desirable that city elections should be separated from State and national elections. And while I do not concede that all the wisdom of the people of this State is lodged in the press, I do say, what

everyone, I think, will agree with, that the press of this State reflects in a large measure the conscience and the opinion of the people, where the press is practically unanimous, as it is upon this question. Now, it may be, in trying to effect that purpose, that the language used by the committee may seem a little difficult of construction. I found it quite difficult in construing it, and the amendment as it was first drawn was more specific. It spoke of the dates at which the terms of office of the different officers should expire; but later on it was thought better, and a very careful draft was made for that purpose, to insert general language in the bill; and it is the opinion of the committee that with possibly one exception, which may relate to the time of the expiration of the term of office of one of the mayors of a city of this State, as to which there will probably have to be an amendment, a verbal amendment merely, changing it from the 31st day of December to the 1st of January, so as to cover the point that an office which expires at noon on the 1st of January will be affected by its provisions — it seems to the committee after careful consideration, in which my friends, Mr. Hotchkiss and other gentlemen participated, that that fairly well expresses the purpose of the amendment. I think I am right in making that statement, am I not, Mr. Hotchkiss, as to the separation of elections?

Mr. Hotchkiss — Yes.

Mr. Becker — It is a very difficult section to draw, and the committee will be very glad, I know, to have some of the acute legal minds of this Convention, which have been in the habit of splitting hairs on every question which has come up in Committee of the Whole, to take hold of this, to see if they can formulate any amendments which will more correctly and succinctly and clearly express the purpose, which is simply to separate the election of all city officers from the election of State and national officers, through the medium of having those respective elections in the odd-numbered years. Now, everybody, as I say, in and out of the committee, so far as I have heard, including the press of this State, are in favor of that proposed provision, giving it a trial, seeing what it will do. Like a great many others, I do not believe that it will be a panacea for all our ills. I think no one has claimed that; but it is thought that there will be less opportunity for dickers and deals between politicians, and that if we separate these elections the minds of the citizens can be absolutely concentrated on the proposition that there are to be such and such municipal officers voted for at a given election and no one else.

These, gentlemen, are all the remarks that I desire to make at this late hour on this day on the subject of this bill. While the

committee concede that their work has not been perfect — very far from perfect — they have labored in season and out of season, for hours and hours, endeavoring to perfect it; they have had advice on matters other than that of police and elections, and the assistance of all of the gentlemen on the committee through a very considerable time, that is, the minds of the whole committee have been concentrated on those questions; and while it is not claimed by those who signed the majority report that the minority concurred in all of the provisions, they did assist, and assisted very materially, in endeavoring to perfect the expression, and I am at a great loss now to understand why there should be criticism of it.

Mr. Nicoll — Was the omission to require the Legislature to pass general laws intentional?

Mr. Becker — I do not understand that there is any such omission. If there was I think I may say — I speak for myself now only, and possibly from what I have heard one or two of the other members of the committee say — it was very far from being intentional.

Mr. Nicoll — Now, let me call your attention to the first section of article 1. That provides that the Legislature shall pass general laws for incorporating new cities. Now, section 3 is the only part of the amendment which relates to the passage of other general laws. That provides that, except as permitted by section 4, the Legislature shall not pass any laws except general laws or a general city law. What I want to know is whether or not you intended to leave it to the decision of the Legislature to pass such general laws and to confine it to their discretion, or whether or not your omission to make it mandatory on the Legislature was intentional?

Mr. Becker — I did not understand the gentleman's question. Under this amendment, cities are divided into two classes, and the provision is that general laws shall be passed and general city laws ——

Mr. Nicoll — May be passed?

Mr. Becker — General laws shall be passed as to new cities; general city laws may be passed as to cities of a class, as I understand it. Am I not right, Mr. Johnson?

Mr. J. Johnson — Yes.

Mr. Becker — Consequently a general city law could be passed for any city in a class, but it must be general to all.

Mr. Nicoll — It would seem that there is no provision compelling

the Legislature to pass either general laws as to existing cities or general city laws.

Mr. Becker — They have that power now.

Mr. Nicoll — They have the power, but you make nothing mandatory about it.

Mr. Becker — Why should we?

Mr. Nicoll — Isn't that the whole question?

Mr. Becker — I think not.

Mr. Nicoll — Is not the whole question of home rule really a question of existing cities and not a question of new cities, and should not there be a mandate to the Legislature to pass general laws, or general city laws, if you choose to call them so, as to cities that are now incorporated?

Mr. Becker — All cities, whether now incorporated or hereafter to be incorporated, as I understand the purpose of this amendment, are to be divided into two classes. As to cities of any class, a general city law, applicable to cities of that class, may be passed, and shall be passed, as I understand it ——

Mr. Nicoll — That is not made mandatory by your article.

Mr. Becker — Well, I think that that will be the practical working of it though. Where you specify that laws relating to certain specific subjects shall be special laws, why would not all other laws relating to the other subjects, and relating to cities of a class, be general laws? And why would it not be obligatory upon the Legislature, in passing a law in regard to cities of any particular class, to pass a general city law relating to cities of that class, and no other? That, at least, was my understanding of the amendment. If I am in error about it, I presume it can be corrected.

Mr. Griswold — Will the gentleman allow me to ask a question for information? I understand their proposition to be to invest the power of removal and the appointing power in the same officer — in the Governor.

Mr. Becker — No; I have already explained that very fully. If the gentleman had been here I think he would have heard it. The power of appointment is now by law in the mayor. We continue that power ——

Mr. Griswold — The power of removal is vested in the Governor; the power of appointment, in the mayor?

Mr. Becker — It is now elective. The charters can provide for the power of removal in the mayor if they wish, as well as in the

Governor. Nothing to prevent it in the existing law. The charter of the city of New York now provides that the police commissioners of the city may be removed by the mayor, by and with the approval of the Governor. That is the law to-day. We do not change that; don't pretend to change it. But we do say that the Governor may also remove on charges; and where he does see fit to exercise that power after the mayor has perhaps neglected to do it, then, for fear that the mayor may turn around and appoint the same man, or one equally obnoxious, we vest the power of appointment in the Governor, limiting the term of the man thus appointed to the term of the mayor then in office; so that when a new mayor comes in, he will resume his authority and power of appointment.

Mr. Griswold — Still, you leave the power of removal in the Governor.

Mr. Becker — Only after it is failed to be exercised by the mayor.

Mr. Griswold — But still that power would remain ——

Mr. Becker — He would have the power, if he removed, to appoint, during only the term of the mayor then in office.

Mr. Griswold — The only objection that suggests itself to me is ——

Mr. Dean — I submit that if these gentlemen desire to have a private discussion, they hire a hall.

The Chairman — Possibly that point is well taken.

Mr. Griswold — I only wanted to ask a question for information ——

The Chairman — Mr. Griswold was recognized for the purpose of asking a question, and it has resulted in a colloquy, and Mr. Becker has the floor.

Mr. Griswold — I wanted merely to ask as to whether that would leave the power of appointment so that the Governor, who is of an opposite political party, might remove the officer and immediately appoint one of his own selection, also belonging to the opposite party.

Mr. Becker — The gentleman asks if it would be possible for a Governor of opposite political faith from the mayor and the people, to exercise the power of removal and appointment. I say, of course it would, but the provision is that a police commissioner can only be removed upon charges preferred, and after a hearing; and the same power exists to-day in cases where the Governor removes a sheriff or a district attorney, who are peace officers.

Within the last sixty days the Governor of this State has removed the sheriff of Erie county and appointed his successor. And if they have that power as to these peace officers of counties, why should not they have the power as to the peace officers of cities, in which most of the infractions and breaches of the peace occur?

Mr. Deady — May I ask the gentleman a question? Has anybody else the power to remove a sheriff of a county except the Governor?

Mr. Becker — I will answer the gentleman that, as I understand the Constitution, nobody else has the power to remove the sheriff; and I will also add that the sheriff is an elective officer.

Mr. Deady — And a peace officer.

Mr. Becker — You may call him so, but he is elected by the people of a locality. The head of a police department is an appointive officer.

Mr. M. E. Lewis — I desire to move now that the committee rise, report progress and ask leave to sit again. I make this motion at this time because a large number of delegates living in the western part of the State, if this debate and argument are protracted beyond a quarter of one, will be unable to catch the one o'clock train. That being so, it will be necessary for them to remain here until evening.

Mr. Becker — I most cheerfully give way for this motion. I hope it will prevail. I think, in view of the fact that this is the last Saturday that members will have at home and have a chance to adjust their business, this Convention should now adjourn; should give them an opportunity to go home this afternoon and attend to their private affairs, that they can be here next week.

The Chairman put the question on the motion of Mr. Lewis that the committee rise, report progress and ask leave to sit again, and it was determined in the affirmative.

President Choate resumed the chair.

Chairman Lincoln — Mr. President, the Committee of the Whole have had under consideration the report of the Committee on Cities, have made some progress therein, and now rise, report progress, and ask leave to sit again.

The President put the question on agreeing to the report of the Committee of the Whole, and it was determined in the affirmative.

The President — Mr. Maybee, of Sullivan, asks leave of absence for the day.

The President put the question on the request of Mr. Maybee, and it was determined in the affirmative and leave duly granted.

Mr. M. E. Lewis — Mr. President, I move that the consideration of the report of the Cities Committee be made a special order for Tuesday morning immediately after the reading of the Journal. I make this motion for the reason that the Convention is now in the midst of the debate upon that proposition, and it seems to me that before any other subject is taken up it would be well to complete the consideration of this question. If we are permitted to have Tuesday for the consideration of this subject, I think the matter can be completed at the end of that time.

Mr. Hawley — I desire to offer an amendment that it be made a special order for Tuesday, so that if there is any routine business that comes before the Convention, it can be disposed of in the morning, and so that when we come to the special orders this shall have precedence.

The President — Will Mr. Lewis accept the amendment?

Mr. Lewis — I understand the amendment is simply that it shall take precedence after all routine business is finished?

Mr. Hawley — Yes.

Mr. Lewis — I will accept that amendment.

Mr. Kerwin — Before putting this question on making the report of the Committee on Cities a special order for Tuesday, we ought to turn and look at the clock; turn and look at this chamber to-day, then turn and look at our work this morning. What was it? Three sessions a day, for six days in a week! Here we are, not on a Saturday, but on a Friday, and, if the point was raised now, this motion could not be carried. We have not a quorum. Mr. President, before putting the motion I raise the point that there is not a quorum present. Let them go home. I raise the point of no quorum.

Mr. M. E. Lewis — I move that the Convention do now adjourn.

Mr. Holls — Was a resolution not passed yesterday that the report of the Committee on Cities be put at the head of the calendar on general orders?

The President — For that day.

The President then put the question on the motion of Mr. Lewis to adjourn, and it was determined in the affirmative.

Tuesday, August 14, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber in the Capitol, at Albany, N. Y., August 14, 1894, at ten o'clock in the morning.

President Choate called the Convention to order.

The Rev. A. T. Johnson offered prayer.

Mr. Acker moved that the reading of the Journal of August tenth be dispensed with.

The President put the question on the motion of Mr. Acker, and it was determined in the affirmative.

The President — Before general orders are taken up, are there any special orders for this morning?

Mr. M. E. Lewis — Mr. President, I believe the pending question at the time of the adjournment last Friday was the motion to make the report of the Cities Committee a special order for this morning. That motion was not acted upon, owing to the lack of a quorum.

The President — Does Mr. Lewis make a motion?

Mr. Lewis — Mr. President, I call for the pending question.

Mr. Ackerly — Mr. President, Mr. Manley is detained away from the Convention upon some matters of business, and desires to be excused from attendance at this morning and this afternoon sessions.

The President put the question on the request of Mr. Manley to be excused from attendance, and he was so excused.

Mr. Dean — Mr. President, is a petition or a memorial in order at this time?

The President — Not now; the pending motion is that which was left undetermined before the adjournment on Friday last.

Mr. Marks — Mr. President, I have received a telegram from Mr. J. I. Green, stating that owing to illness in his family he will be unable to attend the Convention until Thursday, and asking to be excused until that time.

The President put the question on the request of Mr. Green to be excused from attendance, and he was so excused.

Mr. Chipp — Mr. President, on Friday I asked leave to be excused from attendance upon the Convention during this week.

Circumstances are so changed that I am able to be here, and I, therefore, withdraw my request to be excused from attendance.

The President — The question is upon the motion that was pending at the time of the adjournment upon Friday, to make the report of the Cities Committee a special order for this morning. It requires a two-thirds vote.

Mr. J. Johnson — Mr. President, the debate was cut off in the middle of the discussion, and, therefore, the Committee on Cities think it eminently proper that it should be resumed this morning, and not left in an incomplete state. That is the reason the motion is made.

The President put the question on the motion to make the report of the Cities Committee a special order for this time, and it was determined in the affirmative.

Mr. M. E. Lewis — Mr. President, I move that the Convention now go into Committee of the Whole on the report of the Committee on Cities.

The President put the question on the motion of Mr. Lewis, and it was determined in the affirmative; whereupon the Convention resolved itself into Committee of the Whole, and Mr. Lincoln took the chair.

The Chairman — The Convention is in Committee of the Whole for the consideration of general order No. 13, the report of the Committee on Cities, last printed No. 409, and the last thing on the calendar this morning. What is the pleasure of the committee?

Mr. J. Johnson — Mr. Chairman, I do not desire to speak now. I supposed that there were other gentlemen who desired to be heard. If not, I suppose I should be granted the privilege of closing the debate.

Mr. Hotchkiss — Mr. Chairman, although I think that, technically, the form of the motion which I offered was for the substitution of the measure which I proposed for the entire measure proposed by the Cities Committee, I at the same time said that I proposed subsequently to offer a separate substitute for section 2. In order that my motion may be technically correct, I wish to amend its form simply, and to have the record show that my substitute is offered for all of the sections of the measure proposed by the Cities Committee, except section 2, which affects the separation of elections.

Mr. Dean — Mr. Chairman, after several days of rigid mental discipline, I have reached a state of mind where I can discuss in all

seriousness the absurdities of the report of the Committee on Cities. It takes a good deal of effort, even for one whose lines have been cast in the sombre tints of life, to attain this mental attitude, but I have accomplished the feat, and I now feel that I could stand a civil service examination in gravity before my distinguished critics of last week, and be marked 100 per cent. Having attained this condition, I desire, in all earnestness, to call the attention of the Convention to article 1 of this report. It says that "every city shall have a common council, which shall consist of one or two bodies," and that this common council shall be "elected with or without cumulative voting, or proportionate or minority representation, and with such legislative power as may be provided by law." I shall make no criticism upon the obvious absurdity of this language, because I have no desire to waste time in mere captiousness; but I do want to say that this provision violates every well-tried principle of popular government by majorities, and that, in my judgment, it is a fatal defect in the instrument. In the first place, the provision that "every city shall have a council of one or two bodies" is legislative. A Constitution should declare either that the council should consist of one body or of two bodies, or it should leave the question entirely to the Legislature. The provision, as it stands in the report of the committee, does not change the attitude of the Legislature to municipal governments in the slightest degree, and is simply so much verbiage. The Constitution does not confer powers; it limits them. Except specifically limited, the powers of the Legislature are absolute, and mere declaratory provisions have no proper place in the fundamental law of the State. This criticism applies to the declaration that these bodies may be chosen "with or without cumulative voting." But, we are told that the Court of Appeals has decided that a municipality cannot be authorized to elect its members of the common council by cumulative voting, because it conflicts with the provision of the Constitution that all qualified male citizens shall be entitled to vote "for all officers that now are or hereafter may be elective by the people." If this is true, then we should find ourselves in the position of introducing a conflict into the Constitution, for, I understand that all of these schemes for cumulative voting, or proportional or minority representation, must, of necessity, curtail the liberty of the voter in respect to some of the officers to be elected. All of these matters are, however, incidental. The real question to be decided, and I am ready to meet the issue, is whether we want to introduce into the Constitution of this State a provision which is certain to entail no end of experimental legislation, and which can have no

other result than the undermining of good government. In a legislative body there can be but two parties. Third parties may exist in name, but the legislation is determined by the votes for and against any given measure, and this is not better nor worse, because it is the result of the votes cast by one party or another. The minority has no right to representation. It is the constant effort of the minority to become the majority, which affords a guarantee of the best results in popular government. If we take this conserving influence out of the calculation by giving it representation in our legislative bodies, we have destroyed our greatest safeguard; we have lulled the masses into a fancied security; we have taken away from them the incentive to political activity and watchfulness and have laid the foundation for all manner of abuses.

The vast majority of matters disposed of by legislative bodies are free from partisanship, and the idea that we are not represented simply because the individual chosen in our district differs from us in the mere matter of a party name, is an absurdity. Flagrant and continual abuses, even in the city of New York, must result in the majority coming to the minority, if we do not so complicate the machinery of municipal government that the people cannot concentrate their energies upon the abuse. No political reformer has ever yet existed who has been able to devise a complication which did not operate to strengthen the machine element in politics. The men who are shrewd enough to become leaders in politics are certain to familiarize themselves with details much sooner than the masses, and knowledge is power in politics, as well as in any other walk of life. The simpler, therefore, the machinery of government, the more certain are we to have the intelligent co-operation of the masses in the direction of honesty and competency in public affairs. The experience of more than a hundred years testifies to the efficacy of responsible representative government by majorities. The most conspicuous failure in municipal government is conceded to be that of the city of New York, and this is the city in which the most radical departures have been made from this well-tried principle. It is now proposed to remedy this evil by opening the way to still further transgressions upon this principle, and I appeal to the patriotic intelligence of this Convention to set its face resolutely against this proposition. It is based upon a false theory of government; it proceeds upon the assumption that the majority of the people cannot be trusted to govern themselves, and its logical consummation is absolutism or anarchy. But, it is contended, this is simply permissive, that the Legislature need not act upon this proposition, unless it wants to, or unless the people want it. That,

to my mind, is the strongest possible objection. I am not willing to turn over to the Legislature the authority to experiment in the domain of principles. If the rule of majorities is right, and I believe it is, then the Legislature should be inhibited the power to pass any law violating that principle, even though the people of a given municipality — in the feverish desire for change — should demand it. There are matters in which it is proper to protect society, even from itself, and, I believe, this to be one of them. This Convention would not think of adopting this principle of minority representation for the State Legislature; such a scheme could not command the votes of a hundred thousand people in this State. Why, then, should we give to the Legislature the authority to try the experiments upon municipalities? If we give this authority to the Legislature, it would be construed by every theorist as an indorsement of the idea, and the Legislature, answering to unreasoning public clamor, will be found inducting this pernicious system into the municipalities of this State. The time to stop a wrong is just before it is commenced, and the time to stop this so-called reform is right here and now.

Mr. Mulqueen — Mr. Chairman, the question of home rule, which, evidently, is the object of all the members of this Convention to give to cities, is one upon which men may honestly differ. The measure proposed by the Committee on Cities I do not believe they ever hoped to have passed by this Convention. It is a measure which might well be called a bill to deprive cities of home rule, not a bill to grant them home rule.

The first section says that "every city shall have a mayor, who shall be its chief executive, to hold office for two years; and a common council, with two bodies, to be elected with or without cumulative voting, or proportionate or minority representation, and with such municipal legislative powers as may be provided by law."

Now, Mr. Chairman, I believe that no city should hereafter be incorporated by any special law. I believe that general laws should be passed for incorporating new cities; and I also believe that if some good feature should be found in that general law for that particular city, then provision ought to be made which would give other cities already organized the right to come in and take the benefit of these general laws.

Now, in my judgment, we could meet that by a very simple provision; a provision which would enact that no city shall hereafter be incorporated by a special law. The Legislature shall enact general laws for incorporating new cities. Cities heretofore incor-

porated may became organized under such general law whenever the majority of the electors of any such city, voting thereon at any general or special election, shall vote in favor thereof; and such general laws shall make provision whereby the question of the organization of any such city under the general law applicable thereto may, from time to time, be submitted to the electors thereof.

This is substantially, and, perhaps, in shorter form, the proposition submitted by the committee of twenty-one.

Now, section 2 of the bill says — and I would have a second section, Mr. Chairman; I would break up the first section of the bill and have the second section read as follows: "Every city shall have a mayor, who shall be its chief executive, with such powers as may be provided by law; his term of office shall be two years, except that in cases where the mayor shall be elected in the year 1894, the term of office shall only be for one year, in order that all terms might terminate in the odd years as hereinafter provided."

I understand, Mr. Chairman, that the effect of the bill that has been reported by the committee, if carried into operation, would be to extend the present mayor's term in the city of New York one year, without an election by the people. We, of the city of New York, want that question submitted to the people, and we do not want to come in here by a defective bill and have the term of office of the chief executive of the city of New York extended one year. Therefore, in the substitute which I shall propose, Mr. Chairman, I say honestly and fairly, right on the face of the bill, we want the mayor elected in 1894 for one year, to the end that hereafter all elections shall be in odd years, and then we have it for two years. Then we secure for all times separate municipal elections.

"Every city shall have a common council." So say we all of us. But the committee's report would provide that we should have minority representation in common councils. I am opposed to that. I believe in the doctrine that the majority should rule. I believe that if this Convention gives to the people separate elections, and then gives to the men elected at those elections great power, an inducement to great men to come in and be part of the municipality, you will not need minority representation, because, as the New York Times said in an editorial the other day, why, then, the best men of the State will seek office, and both parties will be compelled to put the best men in office, and then, having the power to enact laws for the government of the municipality, you would not need minority representation.

I believe that it is un-democratic and un-American to say that we should have minority representation in common councils. It

is the right of the people to govern, and the right of the majority to govern.

Now, as to the second section. "All elections of city officers in all cities, and of county officers in the counties of New York and Kings, and in all counties whose boundaries are the same as those of a city, except to fill vacancies, shall be on the Tuesday succeeding the first Monday in November in an odd-numbered year, and the term of every such officer shall expire," etc., the same as the report of the committee. The term "city officers" is the same as in the report. "The Legislature shall enact laws regulating the terms of all such officers now elected or to be elected, so that the terms of office of such officers shall expire in an odd-numbered year."

Why should we put in our Constitution when this or that officer's term shall expire? That is a detail. We state the principle that you must have separate municipal elections, and we say to the Legislature you are bound by this principle; now provide for the carrying of it out. And, if one officer's term of office is two years, and that must be changed to one, and another officer's term of office is for three years and that should be changed to two, let the Legislature arrange those details.

Now, without permission, Mr. Chairman, I would adopt the very wise suggestion submitted by my learned friend from Kings (Mr. Jenks) in the classification of cities. It is not fair, as this bill proposes, that you should simply have two classes, one all above fifty thousand, and the other all below it. I believe we should have three classes, the first class to consist of cities of 250,000 population and upwards, the second class of from 50,000 to 250,000, and the third class to consist of all other cities. Now, the report of the committee has, in section 3, line 19, "laws relating to all cities of the same class and laws relating to all cities of one class and one or more cities of the other class are general city laws." And then they provide — I cannot lay my hand on it now — that the Legislature may pass a general city law for one class of cities or for another class of cities, and one or more cities. In other words, that the Legislature might pass a law regulating cities under 50,000, and also affecting the city of New York or the city of Brooklyn. I do not believe that that is the intention of the committee, because that would be the end of home rule. Now, I say, to get rid of that, laws relating to all cities of the same class, are general city laws, and no laws shall be enacted concerning cities, except general city laws.

Now, as to section 5 — section 3 in the bill is section 5 in the substitute, which I shall offer — "The Legislature shall not pass

any law relating to cities as to any of the following subjects," and now I have adopted the suggestions of the committee and added a few others. I say "the Legislature shall not pass any laws relating to cities on any of the following subjects: Streets and highways, as in the report; parks and public places, as in the report; and, third, the appointment, equipment, compensation, promotion or removal of police officers in every grade and rank. I say, fourth, education; fifth, charities and corrections; then the same as the committee, on to the eleventh; and, as to the eleventh, they say: "Vacating, reducing or postponing any tax," and I say: "Levying and collecting," as well. It is the duty of the municipality to levy and collect the taxes, and it should have the sole control over the same, just as much as it should have the sole power to vacate, reduce or postpone.

Now, as to section 6 — and I think it is section 5 in the bill — as to police. I say that the sole power to appoint or remove a commissioner of police or other head of the police force of any city shall be vested in the mayor of such city. He is the representative of the city. He is the one who is directly responsible to the people for the management thereof. You cannot have any home rule, if you take from it all that makes it valuable, and that is direct responsibility of the municipal authorities to the people to be affected thereby. And, although in the bill it was stated that no other city officer shall ever have the right to name a police commissioner, it is silent upon the question whether the Legislature would not have the right to give the Governor the power to appoint, even in the first instance.

Mr. J. Johnson — Mr. Chairman, may I interrupt the gentleman? The matter he refers to is fully and amply and certainly provided against by section 2 of article 10 of the present Constitution, which remains inviolate and unaffected by this provision.

Mr. Mulqueen — I am glad to hear that, Mr. Chairman; but at the same time we may as well get this bill, which is called home rule for cities, absolutely correct now. It may be supplied by another provision of the Constitution, but let us have it here also, if we believe in home rule. If we want to give the municipal authorities the right to govern themselves, let us say it right in this bill, which is called a bill to give cities home rule.

Now, then, the mayor of any city may remove the commissioners for cause upon charges made by or preferred before him. A copy of such charges shall be served upon him, etc., and upon such removal he shall appoint.

Now, it seems to me that a measure of home rule should not require any labored argument on behalf of the able men that made up the measure of the Cities Committee. My friend, Mr. Johnson, from Kings, and the gentleman from Erie (Mr. Becker), trained lawyers, would have easy sailing if they wanted to tell this Convention just what they meant. They labored for two hours and a half in one case, and the Lord knows how long in the other — because the gentleman has not given up the floor yet — to explain what this bill did not mean. If they intended to give us home rule, it is a simple every-day proposition. In the first place, is it for any municipal purpose? Should the cities have control of the police? They say no, it is part of the police power of the city. Why no? We are not in doubt as to the meaning of the police power of the city. The Court of Appeals has defined just what police power means. It has held that the Legislature has the inherent right to enact laws to protect the life, property and health of the city, but it nowhere says that the police power shall be extended to the removal of a constable or of a police officer. We say now, let the Legislature pass just such laws as they please and which they deem wise for the protection of the life, property and the health of the city, but leave the management and the carrying out thereof to the municipal authorities.

Now, I am not alone in this Convention, Mr. Chairman; members from the city of New York of both parties will, I believe, cheerfully admit that, in season and out of season, no paper in the city of New York has fought harder for home rule and reform in municipal administration than the New York Times. It is disinterested in this matter. It looks upon the proceedings here only as to how they will affect municipalities; and, in writing upon this particular subject, it says, criticising the letter of Mayor Low:

"His argument about the police power of the State is aside from the question. The State exercises its police power to the full in the enactment of laws and in provisions for their execution, the police departments of cities being of its creation. The powers of such a department are derived from the State and defined in the laws. The question is whether it is better to have the head of the police department, whose functions have such a close relation to the protection of the people and the property exclusively within its jurisdiction, responsible to those people through authorities of their own choice, or to permit the executive of the State to intervene and take control of it virtually at will. The argument in support of the Governor's power of removal and appointment would justify a direct and continuous control, if it is sound at all, and, if it

has application to the police department, it could be extended by the same reasoning to the fire department, or the dock department, or any other branch of city government."

But, says the chairman of the committee, the police are merely peace officers. They are the same as your sheriffs and your district attorneys. Why, sheriffs and district attorneys are county officers. Nay, some go further and say they are State officers, and it is only right that the Governor should have the power to remove and appoint to fill the vacancy. But how absurd it would be to say that in some counties which have one city and other outlying territories, or, perhaps, some have more than one city in a county, to say that the mayor of any particular city should remove a sheriff or should remove a district attorney. The power must be somewhere, and it rests, as it properly should rest, in the Governor. But with municipalities they are matters altogether for the citizens of the particular city. They are interested in the management of the police, just as much as in the management of the fire department. If the mayor, the head of the city, should refuse to do his duty, then he is directly responsible to the people. Now, just imagine, gentlemen, what that means. Here we talk of home rule for cities, and yet the next mayor to be elected, if you please, might, on the first day of January, appoint four police commissioners, and on the second day of January charges preferred by anyone might be made to the Governor in the morning, a hearing given in the afternoon, that night removed and on the following day the Governor would appoint the successors of those police commissioners. For how long? Until the next general election? No, not at all, but until the term of office of the mayor of the city had expired. Now, this may be a very nice thing, to control cities from Albany, but it is not home rule. You may call it that, if you please; a check on cities. A bill to deprive cities of home rule. All right. You have the power to pass such a law, but you must not go to the people and say, here you have been asking for years for home rule and this is what we mean, to take from you the control of your municipal affairs and give it to the officials in Albany. Now, then, some gentlemen say you cannot trust the municipalities in times of great emergency. You must have a strong central government. You must have some one in Albany to place his hand on the officers of the city, or otherwise municipal government is a failure. I say, Mr. Chairman, if you admit that, then you admit that our government is a failure. I take my stand along with the common people of the land. I believe that the common people of the municipalities can be trusted with municipal government. I say it is wrong to

say that in times of great emergency the common people, or the representatives of the common people, if you please, would not be great enough to attend to the duties intrusted to them; therefore, we must take that power from your municipality and leave it with the Governor.

Now, if we are going to make a Constitution, based on actual experience, as to whether the police force of the city of New York, if you please, is able to cope with great emergencies, then you have only got to go back in memory to all the strikes since 1872. We have had many strikes in the city of New York, but we have never called out the militia on any occasion to quell those strikes. The municipal authorities, with the aid of the police officers, have been able to keep the people right, and to compel obedience to the laws.

But it is said that this would be secession. Give to the municipalities local self-government; give to the cities of the State of New York the right to govern themselves, then you give them the right to secede from the State. These are strange words to hear in the year 1894. To say that this State to-day lives by virtue of law is something I cannot agree to. I believe to-day that the State of New York is loved and revered by the sixty-one per cent of our population who live in cities; and, to say that by extending home rule to these cities that will change the nature of sixty-one per cent of your population, and that they would become secessionists and want to secede from the State, is to make a statement that I claim will not bear investigation. I believe the people of the cities glory in the prosperity of the State; want to see it just as it is; want to see it march on in its career and to remain for all time the Empire State of the Union.

Now, another section, Mr. Chairman, is for the purpose of securing fair elections. Everyone here, every man in the State, be he Democrat or Republican, believes in fair and honest elections. We want fair elections and we want an honest count of the vote. Now, what is to be done? It is not necessary for us to do anything more than to state the principle. Let us say that throughout the State there shall be equal majority and minority representation, and no laws shall be passed impairing such equality of representation. Now, it may not be the intention of the committee, but the impression will go out among the people, if we pass the bill as submitted by the committee, that it is simply a grab for patronage. We do not want that, and it is not the intention of the committee. The committee wants to secure fair and honest elections, and we say God speed, and we will help you all we can. But we say you may

safely leave to the Legislature the details of carrying out your scheme.

Now, I have stricken out of my substitute all of section 4, which would make the mayors of cities deputy Governors, which would give them the right on certain occasions to veto legislation. I believe that if we are going to give power to the municipalities, that it should be absolute. What the municipalities want is "Hands off at Albany." They want to be divorced from Albany legislation; and in this connection I appreciate fully the difficulty that any member of this Convention has in opposing any amendment to a bill when proposed by the President of the Convention. His absolute fairness to all members of this Convention has won the hearts and the affections of the members of the Convention. The first thing in order to secure legislation in any body of men is to first win their hearts and affections, and, if you do that, then whatever you propose is apt to be carried, because of that reputation. Now, then, he has proposed, as an amendment, that the municipality shall have control over certain defined matters; but that the Legislature may, with the consent of the mayor, pass any law relating to those particular subjects that in the third section you leave to municipalities. If the mayor should refuse his consent, then three-fifths of the Legislature may pass a law affecting those particular subjects. Now, that is all very nice, but it is not home rule. You may call it, if you will, a check upon New York city, or a check upon the cities of this State, but it is not home rule, and, if you intend to give the people of the cities home rule, give it to them absolutely.

Now, another suggestion that I make, and it is taken largely from the suggestions offered by Mr. Jenks the other day: nothing in this article contained shall limit or affect the power of the Legislature to consolidate contiguous cities or annex contiguous territory to any city, or to make or provide for the making of a charter of any city created by such consolidation; but no such law shall be passed until a majority of the electors of each city or territory to be affected thereby have decided in favor of such consolidation. The Legislature may make provision whereby the question of the consolidation of contiguous cities or the annexation of contiguous territory to any city may, from time to time, be submitted to the electors thereof.

Now, it seems to me that that speaks for itself. It would be manifestly unfair to leave with the Legislature the power to say at any particular time that two cities shall be consolidated, even if the people of neither city wanted it. Let the people of both cities

say whether they want to be consolidated or not, and, if a majority of the people in each city shall vote in favor of consolidation, then let the Legislature consolidate them under these general laws.

Now, Mr. Chairman, in conclusion, I desire to thank the Convention for its attention. I hope that this Convention will, contrary to the general expectation, pass some bill which will give home rule to cities. It is a great question and I think it should be decided. It should be above party; and, if the members of this Convention, irrespective of party, rise to the occasion and give to the cities of the State the relief they ask, then I believe we will have done a great work for the municipalities of the State.

Mr. Chairman, I ask leave to offer this substitute —

Mr. C. B. McLaughlin — Mr. Chairman, will the gentleman permit me to ask him a question? As I understood the gentleman from New York, speaking of section 3, he specified, among the subjects upon which there should be no control exercised by the Legislature, State education?

Mr. Mulqueen — Yes, sir.

Mr. McLaughlin — Does the gentleman mean by that that he would exempt the city of New York from all of the provisions now made by the State, in reference to the education of the children of other portions of the State?

Mr. Mulqueen — No, sir; I would not; neither would I interfere with the present system of the Superintendent of Education. But in the management of the erection of school buildings, in the appointment and compensation of teachers, I think another rule should apply.

Mr. McLaughlin — One more question, please. Under the general statutes of the State, as I now understand them, the State at present has control of school buildings to a certain extent, especially with reference to their sanitary condition, etc. Would the gentleman have the city of New York exempted from the provisions of that statute?

Mr. Mulqueen — Mr. Chairman, I call the attention of the gentleman to the substitute which I have offered. By reading that he will see that all that matter is left with the State.

Mr. Francis — Mr. President, criticism is useful, but an agency of usefulness may be exercised to the excess of perversion. Technicalities comprise elements important for the elucidation of a subject or proposed law as to meaning and intent. But technicalities may be, often are, ingenious inventions to confuse and mislead. After all,

plain words, which the common mind may understand, concise statements, clean-cut and simple, are the only safe guide to accurate conclusions. The juggling with words may be an artifice for stringing out glittering generalities to capitivate the imagination, and so make for eccentric and not infrequently injurious results.

In respect of all this, my generalization resolves itself into this: Common sense, the calm exercise of judgment, as it is brought to bear in dealing with business problems that daily confront us, is the practical, potential force that should have a dominating expression here. Such is the spirit with which we must address ourselves to the work of seeking a solution of one of the most vexed and complicated problems of our time — that of wise, safe, honest and fair municipal government. Such is the spirit which I believe controls this Convention.

With reference to the plan submitted in the form of a constitutional amendment to provide home rule for cities, the aim is to meet a difficulty that is clearly apparent to discerning and intelligent minds It is evident, that as matters now stand, the Legislature of this State is largely occupied with labors that make it a sort of higher common council for our cities. The plan proposed by the Committee on Cities would do away with this by granting to the municipalities control of certain matters purely local, to be carefully defined in the fundamental law. At the same time the sovereignty of the State should be, must be, rigidly guarded and distinctly affirmed.

This, it seems to me, would combine with the essential principle of State supremacy a recognition of the right of communities to self-government within such limits as would be regarded as proper, reasonable and expedient. The relief given to the Legislature from an undue pressure of work, involving matters with which the majority cannot be fully familiar, would, if practicable, of itself prove a public benefaction. We might justly expect, as one of the most gratifying results, more careful deliberation upon questions affecting the general interests and welfare of the people. There would be better legislation, with more regard for economy, and fewer objectionable and hasty enactments. Many defective and ill-advised laws may be attributed to the fact that they were passed at a time when legislative attention was so absorbed with local measures as to make proper consideration of them impossible.

With reference to the provision relating to the police of cities, we have the principle of State sovereignty asserted in its most salutary form of expression. More and more, under the varying phrases of municipal growth, the police of our cities has come to be the

potential factor for good or evil government. Place its control in impartial hands, and it is an agency for pure elections, public peace and order, and the effective repression of crime. Give it over to the mastery of unprincipled and designing men, and it is prostituted to the basest partisan uses and employed to foster fraud in elections, destroy the liberties of the people and promote disorder and corruption in an ever-widening circle.

It is the duty of the State to guard the freedom, rights and property of the citizen. In no way can this be more effectually done than by retaining its grasp on the police power of cities. This is provided for in the amendment now under discussion, without unduly infringing on the home-rule prerogative of the municipality. The right to remove the head of the police in any city for cause is granted to the Governor, just as he now has the power to remove sheriffs, county clerks and district attorneys; and, as in the case of these officials, to fill vacancies for the term. Can any reason be urged against this policy which may not be used with equal force as an argument for depriving him of a power he has long enjoyed? On the other hand, would not the fact that above the police force, clothed with this authority, stands the chief executive of the State, prove a strong moral safe-guard, a legal power, in fact, against police wrong-doing?

That the State should lend its august influence to the cause of fair and pure elections is a proposition so self-evident that it needs little exposition here now. Embodied in the fundamental law, a declaration to this effect carries with it a force of solemn and majestic import. It is the voice of a free people affirming the principle that the ballot-box, the fountain of popular rule, must be kept free from pollution. Such a declaration is worthy of this great State and its enlightened and virtuous citizens. We, as their representatives, and speaking in their behalf, cannot do for them a nobler duty than to adopt this provision and submit it for their approval at the polls.

The plan proposed by the Committee on Cities goes just as far as safety to paramount public interests would warrant in conceding the principle of home rule. It imposes needed limitations; it retains the mastery of the State in absolutely essential things. It holds in check the unbridled partisanship that would make the police power subservient to its lawless behests. It prescribes the methods for assuring fair elections — an honest ballot and a truthful count. It gives home rule for cities upon the same discriminating basis as such rule is now applied in county governments by boards of supervisors. But where intolerable abuses occur, as in police mal-

administration, accountability is exacted to the sovereign power, the State. The State may yield what is safe and proper; but it must not abnegate its sovereignty to the peril of the protection of citizenship, life, liberty and property, which it is bound to maintain.

Another commendable feature of this committee's plan is the holding of municipal elections on a uniform day, so far as may be, separated by many intervening months from State and national political contests. The influence of this would be to concentrate the public thought upon good business in this relation, so repelling the passion of pernicious partisanship. A blessed thing it would be if one election we can have for the year divested of excessive party spirit and with the best citizenship going to the front in contention for honest, business-like municipal administration, such election being the only one for the year in which it is held.

The luminous exposition of the committee's plan by its chairman has had, I trust, the careful consideration of the members of this Convention. And, co-operating with him in the committee's earnest labors, I can testify to the sincere effort made for a fair and practicable solution of the very difficult problem of just government for our cities.

Mr. Emmet — Mr. President, before addressing myself briefly and, I fear, censorily, to a statement of my views on this important problem, I desire to say that I have a full appreciation of the immensity of the task undertaken by the Committee on Cities, and the difficulties which, under the most favorable circumstances, lie in the path of a satisfactory fulfillment of that task. I do not recognize it as a duty, much less as a right, of the minority of this body to undertake the consideration of the cities report in a spirit of preconceived hostility to it; nor do I believe that the individual responsibility of any member for the satisfactory outcome of our labors upon this problem are materially lessened because he is a Democrat. Most of the possibilities of municipal reform lie beyond and outside the scope of constitutional enactments. Many evils from which the dwellers in cities now suffer require experimental treatment, whose appropriate source is in the State Legislature. Many of these evils, too, are of a sort amenable to no law, because they are part of human nature itself. The Cities Committee's power for good being thus limited and their scope thus narrowed, it became an imperative duty upon the part of the majority and minority alike to aid the legitimate work of the committee as fully as possible, and assist, as far as may be, in satisfying the reasonable and proper demands for municipal reform which have been made upon it. It also became our duty to fearlessly criticise those por-

tions of the report which treat of legislative or experimental reforms, without regard to the effect of the propositions upon the party affiliations of delegates. The problem is immense enough to lift us above the realm of partisanship and to demand the fullest patriotism from all who attempt its solution.

I am opposed, sir, to the adoption of the Cities Committee's amendment in its present form, because I believe that the committee has attempted to do more than it had any right to attempt, and that in its desire to create a panacea for all municipal evils it has lost sight of those limitations to which constitutional legislation must always be subject. In the goodness of its heart, this committee has been generous, even prodigal, in its answers to the suppliants at its gates, and has, in my humble judgment, forgotten that many of the prayers to which it has given favorable attention should have been addressed to some other dispenser of reform than a Constitutional Convention. It has attempted what, among Constitution-makers, should be regarded as an unpardonable sin — the injection of experimental legislation into our organic law. Let me say that these criticisms are directed almost entirely to one feature of their work, the so-called home-rule idea, upon which I desire to speak briefly.

The pursuit by the nineteenth century statesman of that volatile and intangible thing, which has been called home rule, is, to me, one of the most curious features of modern political activity. What is home rule? I fancy it would puzzle her most ardent admirers to describe the charms of this enchantress, whose wooing has ever been attended with all the labors of Hercules and the tortures of Tantalus. About the only conceded fact about home rule is that no two people have been known to agree upon any scheme of details for its accomplishment, although, so long as it remains intangible and undefined, all are willing to subscribe to the theory embodied in this mystic phrase. As an ideal, it meets the approbation of all; but once you snatch it from the realm of untried theory, clothe it in what you believe to be its appropriate garb, attach those details which, to you, seem proper, and present it to the criticism of your fellows, instantly your conception of those magic catch-words is vilified, jeered at and spat upon, and yourself excepted, there is none so poor as to do it reverence.

I have been trained to a traditional reverence of this phrase, applied to different conditions, perhaps, but used in the exact sense in which Mr. Johnson used it, when, in printer's ink, he placed it as a caption to his proposed amendment. Yet, notwithstanding my preconceived friendliness to the idea and desire to support the

committee's conception of it, I find myself in absolute opposition to the entire portion of the cities amendment which deals with this subject.

One would suppose, from the frequency with which this phrase has been suggested as a panacea for municipal evils, that home rule was a privilege at present unknown to American cities. In my opinion it has been the predominant characteristic of our entire system of government, and is now enjoyed in as abundant measure as is consistent with the theory upon which our State governments are conducted. Cities now possess their own local legislatures, which, under ordinary circumstances, attend to all the municipal necessities within their boundaries, and enjoy the fullest liberty compatible with a strong and virile central government. It is true that, in the wisdom of the broad-minded men who constructed our present Constitution and those which preceded it, the natural right of the State at large to exercise a power of supervision over the entire State, including cities, has never yet been tampered with. But it is an absolutely false conception of the extent to which this power has been used to suppose that at any stage of our State history the Legislature has ever systematically attempted to control and direct the affairs of municipalities in opposition to the wishes of the municipalities. I do not mean to say that power to do so has not at times been misused, or that occasional sporadic outbreaks of pernicious local legislation have not caused just resentment in the communities affected. It is a matter of known history that these abuses have existed, though never continually or for a length of time. They have existed always as lone and solitary instances of abused power, and their importance has been exaggerated far beyond its real significance by contrast with local legislation of quite another sort, which has proven salutary, in fact, invaluable, on more than one occasion and to more than one locality. For one iniquitous local measure which the Legislature passes, against the protests of the citizens affected, the annals of our State can show a score of enactments whose passage has safe-guarded the interests of otherwise unprotected taxpayers, and which has resulted in the rout, horse foot and dragoons, of municipal rings, against which the good citizen possessed no effective weapon but his right to appeal to the State Legislature. Certainly, in the present condition of municipal government throughout the State, it would impress me as an act of the sheerest stupidity and political blindness to deprive dwellers in cities of this right to which they have so often successfully appealed as the one available means of dragging from the sloughs of despond communities whose energies

were paralyzed and whose power for self-protection was almost gone. As a practical expedient to insure good government, or, at least, to make its attainment possible, I believe that the right to solicit State assistance and aid is most important and should never be absolutely closed, even if the optimistic views of municipal reformers are realized, and, through the mediation of separate elections and minority representation, our city governments became instantly better.

As a theory, I think Mr. Johnson's scheme is as unsound as it would be in its practical workings. One of the most legitimate of the criticisms which have been leveled against our institutions has been against that tendency throughout the Union towards a multiplicity of practically independent law-making bodies, and the complexity and multiplicity of legislations thereby created. Indeed, one of the professed purposes of Mr. Johnson's scheme is to prevent complexity in legislation. I should suppose that in its home-rule features it tended to accentuate the evil, instead of reducing it, for it increases indefinitely the number of independent legislatures throughout the State, each of which may pass laws — some of them for communities in which the entire State is directly interested — with a free hand and no fear of interference.

It is appalling to think of the expansive effect such a system would have upon irresponsible legislation within our boundaries — of the fearful and wonderful variety in legislation it would promote. The immediate and irresistible effect of such a system would be to destroy much of the present force, vigor and integrity, with which our great sovereign State is invested. There could be no other effect if the law-making body of the State is to be stopped from possessing, and upon occasions, using the fullest power over any citizen and every locality. I believe that a great educational work has been performed during the past three months on city problems. I think I do not overestimate the extent of the educational influence of intelligent discussion and business-like consideration, when I venture the assertion that this, the most-talked of avenue of municipal reform, has lost caste of late, and that home rule, so attractive as an ideal, is commencing to be looked upon, even in the camps of its supporters, as too advanced and experimental to be incorporated into the State Constitution.

For my part, I shall never consent, with vote or voice, to the State's washing its hands of all responsibility for its great cities.

It is pleasanter for me, Mr. Chairman, to turn from this feature of the Cities Committee's report, to which I am entirely opposed, and pledge my support to that committee in their efforts to secure

the adoption of the sound, practicable and healthy reforms for which they have provided. But fear of infringing on abler speakers will not permit me to waste time in superfluous praise of features which I think are worthy of the highest praise.

Stated briefly, my idea is that the portion of the cities amendment relating to the separation of local and State elections is a reform of the wisest and most appropriate sort, perfect in theory and capable of much practical good. So apparent and self-evident are the objections to the present system of conducting our city elections that it is needless to enumerate them. It is sufficient for me to say that the language and ideas of the committee's report on this subject are entirely satisfactory to me. I am glad of an opportunity to state also that I am in entire sympathy with the theory of minority representation. While I think it would be imprudent in the present development of this theory for us to make its adoption mandatory, I am in favor of making it possible and believe that it would go far toward remedying existing evils. It is not un-democratic or un-American. It is not an infringement of majority rights, for it protects majorities, as well as minorities. Minorities, which inaugurate every great reform and plant the seed of every flower of progress, are deserving of more consideration than they sometimes receive. They are apt to be too ruthlessly overridden and their activity is too valuable a function of political economy to make it proper that it should, in any way, be curtailed. All great reforms have sprung from minorities. Cobden was a minority of one in the propagation of free-trade in England. Majorities left to themselves are too apt to forget the demands of progress and rest content with present conditions.

Minorities keep the flame of healthy progress alive and burning, and I am in favor, by securing the certainty that the minority voice will always be heard in municipal councils, of extending their opportunities for good to the fullest extent.

These, Mr. Chairman, very inadequately stated, are my views upon what this Convention may and may not, with propriety, do towards solving the municipal problem. The question is of superlative importance; it has agitated the patriotic pride of Americans for many years, for it pertains to the one weakness which has hitherto developed in our system of government. Whatever we do, we can only make a little easier the exercise of a power which communities have always possessed, but it is to be hoped that with a smoother path there will be an immediate tendency toward the creation of a local public spirit, healthy enough to take advantage of whatever we may accomplish. To its attainment we may look hopefully, yet

soberly; no overweaning confidence, yet no despair; much patience but unshaken faith, for our trust rests upon everlasting foundations. (Applause.)

Mr. Bowers — Mr. Chairman, the Convention is engaged in Committee of the Whole in the discussion of one of the most important, if not the most important, questions it has to deal with. It has discussed it, as it has every other proposition that has thus far been brought forward, on entirely non-partisan grounds, and with a desire to accomplish results that shall be most beneficial to the great cities of the State. For my own part, I intend to continue the discussion on the high plane on which the subject should be put, even though it becomes my duty to criticise, in frank and plain terms, many of the propositions that have been advanced in the report of the Committee on Cities, and then to lay before the members of this Convention, as I would were I in one of the sub-committees of the Convention, some of the difficulties under which the cities now suffer, and ask if we cannot devise some plan which shall remove, at least in part, those difficulties.

In the report which is sent by the Committee on Cities, with the proposed constitutional amendment, are numerous statements that that committee have concluded that home rule in some form should be given to the cities of the State. Had their proposed amendment, in any degree, equaled the views they expressed in the report, it must have been satisfactory to the residents of the cities of the State. Unfortunately, we are forced into the position of breaking down their report, which, I submit, does nothing of the kind, and then taking such parts of it as do deal with that subject fairly, and building up therefrom. Conceded, then, is the proposition that home rule in some form should be given to cities, but when we come to deal with such a conceded proposition as the handiwork of gentlemen who tell us on the floor of this Convention that the good people of the great cities are in a hopeless minority, we cannot expect that the result of their labors will deal with the subject as it ought to be dealt with. For, it is not true, and no man in any of the great cities can sit silent in this Convention and not deny the assertion that the good people are in the minority. I assert now that the good people in any of the great cities of the State are in quite as large a majority as the good people in any of the rural districts, and quite as capable of governing themselves. If these gentlemen could have drawn their report from some other standpoint than the standpoint of dealing with the majority of the population of the State with a restraining hand —

Mr. J. Johnson — Will the gentleman allow me to interrupt him? There is no such thought or sentiment in the report, and no such thought or sentiment adopted by the committee. As for myself, I believe they are in the vast majority.

Mr. Bowers — I am very glad to hear that statement from the chairman of the Committee on Cities. It will be recalled that on the floor of this House his apparently principal assistant in the Committee on Cities announced the proposition I have named. Assuming, then, under the denial of the chairman of the Committee on Cities, that they were not thus influenced, let us proceed to a discussion of their bill and find out how far it sustains the views expressed in their report. There are six clauses in the bill. I make no reference to the seventh, which is not material for the purposes of this discussion; and there seems to be two sections which are given up to what is called home rule. Now, let us deal with this first, and see if anything whatever is offered to the cities. In section 3 it is specified that general laws shall be passed, to apply, I presume, to all cities upon certain propositions. "Streets and highways" are No. 1. I wish to bring, at this juncture, to the attention of the Committee on Cities the fact that they will find in the second volume of the Laws of 1882 an act called the Consolidation Act of the city of New York; and now, speaking, as I must speak, in reference to the affairs of that city, with which I am most acquainted, I want to say that that act gives that city all the authority it needs as to streets and highways. No. 2 refers to "parks and public places." There is an act in the statute book giving authority, as I recall it, to the municipal authorities to lay out parks in the tenement districts, with a very large expenditure each year, and the only possible power which this confers would be the power to go into the annexed districts and buy new parks at the expenditure of millions, as to which I have no objections to the municipality going to the Legislature for authority. "Sewers and waterworks" are governed by existing laws. There is no better law that could be imagined than the present building law in the city of New York, and that is in the Consolidation Act, as amended.

Mr. J. Johnson — Will the gentleman allow me a suggestion?

Mr. Bowers — I think I should decline, because it is better that the chairman of the Committee on Cities should allow some suggestions to be made on this subject without constantly interfering with them.

Mr. J. Johnson — You have misunderstood the article, that is all.

The Chairman — Mr. Bowers has the floor.

Mr. Bowers — The next is the city apparatus and force for preventing and extinguishing fires. We need no law on that subject beyond what we have at present. Seventh, "vacating, reducing or postponing any tax or assessment." We need no law on that subject beyond those now in existence. They are full and complete and protect the cities. Eighth, "membership and constituent parts of the common council." We have not come here with any demand for change in that regard. And, lastly, nine, "the powers and duties of the common council," which are already specifically enumerated in the act to which I referred.

Now, Mr. Chairman and gentlemen, it is not anything new that the cities are to get by this proposed general law, and the committee have not risen to meet the occasion where we do need relief. As to that I propose now to tell you as frankly as I have heretofore, as if we were engaged, as we ought to be, in a committee, striving to work out the most beneficial results to the cities. The harm is this: Year after year the Legislature of the State passes new acts changing old forms of law and putting municipalities to the expenditure of hundreds of thousands, and frequently millions of dollars, against the protests of their own municipal authorities. Is that right? Last winter there was passed by the Legislature an act increasing the payment of the employes of the metropolitan police force, on an average of at least $150 apiece, against the direct protest of the mayor of the city. I submit to this Convention that, while you may ultimately conclude not to give home rule in its complete form to cities, if you let the Legislature hold a restraining hand as to the expenditures, it will be little enough to say that the Legislature shall not make expenditures against the protest of the city. Two or three years ago the people of the city of New York talked of holding a Columbian exposition. They raised $5,000,000 by voluntary contribution. The then mayor of the city appointed a committee of a hundred citizens to manage such exposition, and they came, after long deliberations, to the conclusion that the city must make a loan of ten millions of dollars in order to make the exposition scheme a success. There was no power in the city itself to issue the bonds for that loan, and they were compelled to come to Albany to ask specific power in that regard from the Legislature, and when they came here the Legislature told them: You cannot have that privilege unless you let us add some fifteen or twenty new men to your committee to take part in the expenditure of the funds. That gave rise to the protest, in the strong language which the gentleman who is the chairman of

the Committee on Judiciary of this Constitutional Convention (Mr. Root) is so well capable of using when he pleases, that we in New York claimed the right to spend our own money in our own way; and New York finally triumphed and forced the passage of such a bill by public sentiment, but it was not passed till she lost the opportunity to get the exposition. Now, do not misunderstand me to-day. I am not seeking to raise any old political story; I am simply telling you facts where the Legislature interferes to the injury of cities, and where it ought not to interfere. It may have been right enough to compel New York to go to the Legislature to ask leave to issue ten millions of bonds, but if it was right that they should be issued, and right that the money should be spent, then it was right that she should spend it in her own way. So, likewise, as to the last construction of an aqueduct, you will find precisely the same state of affairs, that she was obliged to take commissioners named by the Legislature. I have but commenced to tell you the tale of wrong done the cities at times by the Legislature. New York is not safe in her streets, and the only reason that street railways, yea, more than that, that railways of the ordinary kind, are not running as they please in her streets to-day, is because of an old constitutional amendment which says that the consent of the common council must be had before you can put a railway in the streets. But there is no restriction on the right to use her sub-soil, and it was only two years ago the Legislature passed an act, against the earnest protests of the mayor of the city of New York, by which a gas company over in Long Island City was authorized to lay its mains under the river and to run them into every street in New York, to take up the pavement of every street in New York; and the act expressly read that there should be no further warrant needed for the exercise of the power to tear up the streets than that act itself; thus doing away entirely with the ordinary power devolved upon the common council and the commissioner of public works, to say when our pavements should be torn up and when our streets should be altered. Are these things right? Is it not the duty of this Convention to rise to the occasion, and, by some short amendments, at least say that the Legislature shall not pass an act appropriating the funds of a municipality except with the assent of its mayor, and that it shall not grant franchises in the streets or in the property of such city without a like assent? Do the citizens of the great cities ask too much when they bring to your attention this class of legislation, which is what gives rise to the great cry for home rule? It is all wrong. There should be no power to do such things, and it is to this body that the people have

the right to look for redress. But the Cities Committee have not dealt with that question in their report. They may have overlooked it. They may have forgotten these wrongs. They may not have thought them of sufficient consequence to cure. And yet I do that committee but simple justice when I say that the principle of section 4, which provides that in a certain class of cases there must be given the assent of the mayor, is a right principle, and shows that the committee intended, so far as they had considered the subject, to give some protection. But the difficulty is it is too limited and too cumbersome in form, and all you need is the statement that a city's money should only be spent on the application of the mayor.

Permit me, then, gentlemen, to simply restate the proposition on which we must at last plant ourselves. You must protect the cities against expenditures ordered by the Legislature, even though you insist on retaining in the Legislature the right to restrict the city, as has been claimed by gentlemen who have already been heard upon the floor of this House. I have thus referred to the only two clauses in the bill of the Cities Committee which in any way pertain to home rule, and I have called your attention to the facts which we ought at least to remedy in this Convention, and I shall proceed now as rapidly as may be to some remarks upon the other portions of this proposed constitutional amendment, which, in my judgment, compel the members of this Convention to defeat it as a whole.

In section 6 it is provided that the Legislature shall appoint commissioners, who are to manage elections in the cities of the State. It is a most extraordinary proposition, and more especially so at this particular time. The justification for it seems to have been the hapless Gravesend frauds of these later days, which have had so much influence upon the chairman of the Committee on Cities. But has he forgotten that Democratic prosecuting officers prosecuted these criminals who violated the election laws; that Democratic judges tried them and Democratic juries convicted them, and that they are suffering punishment to-day? Does he forget that in the city of New York Democratic prosecuting officers and Democratic judges and Democratic juries did the same thing, for the first time in many years that we have been told that any frauds in the elections occurred? Does he know that there is full power in those counties and in all the great cities to protect citizens in their right to suffrage, and that it does protect them? And have we not on record in this Convention its almost unanimous vote unseating delegates here who took no part in those frauds, and who went out from our midst with our certificate of the purity of their characters and lives? And this is to be done, as stated in the report of the

Committee on Cities, at the demand of thirty-nine per cent of the population, against sixty-one per cent. For the report says, if I read it aright, that sixty-one per cent of the population of the State is now gathered in the cities. To my mind, this is the reduction of the cities on a most important question to the condition of provinces, with satraps to be appointed by the Legislature for their rulers. And why is it to be done? Because it is said that the people of the whole State have an interest in the elections. So they have. And have not the people of the cities an interest in the elections in the rural districts? And while the Committee on Cities tell us many tales of frauds and wrongs in the cities, let me call to their attention some tales that are floating about in reference to the rural districts. I do not know how true they are, but I have frequently heard that at important presidential elections the Province of Ontario is largely depopulated by voters who come over and swoop down upon our northern borders, and, against the protests of our own good citizens, insist upon voting there; and that on our southern boundary, from the States of New Jersey and Pennsylvania, the negroes come up, thick as black-birds, at the same time, and overawe the rural voters, and that in almost all the rural districts there is more or less corruption upon election day, which the denizens of the rural districts are unable to protect themselves against. We are told frequently in the public press of all these matters; they are common rumor, how wicked men go into the rural districts because they have no police officers and no election machinery and no power to protect themselves, and these great wrongs are done in which the whole people of the State are interested. Might it not be better under all circumstances, if we are to have commissioners appointed by the Legislature to supervise elections, to go and give a helping hand to our rural friends, to enable them in the future to have pure elections? It is said that this may be extended to the whole State. Why? Have not we constantly found that the vote of this State was fairly cast and fairly counted, and have you not elected a President of the United States by a majority so small as almost to make you tremble, as you waited until the canvassers had announced the result? Can we ask for better election laws? Have we not all that we need? And yet, please understand, as I am sure you do, that in all I have said, I am not attempting to make charges against any political party. I am only telling you of things I have heard. I do not know who were connected with them. It seems to me that this Convention will bury the proposition to send out these rulers to govern the elections in the cities. And then there is that other proposition,

that the Governor of the State shall remove the police commissioners, and shall appoint to fill the vacancy until — I believe it is — the expiration of the term of the mayor, who otherwise would appoint. Now, I want to bring back to the recollection of the Committee on Cities a little political history. In 1884, as the result of a popular discussion on the abuse of the appointing power in the common council, an act was passed vesting the absolute power to make appointments, in the city of New York, in the mayor. I will not take up your time now with the detail of the wrongs that led to the passage of that act. It is sufficient to say that it was one of the reforms demanded by the public, and, in my judgment, one of the few reforms, the result of popular clamor, that were good. It put upon the chief executive of the city absolute responsibility which he cannot deny to the people. It took from him the excuse of saying the common council would not confirm, and it took from them the power to bargain. It was a good law, and it has worked well. You can get no law to work better. The principle which justified the passage of that law was that the Legislature conceded to public sentiment the proposition that the chief executive of the city should be given absolute power in reference to all the heads of departments who make up the government of the city of New York, and should stand responsible to the city therefor. Having vested that power in the mayor, who also has the power of removal on charges, with the approval of the Governor, what mean you by suggesting that the power of removal and the power of appointment thus given should be taken from the mayor? Because it is said that the sheriffs of the State are removable by the Governor? Who else could remove them? Have you any mayors in the counties, or any other chief executive who could do it? Why do you suppose the law was passed? Because there is no other power to which you can go. But when you turn and say that the Governor of the State shall remove the police and appoint their successors, you strike as bitter a blow at home rule as it is possible for the ingenuity of man to devise. You do not dare to say on the floor of this House that the police forces in the great cities are not good. Life and property are absolutely secure; and when there was talk recently of an outbreak of Anarchists, there were no people who slept as quietly and as safely as the people of the city of New York, in the knowledge of the protection that they had at the hands of their police. And if you are not satisfied with it, and criticise it in any particular, the people of New York city can correct it for themselves, and they do not need the assistance of the people of the State.

I have thus dealt with the good propositions of the bill, and I have dealt with the more material ones which I deem to be evil. There remains the first subject for discussion, which is that the Legislature shall pass general laws for incorporating new cities. Well, and where are you going to get your new cities from? All the great cities of the State have already developed, and if some struggling hamlet grows to a size sufficient to justify its becoming a city, there is no reason in the world why it should not come to Albany and get just such a charter as its people want. You have not even taken the trouble to say that the old cities can come in and take the benefit of these proposed new general laws. In the very carefully prepared and well delivered argument that was presented to this Convention last week by the gentleman from Brooklyn, Mr. Jenks, you had pointed out to you, in much more specific terms than I can hope to point them out, the advantages of home rule to cities; and I understand that the views that he expressed must and will at some time receive the careful consideration of the Committee on Cities. There is one line to pursue, and that is the line suggested by him. You can solve this problem now by giving to the cities the right to govern themselves in their own way, absolutely free from legislative restraint, and I think you will satisfy the people of the State, and I am heartily in favor of it. But the President of the Convention and others have told us that it is not wise to do that; that it cannot be done. At least I so understand their language; and, therefore, we are now confronted, after these suggestions which I have just brought to your attention, with the question as to what we are to do with this problem on which we must act. If it is not the wisdom of this Convention to give absolute home rule, either in accordance with the bill of the Cities Club, which, with some amendments, has been offered by Mr. Hotchkiss, or with the suggestions of Mr. Mulqueen, or the suggestions of Mr. Jenks, then it seems to me that you must at least deal with these matters which I have brought to your attention this morning, and give relief in the way of restraint upon legislative enactments; and for that you have the precedent already in existence that railways shall only be built in the streets of cities with the assent of the Legislature of the city. With all the substitutes that are now in existence, and with all the amendments that have been made, it seems almost a work of superfluity to suggest any more; but the only way in which I can present the restrictions that I think you ought to consider, is to offer them in writing, and they would be these, that the Legislature shall pass no law providing for the expenditure of the funds of a municipality, except with the assent

of its mayor; no additions to or alterations shall be made in existing laws affecting any city except with the like assent; no alterations shall be made in the charter of any city except with the like assent; no franchise shall be granted authorizing the use of the streets or property of any municipal corporation except with the like assent. All expenses authorized by a municipal corporation shall be made by its duly constituted authorities or their nominees.

I may say in conclusion, as I said at the outset, that I think the earnest desire of every member of this Convention is to solve this subject properly, and the views I have expressed, so plainly expressed, are intended to assist you in that direction. I would infinitely prefer that you should adopt such amendments in the shape of absolute home rule, or by some restrictive clause of this nature, and have your amendments satisfactory to, and adopted by, the people of the State, than that by a bill which, while pretending to grant, in fact, takes away home rule, you should endanger all the work of this Convention. With the permission of the Convention, I will ask leave to offer these views in the form of an amendment, which may be referred back later for proper consideration.

Mr. Holcomb — Mr. Chairman, I am very mindful, in the consideration of this proposed amendment to-day, that we are here in the presence of the sovereignty of the people, in a manner in which that sovereignty is not expressed otherwise under our system of government. This proposed amendment of the Constitution has been debated at large by the distinguished chairman of the Cities Committee (Mr. J. Johnson), and by his colleague who comes from the west (Mr. Becker), and there is very little, it may be, left to be said by others following, especially after my distinguished colleague from the Seventh District, and after what Mr. Emmet, from New Rochelle, has said. Nevertheless, Mr. Chairman, I would consider myself derelict to my duty, I would consider myself as not discharging here the trust reposed in me by the great constituency that made me here upon this floor one of its representatives, if I did not have something to say concerning the extraordinary proposition, depending now before this committee. And first, Mr. Chairman, taking the subject in order, I would speak concerning the proposition that there should be in this State, and that there may be in this State hereafter, a constitutionalized minority representation. If anything should be said concerning this new idea, Mr. Chairman, I think the word should be mandatory upon the Legislature. In that, I understand, I am at one with the President of this Convention. There should not be left to the Legislature, which so often is controlled by fierce partisanship, the power to act or not to act,

in respect of such a subject, at its unrestrained will. There already are too much confusion and detail in the manner of our elections, and if the unnecessary burdens, which now are almost intolerable upon our people, are to be added to by leaving the Legislature to say this year that there shall be minority representation, and next year that there shall not be minority representation, it is manifest to my mind that confusion will be worse confounded. It is, therefore, as I believe, the duty of this Convention to speak mandatorily to the Legislature of the State, if it speak at all, and say what the Legislature shall or shall not do; but, in my judgment, Mr. Chairman, the whole theory is entirely un-American. Ours is a government of majorities. Will it be said here that our majorities are tyrannical? Well, let that pass, as being a fact. The curb and the brake upon a tyrannical majority is a strong minority, almost as strong as the majority itself.

The man who really formulated this principle of minority representation, or if he did not formulate it, gave it currency in his writings, who had very much to say upon it, and who might be considered, at least, the foster-father of the proposition, is the English law writer, Mr. Hare, with whose name all the lawyers in this Convention are familiar. In his work upon the question of minority representation, he quotes with approval these words of Edmund Burke: "Neither England nor France can, without detriment to themselves, as well in the event, as in the experiment, be brought into a republican form, but everything republican which can be introduced with safety into either of them must be built upon a monarchy, built upon a real, not a nominal monarchy, as its essential basis. In monarchical government all institutions, either aristocratic or democratic, must originate from the Crown, and in all the proceedings must refer to the Crown. It is by that main-spring alone that those republican parts must be set in motion and derive their whole legal effect, or the whole will fall into confusion." Upon this, Mr. Hare reasons in favor of this so-called reform: To save the Crown, to save the Crown from the hardship of too much republicanism in democratic localities; to bring to the throne the conservatism which shall offset that democracy, which would like to see the crown torn from the head of every sovereign. He does not reckon with our principle that no man is to be a king in this world, that there is no king but God, nor that our Republicanism and our Democracy are, alike patriotic, are, alike the servants, and, alike, the masters of the State, are both and each quite conservative when the republic's interests are involved, that all of us here on this floor, that every Democrat, so-called, and every Republican,

so-called, will stand, whenever the Union or the State shall demand of him, upon the magnificent words of Lowell:

"What were our lives without thee?
What all our lives to save thee?
We reck not what we gave thee,
We will not dare to doubt thee,
But ask whatever else, and we will dare."

Our hope, in my judgment, Mr. Chairman, is in the principle of government by the majority, and, as I observe, there is no danger from that principle. Our minorities are not selfish or cowardly. They are independent; they know their rights and they dare assert them, whenever there be the need of their assertion. A strong minority is a check upon the majority hardly, as with us, in this country, stronger than itself, it acts readily as a brake upon it; besides there has always been, until these new-fangled notions received their little vogue in these later days, a concensus of opinion abong our greatest statesmen that there is need of two great parties in State and in republic; of two great parties which divide, not upon the principles underlying our system of government, but upon the details to carrying those principles into operation; upon details which are nothing more or less than the republic's counting-house business, of which we can debate and differ concerning, and determine, for the time being, as the majority shall declare, regarding the manner in which the business of our government should be carried on.

The system approved by the committee does not commend itself to my judgment. It is not wise, and, therefore, it is not expedient. We know our policy to-day. We know with reasonable precision what will be done by this body, or by our Legislature in session, or by our Congress in Washington. In our government we are certain at least of patriotic action; but I would like to ask any gentleman upon this floor what could be looked for if an ordinary proportion of Populists or Coxeyites were in Congress at Washington, of Anarchists in the common council of the city of New York or of other of this State's cities, or in our Legislature, and let him answer me what might be the result to the law and its system, our majorities not being able to govern themselves, but within the power, it may be, of an unwise, venal or grasping minority; filled with hatred of our laws and our principles, eager to put into effect some half-judgment given out by some "all-wise" but irresponsible committee or club of Anarchists or worse, and holding the balance of power between the two great patriotic parties through which now the government is administered? I confess

I do not like the suggestion. I consider that all the varied interests of the State and of all the people now are protected and represented in our public bodies, and are in the main identical. There is no need of these hazardous experiments. Our people have, therefore, since the beginning governed themselves, and will do so; ever ready, as they have shown themselves in the past and will show themselves until time shall be no more, to make a majority to-day and unmake it to-morrow, and able to continue in that way and always hold control, absolute control, of their own affairs.

Now, Mr. Chairman, I would call attention to other provisions of the proposed amendment, particularly to that concerning the appointment of the State inspectors of election, or, as they are called by the Committee on Cities, State commissioners of election. I come from the city of New York, and I have every confidence in my constituency. I do not agree with the gentleman from Erie (Mr. Becker) in what he said concerning the people of that city any more than I agree with him in the definition of "liberalism," which is very different from my own idea of liberality, and if I may judge him by his own words, he would be narrow-mindedness itself in every suggestion of policy affecting the great constituency whose home is down by the ocean at the lower end of the State.

I find by looking at the report of the Superintendent of Public Instruction, that the people of the city of New York paid last year the precise sum of $1,788,866.72 of the State school tax, the gross amount of which was almost $3,931,741.50, and in addition to that sum raised by tax in the city for local schools, $3,885,908.62, and that the school commissioners of that city disbursed for our schools during the year the enormous sum of $5,611,093.24.

Now, Mr. Chairman, a people whose authorized servants may, fitly and wisely, be entrusted with such enormous sums of money as these, and whose servants have been proven, so thoroughly, wise and fit for the discharge of their official duties, must be deemed, *ipso facto*, certainly to have power to govern themselves, in every other regard. This to me is a self-evident proposition, as being the utmost expression of the people's capacity, discretion in the choice of their servants, of the competency and virtue of that people's local authorities of every grade and station, and I do not see why it should be insisted upon by the Committee on Cities that we propose to that people, or to the people anywhere in the State, this section of the proposed amendment of the Constitution, as to these new masters of elections throughout the State.

I do not see why the people of the city of New York should not stand upon the foundation that was laid in 1873, after the revolution of 1871, when the distinguished Committee of Seventy, working as our grand jurors work, upon their oaths, "without fear, favor, affection, reward or the hope of reward," simply desiring to serve the people of the city and to give it good government — and of which Committee of Seventy this Convention's President was a very distinguished member, helping greatly to build up that system of 1873 — why we may not stand there in that strong and steady light, instead of wandering about in the dark after the rushlight of this proposed amendment of the Committee on Cities. (Applause.) I see no necessity for any change at all; but, if change be made, then I, with my confidence in my great constituency, say that in the city of New York we should have the same right to elect, in every election district of that city, by our own virtuous, upright and intelligent voting population, our own inspectors of election, precisely as they are elected in the towns which lie so sweetly on the shores of Lake George, or on bloodstained battle shores of Lake Champlain. (Applause.) We have a right to ask that our people may have leave, as have their country-fellows, to choose our own local inspectors of election.

I believe this whole proposition of this committee is simply another expression of what we have heard, frequently, on this floor during the sessions of this Convention. It is distrust of that great principle upon which our government rests in the last resort, and which I stand here willing to carry out to its logical conclusion, wherever that conclusion may lead me, the principle of manhood suffrage, of a suffrage universal, and depending not on what a man possesses, but upon the heart, the patriotism and the brain of the individual citizen everywhere, in State and in republic. That is the reason why I am in favor of my own people having the right to exercise themselves this power of home rule. I will take the principle of universal manhood suffrage and follow it whithersoever it leads me, and I am against this proposition of the Committee on Cities, which is proof, full and clear, that it is afraid of and distrusts the people.

I demand that the men of my district who toil with their hands day after day, who handle the commerce that comes to this western world from the eastern hemisphere, those hard-handed children of toil, who are the very glory of the Seventh Senate District, the longshoreman upon North River front, the laborer of other sort, the truckmen, the merchants and stevedores, all whose households are virtuous, whose wives and daughters are like the good woman in

the proverbs, "Crowns upon their husbands and mindful of the ways of their households," that those men themselves who are honest, upright, hardworking, the peer of any constituency in the broad State, living virtuously and wisely, as they may in the world, should have the same right to govern themselves as is given to any man living within the borders of any county where grasses nod their tender heads to soothing breezes, and the hum of trade and the stress of the battle of the world's business are unknown.

I do not know but this committee may think that "it is the people, and that wisdom will die with it," but I would rather continue within the wisdom of my forebears, of those men who have gone before us in the making of Constitutions and laws for the State, whose greatness has been shown in their accomplishment; I would rather abide by the judgment of the men who were of the Committee of Seventy in 1871; who saw the city of New York almost ruined by wicked men of both political parties, acting in unholy combination for selfish ends, and who, because they loved the city and were loyal to the State, gave us the charter of 1873.

Under that charter we have lived until to-day; under that charter we can live safely for a long time to come, and I am willing to stand in those broad paths and with those statesmen follow my State's destiny, but not to follow the committee as it wanders about and "staggers like the drunken man," as the proverb hath it, because it has no new light to give us and not the capacity to refresh the light that our fathers lighted for us, and which our friends and confreres refreshed for us so splendidly twenty years ago.

And then, Mr. Chairman, one word to the gentleman from Erie. It seemed easy for him to speak of the "good people" who dwell in my city. What is his definition of the word "good?" Is it new? I understand that all our citizens are equal, in morals and in mind, before the law, whether they dwell in New York or in Erie county, and it is not for the gentleman to find in respect of us a verdict as to whether people be "good" or "bad;" the law makes its own definition. I was very sorry to hear the gentleman from Kings (Mr. Powell), here the other night, when talking upon the suffrage question, say so often the words, "the common people." I thank God, here in this presence, that my mind conceives no such thing in this State as any common people. We all are upon the footstool of God; upon a footing of absolute equality before God and man, and, although all peoples shall come from all quarters of the earth to make their "fireside-clime" here under the aegis of our great citizenship, they will stand, in our law's eye, as stood the contents of that basket that was let down from heaven before the Apostle

Peter, and no man in the world has the right to call them, or any part of them — any man here or elsewhere — to call any man in my great city, in my district, "common or unclean." What liberty hath cleansed call not you, gentlemen, "common." We are citizens of this republic. (Applause.)

On this question of election inspectors I think we should get right straight down to hardpan. If the people of the city of New York are good enough and have virtue enough, and are wise enough to know how to collect half your taxes and honest enough to pay it into your treasury, and half, and more than half, of the moneys which educate the children of the State, and who are to be the future sovereigns of the State and hold in their sovereign hands your destiny and the destiny of all the unborn generations who yet shall inhabit these great places that now know us, but soon will know us no more, and in the time to come shall make her a thousand times greater and more glorious than she is to-day, and shall set upon the shores of Hudson's river by the sea a capital beside which all the cities of the old world, which have been or shall be, must be dwarfed into insignificance — then we have wisdom enough and virtue enough and greatness of soul enough and are honest enough to choose our own inspectors of election. Those citizens who reside in the country localities, in allowing any such distinction as this Cities Committee suggests, really express, as I have said before, their distrust of the great principle of universal manhood suffrage. It seems plain enough to me that it is quite wrong, so wrong as to be upon the verge of a crime against the people, and I do not believe that this Convention will follow the committee to the conclusion upon this proposition.

Now, as to the referendum, just a word. I do not understand why we have so many new-fangled, strange notions set before us in this place. We have had an attempt here to drive citizens to the polls, and an attempt to make men honest by compelling them to swear to their own probity. I understand that the former grew out of the attempt made on one occasion by a certain lawyer of the city of New York to run for the office of surrogate; he was beaten by some 50,000 or 60,000 majority, and he has had an insane opinion ever since that if the people had been compelled to vote for him he might have come somewhere within 20,000 or so of election (laughter and applause) — and the other came out of the lucubrations of one of the multifarious, voluntary legislative Solomon associations with which New York, and, I suppose, all the rest of the State are filled. I have not the slightest sympathy or patience with propositions like these. Yet, let us see how this referendum

keeps its promise to the ear, in our city, and breaks it to the hope. It says the Legislature may also pass laws as to any city affecting one or more of such subjects, and to take effect on the consent of a majority of the electors — that is one more of the subjects previously enumerated — not any other. Suppose the Legislature saw fit to take from our own people in New York control of the police force as they did in 1857? We never could find relief. We could not get relief anywhere. There must be a revolution, as has been in this State, and as will be again, a revolution by the ballots cast in the ballot-boxes, changing immediately our whole governmental system. This promise of home rule, I say, is kept to the ear and broken to the hope. Legislative control of the police was tried long ago, and disapproved by the people. I remember very well reading, years ago, the debates upon the report of the Committee on Cities upon the general subject of home rule, and how, in 1867, the distinguished gentleman from Kings county (Mr. Schumaker), who sits before me, bore a great position in that debate. They were then talking about this system of 1857, and why did the people overthrow that? Why did they have that revolution which came in 1870? It was because that system of taxation without representation tore down their very courage, and at last, at last, after sending out their increased majorities from time to time, year after year, to express their indignation, and not being heeded, they overthrew the system of 1857, and the system of 1870 came and took its place. Now, some gentlemen may say here that the system of 1870 did not last long. I will say yes, but when the Committee of Seventy — I come again to that great body of patriotic and unselfish citizenship — when the Committee of Seventy prepared the new charter of 1873, they left untouched the principle, in this regard of the city's control of its own police, the principle of 1870. Now, there are some very useful lessons to be taught here in respect of the method and its sequences of 1857. In 1857, before the act of 1857, giving to us a State police, had been passed, the police cost the city of New York $800,000. In 1859 the police of the city of New York cost $1,200,000. In 1861 it cost them $1,700,000. There was that constant addition to the burdens of the people, and, as in 1861, we had not yet touched the war, so I have the right to cite that year to show you how the system had, in four years, doubled our taxation on this behalf, because the fiscal year ended in the spring of 1861, before that awful shot was fired upon Sumter. Now, as I say, we gave against this iniquity our constantly-increasing majorities. We fought it and fought it, and at last, in 1870, we destroyed it, and the Committee of Seventy came and actually, in the charter

of 1873, gave their seal of approval to our work; and we now say that you should leave us as that charter left us. But, if we wanted to make any change, this referendum is deceitful. "It is a delusion and a snare," to quote the words of the distinguished chairman of the Committee on Cities. We cannot touch under it such a proposition as this. It were absolutely impossible that our people's voice ever could be given, or, if given, heard. It will leave the cities bound hand and foot, and not the city of New York only, but every city in this State, bound hand and foot to the legislative power, subject to there being reversed, as to us in New York, without cause, the verdict of 1873, and putting a premium upon political revolution, which, gentlemen, I warn you, if it comes, and come it will, will drive from place and power the men who dare make such assaults upon the independence of our municipalities, and flout the wisdom and the virtue and the property rights of the men who dwell therein throughout the State. And then there is another reason why there is very great unwisdom in this course. It is very unwise for this Convention to alienate any large body of our citizenship from support of the Constitution which we frame, from the Constitution that you shall propose to them, to turn the people from us by the enactment of such provisions as this. Let us all come in together. As concerns New York, we do not wish to be separated from the State; that is a fear as baseless as the story of a vision. For one, I never would consent that my great city be cut off in any wise from the imperial body of the State, never. But we have the right and should be given the privilege to regulate our own domestic affairs, the affairs that concern ourselves particularly, in our own way.

Then there is this provision as to the power of removal of police commissioner and superintendent by the Governor, and in opposing it, I come again — I simply hark back again to 1873. I will be very pleased if I may just call your attention to a little of the legislation. Every Republican precedent in this State is against this proposed method of removal. It seems that the committee got along well enough until just about the time they reached this section 5, and then that there was cast into the committee room the shadow of the ghost of the distinguished Lieutenant-Governor of this State to drive the gentleman from Erie to make haste to put in this section, with all its peculiarities and half-judgments, as if he were in bodily fear. William F. Sheehan must have scared almost the life out of him on that day, or this proposed reversal of all the Republican precedents of a quarter of a century never could, sanely speaking, have been given to the day. Let us look at it for a

moment. When the Legislature created the metropolitan district in 1857, it gave the Governor the power to appoint the commissioners and to remove. That was all well enough, because the Governor then was the appointing power, and they made a State police. It is the superintendent here, you will note in this proposed amendment, who is removed by the Governor.

The Governor may remove the commissioners and the superintendent also. I will call your attention, if you will allow me, Mr. Chairman, to the law of 1857. In section 6 it is provided that the superintendent shall be appointed by the board of police created by this act, and he is to hold office so long as the board shall please. The words of the provision of the act of 1857 substantially are, "so long as he observe the laws and regulations," of which observance, of course, the board itself cannot be judge. Now, by chapter 137 of the Laws of 1870 — that is the charter for the city of New York of that year — the mayor was to appoint the board of police, which should appoint, and at pleasure remove, the superintendent, almost the provision of 1857. By chapter 335 of the Laws of 1873 — the charter approved by the Committee of Seventy — the mayor is to appoint the board of police, and himself be removed by the Governor, as are sheriffs. That is the law to-day. We have a great deal of talk about what should be done if the mayor did so and so, or failed to do so and so. The gentlemen of this committee seem absolutely to have lost sight of the fact that our existing system is to have mayors removable by the Governor, as sheriffs are removable by him. And in the city of New York the mayor is to-day utterly in the power of the Governor, not in his arbitrary power, but within the reach of his executive arm. The police force is to be appointed by the board of police — that is the language of the charter of 1873 — and may suspend the superintendent and other officers, and any member of the commission is removable by the mayor; any member of the force is removable by the commissioners. The existing law in the city of New York is that "all heads of departments, except the department of street cleaning, which is removable by a concurrent vote of the health department, may be removed by the mayor for cause and after opportunity to be heard, subject, however, before such removal shall take effect, to the approval of the Governor expressed in writing," which is quite right. That the Governor shall have the right to pass upon the determination of the mayor in respect of a removal, is quite right, because the Governor is the chief peace magistrate of this State. It is proper that he have this right of revision and to concur or nonconcur in such decision, because the city of New York, and every

other city, is a part of the territorial State, as well as a part of the legal and legislative State, and, Mr. Chairman, I would say that provision of the statute that I have just read to you is article 108 of the Consolidation Act, so called, passed in 1882. Here is a plain, fair statement of the procedure and expressed will of the State upon this branch of the subject, in respect of the removal of the men who are at the head of the police department, a procedure that has been so long continued as to permit it now justly to be said that it is a part of the people's custom, especially when there has been given to it so often and so frankly the approbation of the great party now dominant in this Convention, and almost always during the last generation of years controlling the Legislature, which has kept, ever since 1857, the Governor from intermeddling with police management, or to have any word in connection with the police department in New York, except a voice as to the commission itself, when one of its members was sought to be replaced. Is it not wiser and better, then, I say, that we stand in these known and well-trodden paths, in these ways where we hear still the echoing footsteps of the steady movement forward of the courageous men who have gone before us, whose hands and hearts and brain are in these well-considered systems of procedure; that we walk in these old paths, not dilapidated by age, but still staunch and firm and well buttressed; that we follow them rather than these new and, I am constrained to say, ill-digested schemes evolved by this Committee on Cities?

I will not detain you, gentlemen, longer than to refer to one further proposition that I wish to lay before you. I think this proposed amendment is big with evil. It looks to me as did the story of that great siege of which I read when a boy, of the Grecian horse that came into Troy filled with armed men. In my judgment there is the possibility in this measure, in this proposed amendment, of the blotting out of every city in this State. The Legislature, under section 7, will have the power never given to it before, a power that no Constitutional Convention we ever had, that no Legislature that ever sat within these chambers, that no man who ever has guided the policy of this State, ever dared to claim, except the Legislature of 1857, that districts containing cities be created, over which the Legislature should have supreme control. I tell you, gentlemen from Monroe, that your beautiful city of Rochester could be made by this Convention the district of Monroe, Watertown be put in Jefferson district, and Syracuse be absorbed by Onondaga, and it would make no difference to you

whether either had a mayor, or had not. The words of the committee are very clear; they are very clear, indeed: "And as to any district created by law and containing a city"——

Mr. J. Johnson — Won't you read the rest of the section?

Mr. Holcomb — I have no objection to reading it.

Mr. Johnson — The rest of the sentence quoted?

Mr. Holcomb — I have no objection at all to reading it all. "Nothing in this article contained shall limit or affect the power of the Legislature to consolidate contiguous cities," etc. Over on the next page (reading), "Except as expressly limited, the power of the Legislature as to cities, their officers and government, and as to any district created by law, and containing a city, or to provide for the removal of the mayor of any city remains unimpaired."

Mr. Johnson —"Remains unimpaired."

Mr. Holcomb — Yes; well how does it remain unimpaired? For the first time in our history the words, a "district created by law and containing a city," intending to carry power, are put into the words in the Constitution; they never before have in even a prospective statute; for the very first time, are they now at all, except as the law of 1857 created, then and there, in the immediate words, the metropolitan police district, that has subsequently broken the political wheel. Now, Mr. Chairman, I am unwilling to consent, and I will not consent; I never will vote for a Constitution containing that power, even if it be by inference only. I never will sign a Constitution presented to me that shall contain within it a provision of that kind, that New York and her sister cities, which are stars upon our State firmament, may be made indistinct; and that is possibly to be so construed by the Court of Appeals, or by any other court; a proposition that a city may be wiped out at the legislative will, that New York city's ancient powers, grants and privileges taken away are within any possibility or in anywise prejudiced or affected. I will never consent. The words are not right; they do not belong there; and if I be not in order now, I will when the time shall come, and in due order of parliamentary proceeding, ask that those words be stricken from that section.

One word more, Mr. Chairman, and I am done. The former part of this section 7 is very peculiar, very peculiar. As a citizen of the city of New York I am jealous of her honor, I am jealous of her credit, as I am proud and glorify myself in her greatness, her intelligence and her marvelous beauty. We never have had a charter passed that in the very beginning of it did not have a saving clause, to this effect in sub-

stance — I have not the charter of 1873 here — recognizing the fact that there are ancient rights and powers and privileges belonging to the city, as one might say, from time immemorial — the word "ancient" will cover it all. They have been expressly saved by expressed enactment and saved from every possibility of being affected, in virtue of such enactment. In this proposed amendment, however, the Cities Committee, in suggesting charters, stops at the word "consolidation." I know that there is a provision in the Constitution of 1846 to the effect that the laws of the State and the laws of the colony are preserved. Whether the Montgomerie charter or the Dongan charter were the laws of the colony is something that I do not think this Convention should determine here. A question so grave should not be open to debate, should not be left by us thus open. Therefore, I will ask this Convention to insert the following saving clause, in regard of the new charters of consolidated cities: "Nothing in this article," says the Cities Committee, "shall limit or affect the power of the Legislature to consolidate contiguous cities, or annex contiguous territory to any city, or to make or provide for making a charter," without limitation. There is no saving clause now therein. The charter-making power as to such consolidated cities is left in the Legislature unqualifiedly. I know how thoroughly New York city has been protected in this regard in the days and generations that are gone. In the Consolidation Act all the revenues, all the moneys that go into the general fund, are held, and sacredly held, forever, to be applied to the payment and redemption of the city's securities and in the payment of the city's debt. From section 171 of that act to section 174, which is this, if you will allow me to read, Mr. Chairman, and here is the solemn compact made by the Consolidation Act between the holders of the city's securities and the city, as follow the words: "Between the city and its creditors, the holders of its bonds and stocks, as aforesaid, there shall be, and there is hereby declared to be, a contract that the funds and revenues to be collected from assessments, as aforesaid, by this chapter pledged to the sinking fund for the redemption of the debt, shall be accumulated and applied only to the purpose of such sinking fund until all the said debt is fully redeemed and paid as herein provided." Herein the Consolidation Act is uttering the State's and city's view in respect of this solemn contract. For the first time, I say, does the possibility of violation of this contract go into the Constitution of the State. Once the attempt was made under the act of 1857, to take away from our city government certain license fees to which that government was entitled in virtue of those ancient charters, and to turn them over

to the police board to be applied to purposes such as that board should see fit to apply them to, but John T. Hoffman, then the mayor of the city, appealed as against the constitutionality of the act, and a Republican Court of Appeals held that it could not be done by statute; it could not be done in that way, because they were all saved by the wisdom of the existing laws. That was the reason. And now it undertakes — this committee — I do not think that the provisions could have been carefully read by all the committee — undertakes to enact, to bestow the power to enact, measures similar to that of 1857, and give sanction and force to them in the Constitution.

Could unwisdom go to any greater length. Could the State be let to run hazards greater than this. I think not, and I will ask, when the time comes, if I be privileged, that there shall be inserted in this section a saving clause, as follows, after the word "consolidation:" "Saving inviolate, however, in such new charter, to the body corporate of the city of New York, if that city be included in any such consolidation, all the grants, powers and privileges now and heretofore held by said body corporate in virtue of its ancient charters and acts of the colony and State of New York confirming the same." And here, in the face of this Committee on Cities that seems to be not afraid to trifle with the credit of the city of New York, I would like to say: At present the three and one-half per cent obligations of the city are above par. There is no city in the world whose credit is better than that of the city of New York at this moment; there is no municipality that can sell its securities as she can hers, and her present monetary security should not be disturbed, even by an intimation or an inference, if this Convention have power to save it. I remember very well one statute that was enacted just before the revolutionary war, in truth in the year of Washington's birth, as the founder was providing for the man and statute for the impending strife, the man to save the country, the statute to save the credit of this, the greatest of the colonies, to be a bulwark to the armies that should defend them, and in later years, just as the stress of the revolution began its self-assertion, the Legislature of the colony was mindful of its duty to the people, even as are the Legislatures of the present day, and provided for the perpetual preservation of those basical chartered rights and powers. In 1732 the colonial Legislature passed an act absolutely confirming in every way those ancient charters, vesting in the city of New York, in perpetuity, the powers and rights therein defined. When this Convention prepare for the submission to the people of this fundamental law, when we make for them these great propositions

that shall control all our law-making for years and years to come, I insist that there be no loophole which shall put in jeopardy one jot or tittle of the credit of New York city, there be nothing left open for somebody to debate in regard of that credit or whether our obligation holders be secure or no. Mr. Chairman, the question of the government of the cities of this State is a very grave question indeed, yet easy of solution, we having confidence in the people, and I am reminded that there is one name that is not attached to this majority report, the name of one man of the Cities Committee, who is part and parcel of the history of the city of New York, of one man who stood firmly as a rock in the sea and dared so to stand, when assaults were made upon the funds and the credit and the property of the city of New York, which he had in charge, and who knows thoroughly the city, its needs and its deeds. I do not find the name of Andrew H. Green attached to this majority report, and Andrew H. Green's name will go farther with me than the names of all the majority upon this committee. (Applause.) Gentlemen of New York city, my colleagues and brethren upon this floor, I appeal to you. We must stand firm for the rights of our constituencies, for this prerogative and the prerogative of the city. We must stand; we have the right to stand; it is our duty to stand by the people of both city and State, who are called the "common people," but who are the princes and sovereigns with their ballots and whom virtuous citizenship put in possession. Whether they live in tenements along the river front or in the apartments that are intermingled with the palaces of money in Wall street, or in their houses and palaces along the great avenues; whether they toil with their hands or with their brains, and wherever from the parts of the world they come, they, with the true delegates of the people, are children of the same God, citizens of the State of New York and of the United States; and with my voice and with my vote I will stand firmly out in every presence for their welfare and in their defense.

Mr. J. Johnson — Mr. Chairman, I do not intend to participate in the debate at the present time farther than to correct what I deem obvious misunderstandings of the article discussed. I attempted to make such a correction when the gentleman from New York (Mr. Bowers) was speaking. He said that they had adequate and sufficient laws in New York as to streets, as to parks, as to water, and he construed this amendment as giving power to revoke and take away those powers. The power to do so at the present time, without this amendment, is absolute, full and entire in the Legislature. This amendment, if adopted, subjects the

repeal of those laws to the consent of the city. They are words to save, and not to take away; words of prohibition, and not of grant.

Mr. Bowers — May I ask the gentleman a question? Do I understand you to say that you intend to prohibit the Legislature from changing the laws as they now stand respecting cities?

Mr. Johnson — I answer that there is ——

Mr. Bowers — I think that will take a yes or no.

Mr. Johnson — As toward the enumerated subjects it does prohibit, except with the consent of the cities.

Mr. Bowers — Why not, then, include all subjects involving the expenditure of moneys, and why not put it in language so plain that even a man as stupid as myself will understand it?

Mr. Johnson — Because police, elections, health and education are matters which cannot be limited by city boundaries, and within all definitions are matters that the State is bound to administer.

Another correction. The gentleman last speaking, I understood to say that this gave power to consolidate cities, power to annex territory, power to create districts for police or other purposes. There is not one particle of power granted in either of those directions. Not one particle. It simply says that the power to consolidate cities remains unimpaired. And the reason that that was suggested is this, that this fall, at the very election when the articles we present are to be voted upon, the people of the city that he represents are to vote upon the question of the greater New York ——

Mr. Holcomb — May I ask the gentleman a question? If there be no virtue in the last words of your proposed amendment, ending with the word "unimpaired," why do you want it here? Why do you not take them out?

Mr. Johnson — I did not say there was no virtue in them; there is virtue in them ——

Mr. Holcomb — Well, I would be pleased to hear what the virtue is.

Mr. Johnson — The proposition is this, that having recognized cities in the first section to the extent of saying there shall be a mayor and a common council, which is not in the present Constitution; having enacted in sections 3 and 4 — if we should do so,— that acts as to those matters could not be passed without the consent of the cities, unless a saving clause was put in, it would be obvious, I think, certainly probable, that all power to carry out the statute on the part of the Legislature would be abrogated. And all power to annex outlying sections would also be abrogated.

Before the Committee on Cities, it was represented that just outside of any city there might be a place not subject to city jurisdiction which could be the rallying point for the evil influences of the city; and it was stated, and this was to cover it, that the power to annex contiguous territory should not be limited. And, last night, in the New York Sun, the strongest opponent, perhaps, of this amendment, a paper that represents perhaps more fully than any other the sentiments of many of the gentlemen of the minority, the precise case that was stated to the committee was stated — and this was editorially — that just outside the city of New York, in Westchester, was a town or a village, that was the rallying point of the evil influences that preyed on the city, and the New York Sun editorially said that at once, whether they willed or no — because of course they would object — that section should be brought within the city. And so the power to annex, the power to consolidate, is not granted in any degree here, is not enlarged. It simply provides that it should not be construed that those necessary powers have been abolished by implication. If the gentleman will get up and say he wants those powers abolished, well and good. Then we are on a plane of argument. But if he says he does not desire them abolished, then this section of which complaint is made is absolutely necessary to any provision for greater municipal independence.

Mr. Schumaker — Will the gentleman allow me to ask a question?

Mr. Johnson — Certainly.

Mr. Schumaker — Are not the officers of the law there, in that little Casino, or whatever it is called, outside the city of New York? Is not the government of the State there? Is it outside of civilization? Is it outside the State of New York or New Jersey, or some other place? The officers of the law are there just as much as in the city of New York, and have just the power of the city of New York or any of its policemen, and I do not think they would be any better governed if they were within the city.

Mr. Johnson — The simple situation is this, that if it be true, what is stated in the New York Sun, that the officers of the law are powerless, there is no other remedy, and the remedy is not taken away.

Mr. Schumaker — It is something, Mr. President, with which the gentleman and I are very familiar. You and I know how Judge Gilbert squelched gambling in Long Island City, do we not? It is familiar to both of us how he went there as chief magistrate and enforced the law in Long Island City. You and I both remember that.

Mr. Johnson — It is a very interesting reminiscence, but I do not see what it has to do with this argument.

Mr. M. E. Lewis — Mr. Chairman, I move that the committee do now rise, report progress and ask leave to sit again.

The Chairman put the question on the motion of Mr. Lewis, and it was determined in the negative by a standing vote — 44 to 42.

Mr. Nicoll — Mr. Chairman, I have been very much surprised at the course which this discussion has taken, and especially at the criticisms which have been made upon the report of the committee by some of the minority of this Convention. I can quite understand why the minority of the committee could never have appended their names to this report. It undoubtedly contains provisions in relation to the power of the Governor over the police commissioners in cities, and the creation of an extraordinary method for the control of elections by the State, which no man who has any regard for the welfare of municipalities could possibly subscribe to. And, therefore, the withholding by the minority of this committee of their signatures from this report was, in my judgment, consistent, reasonable and proper. But while it is true that this report contains propositions which no one of the minority ought ever to assent to, it cannot be denied that it also contains propositions which every representative of the cities of the State who is committed by his own experience and the experience of his municipality, to the principle of local self-government, must subscribe to, as essential for carrying out a real reform. I do not hesitate to say that this report contains two propositions which all home rulers agree are absolutely essential to any constitutional scheme for the better government of cities. The two propositions are these:

First, a separation of local elections from State and national elections.

And, second, still more important, still more vital for the purpose in view, an inhibition to the Legislature to interfere by special act with the charters of cities.

These two principles, however imperfectly expressed in this proposed constitutional amendment, are still to be found within its limits and are absolutely essential and necessary for that system of local self-government of cities of this State which the people in those cities expect this Convention to adopt.

As to the first proposition there seems to be a general concurrence of opinion in its favor by all the gentlemen who have addressed the Convention. Everyone seems to agree that the

separation of local elections from State and national elections is one step forward in the cause of better municipal government. It is expected that that change will arouse in the cities of this State a keener civic spirit and interest in city affairs. It is expected that instead of being distracted as we are now by considerations of State and national politics; instead of looking at every city office and proposition from a partisan standpoint in a national sense, we will come to look at them from a partisan standpoint in a city sense; that parties will begin to be divided in cities not upon State and national issues as to-day, but will be governed by consideration of the city's welfare alone. Such I say is the result which the proposers of this part of the cities article hope to achieve. I believe that it is one step forward; that it is without question an advance on right lines. It will help to produce the result desired. But as to its constituting the panacea for every municipal ill, as to its really arousing that deep civic interest which is expected, as to its curing the habit of indifference to strictly municipal affairs which now obtains, I can hardly believe it will have all the effect expected from it.

In fact, there are those who contend that it may play right into the hands of political machines. Now, I find that in some of the cities of other States, where the separation of State and national from city elections has been tried, a return has been made to the old system, because only by a union of all elections could the full vote of the city be brought out. In some of the cities of the State we have spring elections to-day with no better government from that cause. At one time we had separate elections in the city of New York. I do not believe, therefore, that any one can say, with any certainty or confidence, that the separation of city, State and national elections will prove a remedy for all existing evils. I propose, however, to vote for it because it is right in principle and a long step forward. I believe it may have some effect in arousing an interest, now dormant in city affairs, a result which all men agree to be essential before a better government of cities can be achieved.

But unless we go further, unless we adopt the other important principle embodied in this report, this Convention will do little or nothing for an enduring reform of the government of cities. Unless we put an end forever to the system, which has existed in this State for many years, of the government of the cities of the State by the Legislature of the State, without any restriction on the power of interference; unless we give to the people of the cities of this State that amount of local self-government which we give to the

counties, towns and villages; unless we give to them something in the way of municipal government which is permanent, stable, definite and which cannot be tampered with or taken away by Legislatures, we may as well leave the Constitution where it is to-day.

There is little new about all this discussion. Probably nothing that I shall say on the subject will have the merit of originality. Students of municipal affairs and practical men versed in municipal government have practically made up their minds upon it. In the Constitution of 1846, the subject received little attention, because at that time the government of communities agricultural seemed of greater importance than the government of cities. Yet even that Constitution, as we all know, undertook to give to cities some measure of local self-government, to the extent of providing that they should have the right of electing or appointing their own officers. Some years after the adoption of that Constitution that provision came to be interpreted by the court of last resort, and it was adjudged that the Constitution of 1846 really provided no measure of local self-government whatever and that it still remained in the hands of the Legislature to govern the cities of this State by commissions appointed by it. As a result we had metropolitan police districts governed by legislative commissions; we had water commissions, park commissions, health commissions and fire commissions. For many years all of the most important functions of government in New York were in the hands of commissions. Now, sir, what was the fruit of that system of government by the Legislature? What was its result? What did it finally lead to? Why, we all know that it led to the Tweed ring in the city of New York, which stole millions and millions of dollars from the public treasury in the course of a few weeks after a charter from the Legislature of this State had been easily procured. Many of you will recollect the circumstances under which that charter was obtained. The habit of governing New York by the Legislature was then firmly established. It required no great difficulty for the corrupt and adroit politicians of the city of New York of that era to form a combination with the majority of the Legislature and by promises of office and other corrupt considerations to pass a charter which legislated out of office the existing heads of departments and concentrated all power in themselves. The treasury of the city of New York was immediately at their mercy; and in an incredibly short time after the charter had been enacted they had plundered the city of millions of dollars. Had the gentlemen in the Convention of 1867, who refused to break up the possibility of this partnership between officers of cities and the Legislature, ever foreseen

what happened in New York only two years after the adjournment of their session, do you believe they would have withheld from the people of that city that measure of local self-government which they were entitled to? The charter of 1870 was soon repealed and then came our charter of 1873 in New York city under which we have been living ever since. But nothing has been changed so far as the Legislature is concerned. All the evils to which we were then exposed we are exposed to now. There is nothing now in our system of government which would prevent the re-enactment of the same provisions of law which enabled that great fraud to be committed upon the city of New York. We are at the mercy of the same conditions which existed then. The habit of legislative interference is as firmly fixed as ever. Consider what happens at every session of the Legislature. Some men in New York want an office created. They go up to the Legislature and get it. Some want salaries increased. The Legislature does it. Some faction comes into control and, for partisan reasons, procures an act taking away power from one portion of the city government and transferring it to another. Someone is desirous of selling land for the purpose of building a park. The Legislature helps the scheme along. At every session offices are created, powers are taken away, new duties are imposed, authority transferred from one office to another, from one department to another, according as faction after faction, or individuals after individuals arrive at control in the city of New York. What is the result? A natural habit of indifference to city affairs among a large class of citizens. Why should any man in the city of New York take a deep and lasting interest in a government which is so shifting, so uncertain, transitory; which has no definite and stable existence whatever? Why should the common council of the city of New York acquit itself at all times well, when the very members of the common council may be shorn of the powers that they have to-day, and wake up to-morrow with really no power at all?

Mr. Chairman, these propositions can hardly be said to be my own. I am not the originator of these thoughts or the inventor even of these forms of expression. If you will read the debates of the Constitutional Convention of 1867, many abler men than I am, or ever hope to be, advanced these same propositions. Shortly after Governor Tilden was elected Governor of this State in 1874, he addressed to the Legislature of this State his celebrated message on municipal reform, in which these two propositions which I have asserted as necessary to be incorporated in any constitutional amendment designed for satisfactory local self-government of cities

were insisted upon. Shortly after that message, a commission was appointed by the Legislature to examine the evils found in the government of cities and to recommend remedies therefor. That commission consisted of a large number of distinguished men, one of whom was the partner of the distinguished President of this Convention, a late Secretary of State of the United States, and also a United States Senator from this State. They brought to the consideration of this question large experience, ripe learning and a conscientious desire for reform. Their labors resulted in a recommendation that a constitutional amendment should be submitted to the people providing for separate local elections and for absolute inhibition to the Legislature to interfere by special act in the local affairs of cities. That proposed amendment, as we all know, was not submitted, because unfortunately it contained a provision that certain officers of cities should be elected only by voters possessing a certain amount of property. It required a property qualification. It was, therefore, avoided by both parties as a dangerous innovation.

Only a few years ago a Senate committee undertook to study this question, and after a vast amount of labor, prepared a report in which they say substantially the same things as were declared necessary by the commission of 1876. Their language is: "It is frequently impossible for the Legislature, the municipal officers, or even for the courts to tell what the laws mean. That it is usually impossible for the Legislature to tell what the probable effect of any alleged reform in the laws is likely to be. That it is impossible for anyone, either in private life or in public office, to tell what the exact business condition of any city is, and that municipal government is a mystery, even to the experienced. That municipal officers have no certainty as to their tenure of office. That municipal officers can escape responsibility for their acts or failures by securing amendments to the law. That municipal officers can escape real responsibility to the public because of the unintelligibility of the laws, and the insufficient publicity of the facts relative to municipal government. That local authorities receive permission to increase the municipal debt for the performance of public works, which should be paid for out of taxes. That the conflict of authority is sometimes so great as to result in a complete or partial paralysis of the service. That our cities have no real local autonomy. That local self-government is a misnomer, and that, consequently, so little interest is felt in matters of local business that, in almost every city in the State, it has fallen into the hands of professional politicians.

"Our cities are, so far as we have been able to learn, the only

important cities where such important conditions still exist. Wherever they have heretofore existed they have been cured by the abstention on the part of the Legislature from special legislation and the enactment of general laws springing out of a general uniform, logical and coherent plan for the government of cities.

"We, therefore, urge upon your consideration the immediate necessity of a constitutional amendment which shall prevent special legislation affecting the government of cities. In the advocacy of this principle we understand that the so-called Tilden commission was unanimous, although its members differed in other respects."

And so we find all men, of all parties, of all generations who have profoundly investigated this subject of local self-government in cities, men who considered and debated it a quarter of a century ago, and men who were appointed by the Legislature only a few years ago to study this question and make recommendation upon it, uniting and agreeing upon the same things as necessary before a permanent reform can be expected, viz.: Separation of the local elections in cities from State and national elections and inhibition upon legislative interference with their charters by special laws. The history of the government of the city of New York points to the same conclusion. There is no method of the government which we have not experimented with in the city of New York. We have had several charters since 1830, and we have had amendments to charters more numerous than the sands on the shores of the sea. We have had mayors with powers, and mayors without powers. We have had mayors who have had the power of appointment of all officers and we have had mayors who had the appointment of only a few. We have had mayors who have had power of appointment without the consent of the board of aldermen. We have had mayors who could only appoint with the consent of the board of aldermen. We have had common councils of all kinds and conditions. We have had one chamber of the common council. We have had two chambers of the common council. We have had a board of aldermen and a board of assistant aldermen. We have had a board of aldermen and a board of councilmen. We have had aldermen elected at large on a general city ticket. We have had heads of departments elected by the people. We have had heads of departments appointed by the mayor. We have had spring elections, and have had, in a certain sense, minority representation. We have had a common council with the power to levy taxes and to disburse them, and we have transferred that power from the board of aldermen to a board consisting of the mayor and various heads of departments. So, I say, we have experimented with every-

thing in the city of New York. There is no device or method which we have not tried in the course of the last thirty or forty years. But the old system of governing New York at a distance by men, a majority of whom have no interest in its government, so far as its local affairs are concerned, who have no share of its burdens or responsibilites, is still going on, and will continue to go on unless this Constitutional Convention at last prohibits it. Therefore, I say that in this report of the Committee on Cities, however imperfectly expressed, however doubtful some of its language may be, however insufficient the mechanism which it provides for the expression of the will of the locality, is at least to be found the two principles recognized by all men as essential to any better local self-government in cities. What else does home rule mean? What does it mean, except either a direct grant of powers to the government of cities over local affairs, some restriction of the power of the Legislature to interfere with existing charters, or else, as a half-way measure, the passage of general laws under which existing municipalities may be reincorporated and of the opportunities of which they make take advantage. That is the meaning of home rule. Those are the advantages denied to the people of the cities of the State, and which they now demand as essential to the better administration of their local affairs.

Mr. Chairman, I was indeed pained and surprised to hear, from the lips of the distinguished President of this Convention, for whom I entertain the greatest affection and respect, the statement that the State would never give up to the city its control through the Legislature over cities on any subject whatever. I quote his language: "I do not believe that the people of this State will ever consent, or ought to be asked to consent, to abandon their sovereignty over any division of the State with respect to any of its affairs. Now there are two evils to be avoided. One is the abandoning of the power of the State over the city. In my judgment, as I said when I got up, the people of the State will never consent to that in any form." And then the distinguished President went on to say that he had seen times in the city of New York when the dangers to our city government were only averted by an appeal to the Legislature. But has the President of the Convention forgotten that, after all, the greatest injury that was ever inflicted upon a municipality was inflicted upon the municipality of the city of New York by this very system of legislative interference and control; that, if during the era of Tweed *regime*, there had been found in the Constitution a proposition against legislative interference, it would have been impossible to have changed the charter as it was changed in 1870, for the sole

purpose of appointing corrupt men to office and of filching the treasury of the city. With all this long history of misgovernment behind us ——

Mr. Cassidy — Mr. Chairman, may I ask the gentleman a question?

Mr. Nicoll — Certainly.

Mr. Cassidy — Do you not think that cities could be corrupted easier without the Legislature than they can with it?

Mr. Nicoll — Why, of course, I do not. That is what I am arguing.

Mr. Cassidy — And do you believe that the State should abandon its sovereign control over cities and not over the rest of the State? Is there any better reason why?

Mr. Nicoll — It should give at least the same measure of home rule to cities as it gives to villages.

Mr. Cassidy — And do not the cities now have the same measure of home rule that the counties, towns and villages of this State have?

Mr. Nicoll — Is there not a provision in the Constitution against passing special laws as to villages?

Mr. Cassidy — Is there anything in the Constitution opposed to the passage of special laws for the country?

Mr. Nicoll — Does not the Constitution say the Legislature shall not pass special laws relating to incorporated villages?

Mr. Cassidy — And doesn't the Legislature pass special laws not only for the villages, but for the cities at large?

Mr. Nicoll — Well they may beat the devil around the stump, but they ought to obey the mandate of the Constitution.

Mr. Cassidy — Is there anything more to be done than to require that the Legislature shall pass general laws for the city and country alike?

Mr. Nicoll — There ought to be general laws for cities, but they must differ. How can the same general laws apply to cities and villages?

Mr. Cassidy — Ought there not to be general laws for the country, too?

Mr. Nicoll — There ought to be substantially the same measure of home rule for the people of this State in all the localities of the State. Of course, you cannot have the same kind of home rule for villages, towns, and counties that you have for cities. The principle ought to be extended.

Mr. Cassidy — Then don't you come back to the President's proposition that the State ought not to abandon its sovereignty over any part of the State?

Mr. Nicoll — The people instead of permitting the cities to be governed by the Legislature, the people sitting in this sovereign Convention, should say to the people of the localities, you shall govern yourself hereafter on certain local matters instead of being governed by the Legislature.

Mr. Cassidy — But that should be done all over the State, should it not?

Mr. Nicoll — I think I have answered your proposition.

Mr. Cassidy — And that means simply this: That the Legislature should be shorn of its powers so far as special legislation is concerned for city and country alike?

The Chairman — Does the gentleman give way for further interrogation?

Mr. Nicoll — Well, I am willing to give way to the gentleman as long as he does not repeat himself.

Mr. Schumaker — Mr. Chairman, with the consent of the gentleman, I would move that this committee do now rise, report progress and ask leave to sit again. I could listen to the gentleman all day, but inasmuch as the hour is late, he can continue his speech some other time.

The Chairman — Does Mr. Nicoll give way?

Mr. Nicoll — I think I might as well finish what I have to say. Now, I have considered those two parts of the committee amendment which I think should obtain approval of everyone who desires a better local self-government in cities. I shall pass over those parts of the measure which I think imperfect, because its imperfections have been, to my mind, satisfactorily pointed out by the distinguished gentleman from Kings (Mr. Jenks), who possesses, perhaps, larger experience in the government of cities than any member of this Convention, and by other gentlemen who have anticipated me in this debate. Its chief defect is the absence of any mandate to the Legislature to pass general laws. All propositions for reforming the government of cities start with the theory that the Legislature ought to be commanded to provide for the better government of cities by general laws. Such, at least, are the provisions found in most of the Constitutions of the western States. It was also the provision found in the cities article of the Convention of 1867. No one disputes the proposition that it is now in the

power of the Legislature to pass general laws relating to the government of cities, but it is notorious that the Legislature for many years has failed to exercise it. No scheme of home rule in my judgment will be acceptable unless it contains a mandate to the Legislature of this State to pass general laws.

As to the other two propositions, found in this article, no man who has any regard for the good government of cities, or for the purity of their elections, ought to assent to them. What is this provision suggested with regard to the police of cities? It proposes to give the Governor power of removal and appointment. What is that but going back, as Mr. Holcomb pointed out, to the discarded system of 1857? Under that system the State was divided into districts in which the Governor appointed commissioners of police. That system was thrown aside, I hope forever, twenty years ago. But under this measure the Governor may remove the heads of a police department upon almost any ground. He may then appoint their successor, and be ready in this way to control the police of cities without let or hindrance in every city in the State. Now, experience teaches that no such step backward will be tolerated.

All of this discussion has arisen, in my judgment, from certain political mistakes which were made in the city of New York, one of which was the change of the non-partisan board of police commissioners, consisting of two Republicans and two Democrats, to a board consisting of a majority of one party. But the non-partisan character of the board has been restored. But in view of the experience of the past, the unwritten law of non-partisanship is not likely to be violated in the future. Another political mistake was the passage by the Legislature in 1893, of the law which provided for two inspectors of election of the majority party and one inspector of election of the minority party in the city of New York. Under our election code the police are required to be present at the polls only for the purpose of preserving order. They take their directions from the election inspectors. When the majority of election inspectors belong to one party, they practically control the police, and all the complaints that have ever been made against the police, as far as the elections in the city of New York are concerned, proceeded from that law. That law has been repealed. The principle of equal representation in election boards is now, I believe, the settled policy of this State.

Mr. Hotchkiss — Mr. Chairman, will the gentleman give way for a question?

Mr. Nicoll — Certainly.

Mr. Hotchkiss — May I ask him whether the act in relation to the inspectors of election being two to one was not passed because in every town in the State outside of the city of New York the numbers were undoubtedly two to one, and was it not passed for the purpose of giving us justice outside of the cities?

Mr. Nicoll — That was undoubtedly the purpose, but the law in New York has always been different.

Now I say that principle of equal majority and minority election officers has been restored to the election law in this State, and all we need in place of these two cumbersome provisions is some simple mandate such as was reported by the Committee on Suffrage and is to be found upon general orders, declaring it to be the policy of this State that all election officers shall be divided equally between the great political parties. If, in addition to that, you are not willing to trust the boards of police commissioners in cities, the non-partisan board of police commissioners to appoint the election officers, even though these officers be nominated by political parties, then, for heaven's sake, let us elect in the cities our election commissioners, but under no circumstances affront the four millions of people who live in the cities of this State by the suggestion that they are less competent to supervise their elections by their own elected officers than the people who live in the rural districts.

In what I have said, Mr. Chairman, no desire has been expressed, so far as the municipality which I represent is concerned, to have anything more than its just, proper and equal share in local self-government. We have no desire to establish an imperial city, a sovereign and independent existence, like the cities of ancient history. We have no ambition to establish any close corporation in the city of New York. There is no portion of the population of this State more loyal to its government, prouder of its history, more ambitious for its future than the people of the city of New York, but in view of its long history of misgovernment, our earnest hope and prayer to this Convention is that in the future you will give us our just measure of local control, and put an end to that government from a distance by the Legislature of this State which has brought us in the past fifty years such innumerable woes. (Applause.)

Mr. M. E. Lewis — Mr. Chairman. I move that the committee do now rise, report progress and ask leave to sit again.

Mr. Holcomb — Mr. Chairman, may I ask the gentleman to give

way, so that I may have the opportunity to offer my proposed amendment and have it printed?

Mr. Hotchkiss — Mr. Chairman, I have no desire to restrict the number of amendments that shall lie upon the desk at the same time, but I would like to inquire in what dozens we are now; about how many, approximately?

The Chairman — The Chair is unable to inform the gentleman.

Mr. Holcomb — I think I should have the same right that was enjoyed by the gentleman from New York the other day. All I want is that my amendment shall be printed.

Mr. Mulqueen — Mr. Chairman, I should like to have the gentleman give way, in order to permit me to request that my substitute, offered this morning, be printed.

The Chairman — That matter will come up later.

The Chairman put the question on the motion of Mr. Lewis, that the committee do now rise, report progress and ask leave to sit again, and it was determined in the affirmative.

President Choate resumed the chair.

Chairman Lincoln, from the Committee of the Whole, reported that said committee had under consideration proposed constitutional amendment No. 369, reprint No. 409, general order No. 13, and made some progress, but, not having gone through the same, had instructed their chairman to ask leave to sit again.

The President put the question on agreeing with the report of the Committee of the Whole, and granting leave to sit again, and it was determined in the affirmative.

Mr. Mulqueen — Mr. President, I ask unanimous consent that the substitute I offered this morning be printed with the other amendments and substitutes.

Mr. Holcomb — May I ask whether that will include my proposed amendment or substitute?

The President — I understand that it will. It includes all amendments and substitutes proposed this morning.

The President put the question on the motion of Mr. Mulqueen to print all the amendments and substitutes offered this morning to general order No. 13, and it was determined in the affirmative.

Mr. Jesse Johnson — Mr. President, I ask unanimous consent to submit a similar amendment which I would like to have printed. I ask to insert after the word "section" on line 16, of page 3——

The President — You will have to hand it to the Secretary.

Mr. Johnson — I will hand it to the Secretary.

The President — The Chair presents a communication (No. 23) from the commissioners of taxes and assessments, relative to trust companies in the city of New York, in conformity with the resolution of Mr. I. S. Johnson of August first (No. 161).

Mr. Doty — Mr. President, Mr. Johnson asked me yesterday to request that that be printed.

The President put the question on the motion of Mr. Doty, and it was determined in the affirmative. (See Doc. No. 51.)

Mr. Francis — Mr. President, I beg leave to present the following reports.

The President — Those are not now in order unless by the unanimous consent of the Convention.

Mr. Acker — I object, Mr. President.

Mr. Bowers — Mr. President, I ask that Mr. C. H. Truax be excused from attendance to-day. I received a letter from him stating that he was detained in New York on account of his court sitting.

The President put the question on granting leave of absence to Judge Truax, and it was determined in the affirmative.

Mr. Francis — Mr. President, I ask that unanimous consent be given for the presentation of these reports.

The President — Does any gentleman object to the presentation of these reports by the Committee on Preamble and Bill of Rights?

Mr. Acker — I object.

The President — Mr. Acker objects. They will be reserved until to-morrow morning.

The Secretary read the announcement of committee meetings.

On motion of Mr. Root the Convention stood in recess until eight o'clock this evening.

Tuesday Evening, August 14, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber in the Capitol, at Albany, N. Y., August 14, 1894, at eight P. M.

President Choate called the Convention to order.

The President — The special business for this time is the special order, the consideration of Mr. Tucker's amendment on suffrage (O. I. 194, p. 195).

Mr. Bigelow — Mr. President, at an early period in our deliberations here I had the honor to submit to the Convention an amendment proposing to confer upon the Legislature the power to extend to the female sex all or any of the powers, privileges, immunities and exemptions to which they would be entitled, or which they would incur if the word "male" were stricken from the Constitution. My motive in presenting that — and I would say here that it was presented without knowledge of the amendment that I think had not been presented by Mr. Tucker, and which is now under consideration — my motive in presenting that was, to state it very briefly, that I thought it was as well in the existing division of public sentiment upon this question that it should be handed over to the Legislature to be considered more deliberately than it would be possible for us to consider it here; and also that none of us had been elected upon this issue and could not pretend to have come here with any particular instructions upon this question; that if we have the matter debated in the Legislature, as it would probably be, the best light of the country would be brought to bear upon the discussion of the question, and we should find a point of agreement, either for one side or the other, where there would be less controversy than seems to exist now and as is developed in and around this Convention.

But, Mr. President, it seemed to be the judgment of this able and distinguished phalanx of ladies, who have been representing the interest and the cause of their sex at this Convention so ably and becomingly; it seemed to be their preference that this question should be sent by the Convention directly to the people for their judgment. And, as I have always found that I was more apt to be right when I agreed with the ladies than when I disagreed with them, I have concluded that what little I have to say or do upon this question shall be done in favor of the amendment which they all seem to prefer, and, therefore, I shall ask those, if there are any — I know there are some who prefer that this matter should go to the Legislature — I shall ask them to do as I propose to do, and support the amendment that is now before this Convention.

I would like to say a few words on the merits of this question, and I intend to be brief. But before I enter upon that subject, I wish to separate this Convention from any portion of the responsibility for one argument which was presented before it by one of the learned counsel who represented, by authority, the adversaries of female suffrage.

The ladies who have opposed the extension of the franchise to their sex, with a sagacity and tact for which the sex has always

been remarkable, and in which they have always shown themselves to have greatly the advantage of our sex, declined to appear here in defense of their own case, wisely. Wisely, not that they had not enough and to spare of ladies who could have presented it with quite as much ability as the other side was presented; who have all the eloquence and the logic that would be necessary to do justice to their cause, but they realized that the very strength and ability with which they presented their case would defeat it. It would be undermining the ground on which they stood — sawing off the limb of the tree on which they sat. It would be a repetition of the old fable of the lady who found that the garment she had been weaving all day was unravelled in the course of the night.

Well, they sent some lawyers here to present their case. One of those gentlemen, a gentleman for whom I have personally the very highest respect, both professionally and personally, in the course of his speech, used this language, and I take it from the reports:

"The number of prostitutes in the city of New York alone has been estimated at from thirty to fifty thousand. Every city in the State adds its quota to this disreputable army. These women, who live by selling themselves, soul and body, would, of course, sell their votes. There is no class among the present voting population"— please mark these words — "there is no class among the present voting population analogous to this degraded and unfortunate army of lost women."

Mr. President, I would not like to have uttered that sentence. What is the implication? That the female sex, your mothers, your sisters, your daughters and your wives, belong to a class who are outside the pale of human charity, and to whom the grace of God is not accessible. They are distinguished from the male sex for the complete incurableness of their depravity. The least that can be said of this language is that it is blasphemous.

Now, Mr. President, if there is any class of people in this world who are the object of commiseration it is the women who have strayed from the path of virtue. But there never was a woman who strayed from the path of virtue who had not a male co-respondent more wicked than she. When our Saviour said to the woman taken in adultery: "Go and sin no more," what did He say to the men who accused her and who wanted permission to stone her: "You that are without sin cast the first stone." And they all retired, from the first unto the last, in silence. Far be it from me to presume to interpret the ways of God to men, but I will venture to say that one of the reasons why the language used was so different in the two cases was that to have said to the men, "Go and sin

no more," would have been a waste of words; and He knew, for He knew all, that when He said to the woman, "Go and sin no more," that His advice would not be wasted.

And yet it is upon this distinction that we are asked and expected, by our vote here to-night, to proclaim upon the housetops, and to write it in the Constitution of the State, that the sex from which we derive our being is so incurably depraved that they cannot be trusted with the franchise.

The particular claim that is referred to here is that this class sell themselves, and that people who sell themselves are not entitled to the franchise. That seems to me the burden of this argument. But, Mr. President, let us see where we shall draw the line. According to my experience there are occasional sales of that sort among our own sex. It is only while we have been sitting here that we have heard that the captains of police and their assistants in the city of New York have been found selling themselves for various considerations, and great scandal has arisen in consequence. If you were to draw the line at all those who are unfit to be captains of police, you would reduce the male franchise very considerably.

We heard from one of the eloquent speakers to-day a good deal about the Tweed charter. It is but a few years ago, according to the authority of an eminent Republican judge in the city of New York, that Mr. Tweed carried the charter through the Legislature of this State for the city of New York, and that six of the Senators received each $10,000 for his vote, $5,000 more for votes on kindred subjects, and $5,000 more for the vote for the next year. Now, then, shall we draw a line that will exclude all the legislative class?

While we have been sitting in this Convention, Mr. President, the Senate of the United States has been obliged to purge itself upon oath, and not with entire success, either, of having sold itself, not for soap, but sugar. (Applause.) Will you draw your line at the United States Senate? You will remember a Vice-President of the United States who was driven into coventry, out of public life, for allowing himself to be sold to a corporation. Some of you may, perhaps, suspect that I am not going to stop there. You may be thinking of the election of 1876. If you think I am going to disturb the treacherous ashes of partisanship in this assemblage, you will be disappointed. But I will say this, that if you are going to draw your line against the present voting class who sell themselves, I commend to you the advice which the farmer gave to a man about cutting off his dog's tail: Cut it off right behind the ears. (Laughter.)

It is the misfortune, not of one sex; it is the misfortune, not of one

class, not of one rank in society, to be under influences which more or less bias their political judgments. None of us are free from it. I am not sure that any of us ought to be entirely insensible to such considerations, but, at all events, none of us are; and the idea of proscribing our wives and our mothers for such motives, I think, is weak.

It has often been mentioned in my presence that this would effect a fearful increase of the vote, doubling our vote; that it is bad enough now, but that if you double it you would make it twice as bad. Well, I am not going to discuss that question here. I will say simply this: In twenty-five years, according to all statistical authorities that have been adduced from past experience, the vote of this State will be doubled; and then what are you going to do about it? Why, you will do just what you always have done when the vote has been increased; you will put up more booths, you will print more tickets, you will have a few more inspectors, and a little more money to get the vote of a few more people. That is as simple a problem as can possibly be presented to the Legislature, to provide for the doubling of the vote. I hope that that is enough to say for that proposition.

One of my colleagues a few days ago said to me that he understood I thought of saying something upon this question, and that I was in favor of this amendment. He said he found only one difficulty with it, which was, that he was fearful that the extension to the female sex of the privilege of voting and holding office would lead to domestic dissensions of a serious character; and he asked me if I would say something upon that subject if my mind was clear upon it. I told him that my mind was clear upon that subject. And there may be others besides him who have the same difficulty, which is very probable — because I remember that it was the first difficulty that occurred to me when this question promised to become a subject on which I would have to vote here; the first difficulty that presented itself to my mind was that possibly it might be the source of domestic unhappiness and infelicity.

There are two answers which I will make to that proposition. In the first place we have never thought it necessary to pass a constitutional provision, or to legislate against allowing men to marry women of a different religion. Now, everyone knows that differences of religion are very much more difficult to reconcile than political differences, because they involve questions of conscience, and are and always have been the sources of greater turbulence and disorder; because they are questions about which people who are serious and in earnest feel that they cannot compromise.

Political differences are not of that character. Why should it be more difficult to harmonize on political differences than it is upon religious differences?

But I would ask in the next place, how do we get along with the fathers, the brothers and sons of a family who do not happen to agree in politics? We do not make any law to prevent a son from differing from his father politically, and we do not think it necessary to make any provisions to prevent riot and disorder in families on account of it. Is there any reason in the world why a man and his wife should quarrel about an office any more than the man and his son or the man and his brother should quarrel?

The fact is, Mr. President, that men will be men and women will be women; and the man's power over the woman, and the woman's power over the man will continue to be just what it is and always has been from the foundation of the world in politics, with the vote or without the vote, in office or out of office; and when the husband says he does not want his wife to run for an office, he will be most infelicitously married if he does not have his way. And in that case all I have to say is that if they did not quarrel about that matter they would be sure to quarrel about something else.

One of the lawyers who advocated the case of the anti-suffragist here presented the somewhat singular theory that the foundation of government was force; and inferred from that that women not being as strong as men were not fit to participate in the government. That I believe was the logic of the argument, so far as there is any logic possible in such a proposition. I would have liked to have asked that gentleman what force is? Did he ever feel force? Did he ever see force? Did he ever smell or taste force? Has force any sex? He cuts off his arm, and his force ceases. He has laid down in the dark, in the language of Job, and where is his force? The author of the nebular hypothesis, as it is called, demonstrated to the satisfaction of the scientific world that the sun provided all of the powers and forces which are known upon this planet; but at the same time he was obliged to admit that force had to precede the sun. If you want to learn what force is, you have to learn what infinite power is for all force comes from the source of all power. Did you ever hear of any such thing as sex in connection with force? I take it upon myself to say that, in every language that is written, except our own, force is feminine; in our own it is neuter. Now, the idea that a question of this character is to be settled by the difference in the force or the physical strength of the sexes! I almost feel I ought to apologize for referring to it.

A point upon which a great deal of weight has been placed is, that

the women do not want the suffrage, and that it would be cruel to impose it upon them. I will say in a word all that need to be said upon that subject, without admitting or denying the fact stated that women do not want suffrage, although the evidence before this Convention shows the very contrary state of opinion. There has never been a time when an addition has been made to the suffrage, from the foundation of the world, upon the petition or the solicitation of the party receiving it. I defy any member of this Convention to name an instance in which the sovereign power or the voting power has yielded the suffrage to a class because that class wanted it.

It has always been given because one party or the other of the voting class wanted the suffrage of these people, who, they hoped, would strengthen their party; and in that way the suffrage has been continually increased, but always for the benefit and for the interest of those who have the suffrage already. And, now, as to this cruelty question, I want to say a word. It has been contended here that it would be very cruel to impose upon women the duty of voting. Mr. President, I never found any inconvenience about voting. I never voted against my wishes. I think I have always, since I have been of age, voted upon State and national questions, but I do not remember to have once voted against my wishes, nor wished that I had not voted or considered it a burden; and I venture to say that the same remark could be made of every delegate in this Convention. They would not have voted if they had not wished to vote. It takes very little time to cast a vote.

Therefore, the question remains, would the liabilities and duties that attend voting be oppressive to the women? No, except in precisely the cases where it is oppressive to the male sex, and that is, when they want other people to vote for them and other people do not want to vote for them. That is the difficulty. Those are the people who work so hard at the polls. But for the voter himself, who has nothing to do but to go and deposit his ballot, there is no more trouble about it than he has in smoking his after-breakfast cigar. Nobody has any complaint to make, except those who want to get other people to vote for them who do not want to vote for them.

This cry about cruelty to women reminds me very much of a dialogue that passed between little Johnnie and his mother. "Johnnie," said his mother, "your little sister has been hauling you on her sled for half an hour; why don't you get off and haul her?" "Mamma," says little Johnnie, a genuine incipient, inchoate anti-suffragist, "I am afraid she will take cold," and that is precisely the

kind of sympathy that is felt for the ladies when we hesitate to impose upon them the burdens of the franchise.

Now, then, one word about the effect of the ballot upon the female sex. (I am trying as much as possible to avoid the subjects that have been already fully treated here; this is one which I believe has not been touched.) It is apprehended that if women are allowed to vote, they may be candidates for office, and they may make bad officers, and there will be confusion in politics. In fact I have never heard it stated exactly what they would do, but it was something very bad according to the general description.

Now, I would imagine the case of a woman who is a candidate for office. Would not the very fact that she wished to hold an office constitute a guarantee that does not exist to-day that she would be loyal to all her duties as a wife and a mother? For she would know that she was liable, if exposed to any suspicion, to have that brought into the canvass, and prove fatal to her interests. Though I should be very far from desiring to encourage or recommend it, and far from apprehending that women would generally want offices of any particular importance, still I am satisfied that if they did, the responsibility resting upon them, the possibility of exposure to criticism, would operate to make them infinitely more careful and circumspect than they are at present. Therefore, instead of being an objection, I think it is a very desirable restraint. On the other hand — and this is itself of some importance — were any aspersions cast upon woman's character, the resentment that would follow, if the criticism were unjust, would in itself be a great protection for her.

Now, Mr. President, I do not wish to occupy any more of the time of the Convention. I feel that I owe you an apology for the time I have already taken; but I wish to ask this question: Do you wish, do you dare go home to-night and say to your mothers, if you are so fortunate still as to have them, or your wives, if you are so fortunate as to have wives: "I have proclaimed to-night in the capitol of this State, to be read of all men, that you are not fit to have the franchise, to vote for a school trustee that is to educate your children, to vote for legislators who are to determine your rights, and the rights of your husband and children. You are not fit, you are not competent to vote for any political purpose whatsoever?" I answer that if the question laid between you and your families there would be but one class of votes cast this night.

We have heard a good deal of good advice and bad from lawyers upon this subject, and I will conclude by quoting one other

case from an eminent lawyer who flourished some eighteen centuries ago, but he had a level head. There was an effort making to stone and kill two innocent men that happened to differ in some religious doctrines from the Hebrews of that period, in Palestine. He said to them: "I counsel you to go slow." He referred to two or three cases where they had got into serious troubles from the same processes which they were resorting to then. He said: "If this thing is of men, it will come to naught, but, if it is from God, you will be overthrown." They concluded that he was right, and they, therefore, agreed with him. They beat the disciples and let them go.

Now, Mr. President, the women, following the example of these Hebrews, have already been beaten in the Suffrage Committee room; and, now, following out the example, I propose that we should let them go, go to the people and let the people say whether they are entitled to the franchise or not. (Applause.)

The President — Mr. Lauterbach desires to present a petition.

Mr. Lauterbach — Not to make a speech, Mr. President. I desire to present what will probably be the final petition to be presented to this Convention in favor of the prayer to strike the word "male" from the Constitution. The petition represents the additional petitions from New York, Erie, Cayuga, Monroe, Washington and five other counties, signed by 1,215 women and 493 men, making a total of 1,708. Barring some inaccuracies that may have occurred in computing the number of signatures, I am informed that the total signatures and indorsements to date represents 626,627. (Applause.)

The President — The petition will be received and placed in the archives.

Mr. Mantanye — Mr. President, I have listened to the remarks that have been made here by the various gentlemen on the two or three preceding evenings and also to those that have been made here to-night. It seems to me that they are hardly, as we sometimes say here in the Convention, when calling somebody to order, that they are hardly germane to the proposed amendment and report under consideration. The gentlemen have discussed the question as to the right or wrong, or the propriety of striking the word "male" from the section in question in the Constitution, when that is not the question here at all. What we seem to be considering here is a way in which we may dodge that question, and all of these impassioned speeches that we have heard here from gentlemen who have, with clinched fists and with closed eyes,

appealed to the sense of justice and manhood in this Convention, when we come to compare their speeches and apply them to this proposition which is here, it seems to me very much like the travail of the mountain to bring forth the very small mouse. For this is not to say whether we believe that the right of suffrage should be given to women or not, but it is to evade that question and to send it back to the people who sent us here to render some sort of decision upon that matter. Now, I honor and respect the gentlemen of this committee which made this report. They have first decided that it is their belief, founded upon their knowledge of the wishes of the constituents that they are here to represent, that the people do not want the word "male" stricken from the Constitution at this time. And, therefore, I say that if they have arrived at that conclusion, they have no right to turn around and say, that, believing that, having the knowledge that gives us that belief, we will refer it back to the people to vote upon, when we already know and have declared our knowledge of what they wish in that matter. It seems to me that it is entirely wrong. It is beneath the honor and the dignity of a Convention of this kind to do such a thing as that, and I hope the gentlemen of this Convention will sustain the report of this committee upon this proposition, as it seems inclined to do and willing to do upon the main proposition. I say, seems inclined to do and willing to do, because those who pretend and claim that they are in favor of woman suffrage by their speeches here have not taken and brought up for consideration an adverse report upon the proposition to strike out the word "male" from the Constitution, to which question the speeches they have made would be entirely pertinent. But they have chosen this proposition solely that they will not act upon that proposition, but that they will send it back to the people for them to vote upon and to pass upon. Now, I think that if we do that, we discredit ourselves; we lessen the respect that the people should have for our work here, and for the Constitution that we may propose and submit to them. I should not hesitate with the report of the committee upon this proposition voted down, and my vote recorded here in favor of this report, to go back to my own people, because I believe that they never would honor a coward, one who had been afraid to stand up for his opinions, and to have the courage of his opinions. They would feel, if I had voted against this adverse report, that I was afraid, that I had been dodging the question, that I had been cowardly and dishonest in this matter, and even those of my constituents, my more immediate constituents, even those who are in favor of universal suffrage, would think

better of me than if I should merely cast a vote in favor of this matter of submission.

Now, as I have said, I do not understand or think that this question is before this Convention on the consideration of this adverse report, as to whether it is proper at this time to extend the suffrage to women. That is not the question here. Still, if that were the question, if we had no reason to doubt our belief, which we have expressed, which has been expressed by this committee, that the people do not consider it proper to make this change at this time, if we had any reason to doubt it, when we come to consider these very petitions themselves and the manner in which they are made up, I think that we could clear up all doubts of that kind. I have been examining here the minority report made by the gentleman from New York (Mr. Tucker), in which he states that in these petitions that have been presented to this Convention and memorials, they are signed by 171,449 women. Now, that would be perhaps about ten per cent of the number of women in this State that would be entitled to vote if the word "male" was stricken from this section of the Constitution in question; about ten per cent, and this, after a thorough canvass has been made. There are also the signatures of 119,074 men. That is less than ten per cent of the male voters in this State. This report also says that, in addition to those, are the names on the petition presented by the Woman's Christian Temperance Union, amounting to 73,000. But nearly all those names are on the other petition, so in making up this large number that is paraded here, those names seem to be counted twice. Then it is stated, in addition, that there is a resolution, or what purports to be a resolution or certificate, to the effect that the State Grange, which represents 50,000 more men, is in favor of it. Now, we have not the signatures of those members. I do not know whether the members of the Grange are in favor of it or not. I have heard from Mr. Woolston, who is one of the leading officers of the State Grange. When his attention was called to the fact through the papers that such a memorial was presented, he said it was a surprise to him; that he had attended the meetings, and that he knew that the members of the Grange were not in favor of it, as a body, and that the members of the Grange were not in favor of it, individually. I find, on examining the petition from my own county of Cortland that there are upon that petition about 3,800 names. From the town of Cortlandville, which is mainly made up of the village of Cortland, a village of 10,000 inhabitants, are 669 names of women. From other towns in which an equally thorough canvass was made from house to house by a committee-

man from each town, there were only found 435 who would sign, out of a total of 6,400 voters. About seven per cent of the women in the country, in the rural districts, have signed that petition, and in that county of Cortland I think there are five local Granges, besides the county Grange, so that it would seem from that that the members of the Grange could not be very strongly in favor of this matter of female suffrage. Now, while there appear upon this petition from the town of Cortlandville 699 signers, women, and 1,052 men, I will say this, that no man, woman or child in the town of Cortlandville or in the county of Cortland has ever said one word to me in favor of woman suffrage, and I have seen them often since this Convention commenced its sittings. On the contrary, I have been approached by a great many, both men and women, in regard to the matter, who have spoken strongly in opposition to it and urged upon me action against it. The men put it upon the ground that we have often heard urged here that the women of the households don't want it. They do not wish to have this duty and burden put upon them. They prefer to continue such duties and such rights as they have had. They believe that their influence will be greater than it will be if they are put upon the level with men — that they stand now above them — that men listen more to their advice than they would if they were put upon the same level and thrown together in the same arena of politics. They say also that they do not feel that it is a burden or a duty which belongs to women any more than it would to go upon a jury, or to go into a field behind a plough, or in the cornfield to work — that there are certain duties for men and also certain duties for women in making up the social and political fabric that we call government. Women have expressed the same view to me. It is said that all the women who labor and are in business desire this suffrage. I have called upon those who are in business, and I find that they are not in favor of it. They use these same arguments against having the suffrage. As I have stated, I have had no one say one word to me in my county, or in my home, or about it, in favor of suffrage for women.

But, now suppose that this amendment that is proposed here should pass. What would be the effect of it? This is to submit this matter to the people to be voted upon by them, and when it goes to the people, sent there in this way, the argument would, perhaps, be used, and, undoubtedly, would be used, that it was a sort of indorsement from this Convention, and that would be used as an argument in favor of it, when it was not intended as such by the Convention. Further than that, by what rule would we be

governed? Now, Mr. Marshall has introduced here a proposed amendment to the Constitution in regard to the submission of future amendments to the Constitution. It was agreed in the Committee of the Whole, where the matter was discussed and looked over, that it was a very proper thing, that it was a very proper provision, because it provided that there must be a larger vote, that these amendments should be voted upon by at least a majority of those who are qualified to vote upon that question. But that provision only applies to future amendments, which should be submitted through the Legislature, or which may be submitted by a future Constitutional Convention. Those provisions, if they become the Constitution of the State, by adoption this fall, would not apply to the submission of this matter, because it does not come within either of those classes which are provided for by that section, as to the adoption of future amendments, and, therefore, there might be men withholding their votes, and it might be passed when less than twenty thousand votes were cast upon that question; some small number, insignificant number, which would not express the wishes of the people at all. True, it may be said that if the people allow it to be passed in that way, by default, by a few votes, without voting, they impliedly consent to it. But that is one of the very evils we desire to guard against as to future amendments that are to be brought in here. It is conceded that it is an evil that provisions can be adopted in that way. So I say it will be a dangerous matter for us to have this proposition submitted to the people in that way, when there will evidently not be a full vote and expression of the people upon it. I say we are not here to refer matters back to the people. We are here as the representatives of the people, upon the supposition that we may know and ascertain what the people want, and we are to act upon our belief as to what they wish done in the matter of this Constitution, and that we will formulate it, put it into the form that we think they desire to have it put in, and then submit it to them for adoption. They do not want us here to dodge our duty, to play the coward or play any dishonest tricks with the Constitution or Constitution making by doing anything of this kind, by leaving the main question, refusing to pass it, as we must, because the main question has not been brought up here by any objection to the adverse report of any committee to strike out the word "male." It is only brought here, as I say, by this weak and feeble amendment providing for leaving it to the people and evading our duty. I say, let us not do that. It will bring discredit upon our work. It will not only hurt us, as to this very matter, but as to all other matters that we submit. Why,

even now it is being talked of all through the State of New York, for this matter was discussed here last week, and the discussions have gone out through the papers. The people have read about it. We hear these irreverent young men who represent the public press say: "Why, the Convention is jollying the girls now." I mention that simply as showing the contempt we are liable to bring upon ourselves by doing this thing; the remarks that will be made in regard to our work. I say, let us stand up like men and say that we will do according to our belief; that we will either strike the word "male" out of the Constitution, which we submit to the people for their action, or else we will not, and then let us stand by it and not seek to evade the responsibility, and when we go home the suffragists and anti-suffragists, alike, our wives and our mothers and our sisters, will regard us with more honor than they will if we do this thing which is here proposed, for all men and women alike do never honor a coward. (Applause.)

Mr. Towns — Mr. President, a painful injury, received about the time this amendment was reported from the Committee on Suffrage, has caused me, much against my will, to remain the passive friend of woman and the inactive foe of her enemies, until to-night. I had not intended to lift up my voice to urge at your hands the dispensation of tardy justice to her. I thought the question was so plain that even he who ran might read. But the courtesy which you have shown me, you of this Convention who seem desirous of urging, with lightning speed, this most momentous question through this deliberate body, I graciously thank you for.

I am proud, Mr. President, to stand where Plato stood; where the friend of Kant, Heppel, stood; where Disraeli, John Stewart Mill, Whittier, Lincoln, Chief Justice Chase stood; and there I will forever stand until all the Buckleys, all the Matthew Hales, all the Goldwin Smiths, and even our worthy Chairman, find some arguments that do not appeal to prejudices, dusty with the time of ages; but attack these questions coolly, calmly, and with the logic that knows and believes that justice is on its side.

None of those gentlemen, the great controversalists upon this question, has found time and words to refute the sad truth that disgraces this great commonwealth; the sad truth, I say, that one-half of its population, that half doing more than half of the labors of the day and enduring all its sufferings, that half of our glorious population in this end of the nineteenth century, is put upon the same base strata with the felon and the idiot; for the Constitution guarantees the rights of participation in government to the most lowly,

the most unworthy, the most weakly equipped for the service, and only denies it to our mothers, our sisters, our sweethearts and our wives. None of the mighty controversalists on the side against female suffrage has advanced, sir, any argument against their right to vote, save those contained in special pleas of expediency and appeals to the passions, our passions and prejudices. We are told by Goldwin Smith, he a proselyte from the divine faith of woman's rights, that government is force, and that woman, being the weaker vessel, could never participate in its administration, for she could not enforce the decrees of State. There might be something in this argument of the worthy philosopher, the embittered man who writes polemics against creeds and beliefs, who would drive the Hebrew away from us, and everyone who differs from him and his particular small faith; I say, there might be something in this argument of his, if we were about to abdicate to woman all the functions and powers of our governmental administration. That we are not about to do, sir; though we might go to that extent without great injury to the commonwealth or to ourselves. While woman may not be fitted to do police justice duty, panoplied with the protection of the freeman's ballot, she would be able, sir, to resist becoming the enforced tributary of a mercenary police and a dishonest government. She, of course, cannot bear arms. She was made to bear children, to bear children that the word of God and that this country might live upon the face of the earth. But, sir, the cause of right and justice is not won by the gun or the rifle, and it is not by the resistance of serried legions that any just cause ever triumphed. Take away from it the moral support of the mothers and daughters of the land for which battle was waged, and that country has gone down into defeat and into oblivion, in the history of ages.

The relation of the sexual differences between man and woman, sir, has nothing to do with the right of voting. Has the ballot ever made man worse or more depraved? Ask the workingman of England who lifted him from the slough of political degradation, and gave to him the first certificate that he ever had of his brotherhood with man.

But Professor Cope, who expounds that woman and man are different sexes, and that the peculiarities of women unfit them for government, urges this in a pamphlet of many pages, with great casuistry and small fairness and by solemn arguments. But professor, though he be, emeritus in Latin philology and philosophy, he lives outside of this world of ours. If he walks, he moves with the step of the somnambulist, the dreamer; for, if he but looked

around him in this world of ours, he would see that woman is not only qualified to administer, to govern and to act, but that she does govern, administer and act in nearly every function of life and government in America and throughout the civilized world. In finance he has, perhaps, never heard of Hetty Green, or Burdett Coutts; in philosophy, of Eliza Gannon; in literature, of George Eliot; in medicine, of Mrs. Mary Putnam Jacobi; in the humanities, of Florence Nightingale; in patriotism, of Barbara Freitchie; in devotion, of the good wife of Ulysses, Penelope; and in government, that woman who has put the button upon the church steeple of womanly perfection, the honored, the revered, the almost-worshiped specimen of her time, Victoria, Queen of England. In all the walks of life women are active, discreet, intelligent, reflective. Woman's labors never cease. She continues from sun to sun, and the world, I am almost moved to exclaim, would cease to revolve in its firmament, were the activities of woman, the very mainspring of humanity, to cease but for a single day. Women may not be able to march as far as men, or endure the physical strain of the stronger sex, nor have they now to do so. They can ride on bicycles, whose rolling feet put them on an equality of locomotion with men. (Applause and laughter.) Who can say that in less than twenty years women, upon bicycles run by electricity, and mounted with motors throwing death-dealing projectiles a dozen miles, will not march fearlessly into battle against their country's foes and defeat them. Sir, the reason they have never yet done military duty is that these possibilities did not exist. But they have been subjected, sir, at the hands of man, to more hazardous, death-dealing, destructive and burdensome occupations than the firing of cannon or the bayonet's point. He did not make them soldiers, sir, because it was necessary to leave them at home to supply the thinned ranks of the warriors; to feed and to clothe them, to nurse them and to administer their affairs, when they were doing battle or robbing a sister country. And you may depend upon it, sir, in spite of all their boasted chivalry and masculine devotion, that when the time comes for woman to do battle upon these bicycles, if you please, chivalric man will hide himself behind her fluttering petticoats and send her to the front. (Laughter.) This is no exaggeration.

Her first issuance into history, sir, is in the libelous statement of our abject progenitor when he said to an irate deity: "The woman gave me the apple to eat." But now appears upon the scene great Matthew Hale, the corporation attorney, special pleader, learned and versed in the sophistries and quibbles of the law. He is a veritable Chinese warrior and wages against women vociferous

flagellations and lifts up his voice in dreadful alarums. His weapon against them, like that of the pig-tailed warriors of the Celestial Empire, is the tom-tom and the stink-pot, and he tries to demoralize our judgment and obscure the situation by the stench and noise of his wails as he marches into battle against poor woman behind the bedraggled skirts of 40,000 fallen women of New York, who, he claims, would revolutionize history and subvert the government if they were allowed to vote. Why, sir, it has been many years since the Dutch took Holland; and this gentleman, who, I am told, lives in this old Dutch town of Albany, seems to be ignorant of the fact. In spite of his alarums the ballot-box would be just as pure as it is now, with the miserable wretches masquerading as men, supported by these poor creatures from whom they levy tribute, voting, governing — yea, defying us, as in the greatest city of this State. And last comes that worthy divine, Doctor Buckley, who kindly sent, through Watson Gilder, advance sheets of his article against women to the worthy chairman of the Suffrage Committee, and says "Chivalry"— spell it, gentlemen of the Convention, with a big "C"—"Chivalry, with its refined influence would pass away from the face of the earth, if the shackles, the golden shackles of woman's bondage, were stricken from her." Chivalry, the name would never have been known but for women. What sins have been committed in its name? The name never would have been invented, no, never mentioned in legend or lore but for woman, whose gentle character, whose superior intelligence, whose virtue, whose patience, whose sublime devotion turned the Frankish barbarians, the Anglo-Saxons and the Normans into something besides fighting monsters, civilized them and endowed them with feelings of compassion, and mercy, and pity. Again, woman regenerated man. Again, she led him into the paths of perfection, as she had done, sir, at that time in the history of the world when she reigned supreme, and had all the masculine gender at her feet. The very beards that we wear, and I say this upon the authority of Darwin; the very beards that we wear, the gaudy plumage of the peacock, the mane of the roaring lion, are but the excrescense of masculine excitement endeavoring to please the female to whom he paid courtship. Ancient chivalry, gentlemen, with its minnesingers, its troubadours, its jousts and its tournaments, has long since passed away, if it ever existed, save in the imagination of the poets and the bards. If the act of suffrage is going to put the quietus on such chivalry as we have to-day, on such chivalry as we claim we have to-day, on such as the Rev. Dr. Buckley says will be exterminated from the face of the earth, if woman is allowed the privilege of

depositing a piece of white paper, about two inches by four, in the ballot-box once a year; if such chivalry as we have in these last days of the nineteenth century, if woman suffrage is going to eradicate the hog and hominy knights of the South, the codfish knights-errant of the East and the buckwheat nobility of the West, I say let it come and let it come to-night.

Away with such chivalry, whose principal tenet is to rise with politeness and give some woman a seat, and who the next moment wishes to mash or to look upon with lecherous gaze. Away with the chivalry that pampers one or two of the sex and rocks them in the cradle of luxury, while with tyrannical heel it crushes the life out of the millions of poor suffering wretches who have to earn their daily bread by the sweat, not of their husband's brows, but of their own sweet brows.

But, says Dr. Buckley, the ballot would deteriorate women in their moral tone. I ask that worthy man of God, that most eloquent preacher, no doubt, though I never yet heard his dispensation of the word how to reach eternal life, I ask that worthy divine, who preaches, no doubt, to plush cushions on the Sabbath and moves on the inner or outer crust of the 400, which is the most destructive to the moral tone of men and women, the emotions, struggles and intrigues of the so-called leaders of society, the low-necked and short-sleeved dame sipping champagne at post-prandial functions with the dandy and blase statesman, listening to his compliments and equivocal *bon mots* until her very senses reel with excitement, or the modest mother and sister who goes to the ballot-box on election day and deposits the freeman's weapon in the cause of her country? No, reverend sir, if the debacle of society comes, it will come from the direction where lascivious music sounds its pleading tone, where highly-seasoned food, terpsichorean occupations, French manners and fashions ruin and corrupt the female's gentle heart, not from the loom, the working-benches, the country home, the hut or the hovel. Sir, the women of the middle age who inspired the twang of the troubadour's guitar and taught the modest bard to sing, have perished from the face of the earth. Woman lives to-day under another dispensation. To-day it is the song of the shirt; it is the crack of the task-master's lash; and I ask you, gentlemen, who have been trying to rush this momentous question through this Convention, I ask you, sirs, Democrats and Republicans, I ask you, in the name of justice, I ask you in the name of Him who witnesses the fall of the smallest sparrow, I ask you in the name of that chivalry which Dr. Buckley has conjured up, if there is manhood enough, if there is chivalry enough, in this

body of 170 wise men of the State of New York, like the noble knights of old, to go down into the cave, not of the wicked dragon, but into the caves of the industrial and political dragon and pull up woman, fair woman, pull her up from her darkness and degradation, and make her free. (Applause.)

Mr. Chairman, I well remember that day in June; it was the first time that I came to regard you with seriousness; to study those perfections of feature and intellect with which our common God has endowed you. I saw, sir, you sitting there in the center of that symposium of intellect, of virtue, of motherhood, of this great State, and it seemed to inspire me, to inspire me with hopes, which, if rumor is true, will be dashed to the ground. But there, sir, nevertheless, you sat —

Jove like, exquisite, *debonair*,
You heard with languid, lordly air,
  Brave women make their piteous plea,
I saw the touch of pity trace
Compassion on your noble face,
  And hoped that woman should be free.
But when you spoke to El-i-hu,
My hopes took on a darker hue.

For El-i-hu, though he a sage is,
Prejudice, dusty dust of ages,
  Had hardened him at head and heart,
He has not heard their piteous pleading,
Nor seen their wounds from shackles bleeding,
  In a lifetime spent in slavery's mart.

So up he spoke, the mighty leader,
Wily lawyer, special pleader;
  "Oh, chief, close up your ears and eyes,
We must not for a single hour,
Divide with them our supreme power,
  Nor give up aught of the franchise.

"Why, sir, it would kill this Constitution,
And all the problems whose solution
  Have cost me sleepless nights and days,
With petticoats before the people,
Fluttering from platform, stump and steeple,
  Would not be in it with skirts and stays.

"The article ju-di-ci-ary,
Creating courts unnecessary,
To help us lawyers to our fee
Would go into the paper basket,
If the voter's sweetheart asked it,
And called on him to make her free.

"There'll be no time to set up school,
To teach the ideas of home rule
Set forth in Jesse Johnson's scheme,
And even the labors of Louis Marshall,
For the judges to whom he is partial,
Would be an iridescent dream.

"And eke, sir, the apportionment,
By which the Democrats are sent
To Coventry for years, I claim,
Would be forgotten in the scuffle,
And lost forever in the shuffle,
If woman's playing in the game.

"You, sir, and I must give to party,
Not to mankind, our efforts hearty.
Disfranchised, woman must remain,
T'would mean for us 'the debacle'
If we struck off a single shackle,
Linked in her bondage's golden chain.

"Put Cochran in his regimentals,
To terrorize the sentimentals,
Get Gilder to help Goodelle out,
Let swing and crack the party lashes,
Let party thunder roll its chases,
Till every female's put to rout.

"Turn loose the jammers of dry rot,
Declaim against the female ballot,
Fill every heart with dreadful fears,
Regard not justice, mercy, pity,
Kill the measure in committee,
And woman's slaved for twenty years."

This question, in all earnestness, Mr. Chairman, has been urged with undue haste in this Convention, rushed through the Committee on Suffrage upon outside pressure and influence, precipitated

upon our councils and driven through this deliberative assembly with great haste. There has been a well-organized cabal, in which, I am sorry to say, one of my colleagues from the Second District has been conspicuous, not in his regimentals, with the decoration of the valiant Thirteenth Regiment corruscating upon his manly bosom, but in civilian attire, this son of Mars, or, perhaps, in deference to the ladies, I ought to say this son of mamma's, who never smelled powder, save upon his lady's cheek, has acted as scout and picket for the enemy. He has been the most ubiquitous, cantankerous, agitating perambulator and perambulating agitator this controversy has produced.

The chairman, God bless his gentle soul, has sought to scuttle this beautiful ship in a milder way, but not less effectually. He has appeared to me like one in a dream, battling for a cause from the justice of which his conscience told him he was many miles away. Why, sir, do you know, I have met him in the corridors of this Capitol with a misty sheen upon his countenance, muttering prejudices against the logic of the situation and creating witty apothegms to combat the arguments of poor woman. And, feeling, like Hamlet, I thought that I would approach this Polonius, and I addressed him in the language of Shakespeare; I said to him: "Good morrow, worthy sir, how goes it with fair woman to-day?" It seemed to stun him. He deigned no reply, but addressed me in language which my stenographer took down; I did not understand it: "*Adam per Eva deceptus est, non Eva per Adam.*" "Why," I said to him, "pray, address me in the language of my country, in United States; what mean you, sir?" "Why," he said, "I have just heard it; have you heard it?" "What is it?" says I. "Why," he says, "I have just heard; how I pity poor father Adam; I have just heard that Adam, when from his grassy couch he rose, learned that his first sleep was his last repose." (Laughter.)

The gentleman was so pregnant with this vast subject, that, armed with the advance sheets of Dr. Buckley's polemic against women, he sought the secluded fastnesses of the Adirondacks to quiet his nerves and compose that speech of forty-six hundred words, which will go tingling upon the clapper of the bells of time until their brassy tongues melt with the heat of this discussion. There, sir, mid the vast solitudes of lake and mountain, undisturbed by any sound, save the discordant screech of the weary and lonely loon, or the wail of whang-doodle mourning the loss of her first born, this great production of the chairman of the Committee on Suffrage, whose chivalry has caused him to deny what never yet, in the history of the ages, has been denied to women, the right of

having the last word in a discussion (laughter), was conceived, and will be delivered here to-night under the midwifery of Messrs. Cochran, Cookinham and others. You are, I know, gentlemen, impatient for the sacrifice. But before I close let me warn you, let me remind you, gentlemen, of the fate of that assinine quadruped who once adorned himself with the skin of the king of beasts. Let me tell you, gentlemen, you who are going to vote against this question, that you need not lay the flattering unction to your souls that you are of the race of those who held the pass at Thermopolae, that you are the Casabiancas of this misled Convention, or that you are, perchance, of the blood of him who held the bridge at Rome. No, gentlemen, you who are seeking to stem this tide are the long-lost brothers of Mr. Ike Partington, the posthumous progeny of that old woman who sought to sweep back the waves of the Atlantic ocean with a broom, and you are engaged in just as unprofitable a task. This question has come to stay. Chase her out with a pitchfork, she will come again. Gentlemen, I wish you joy in the occupation; and you, Mr. Chairman, the embodiment of grace, the mold of fashion and the perfection of form, in the words of the Roman gladiator, I exclaim: "*Ave imperator morituri te salutant.*" (Applause and laughter.)

Mr. Cookinham — Mr. President and gentlemen of this Convention, I do not rise to-night to talk to the gallery. I do not rise to address you as a criminal lawyer addresses a jury, when he has neither law nor fact upon his side. I will address you for a very few moments in the line of common sense, in the line of logic, in a line that will, I believe, aid you, fellow-delegates, to do your duty to-night. I shall first address myself to the gentleman who opened this debate. It was put into his mind somehow, I do not know how, to state in the Convention that this committee was made up unfairly to the women. I say to you, fellow-delegates, I open to you no seventh seal when I say it is the only committee named by the President of this Convention upon which delegates were placed because it was known what their votes would be when they came to pass upon any question. Four members were put upon that committee that they might vote in favor of woman suffrage. I ask you, suppose the New York Central Railroad had asked to name four members of a committee, would these halls have held the chorus of condemnation that would have been poured upon such a proceeding? The proposition would not have been thought of for one moment. The gentleman saw fit to criticise the action of the committee. I say again, that I am opening no seventh seal when I say to you that no one on that committee, and no

interest passed upon by that committee, received a thousandth part of the consideration that was accorded to the gentleman who opened this debate and to the question which he champions. I say, moreover, that he has charged some persons with being sharp parliamentarians. I do not know to whom he refers, but I do know that the four gentlemen upon that committee who favor woman suffrage were asked to present this question in any form they saw fit, in the form in which it would command the greatest number of votes, and we would report it in that form to this Convention. I say to you, Mr. President and gentlemen, that every amendment reported adversely to this Convention was reported, with the exception of one vote, and, excepting this amendment, by the unanimous vote of the Suffrage Committee. I do not betray the secrets of the committee room when I say the gentleman who opened the debate voted with the majority. I do not detray the secrets of the committee room, because it is no secret in this Convention, that the gentleman who last addressed the Convention, Mr. Towns, also was present and voted in the same manner. I desire to know when the change of heart took place in the last gentleman who addressed the Convention? When the Convention assembled and he sat in counsel with us, his heart was right. He was with the majority of the committee. But I noticed, not long afterwards, that upon a certain seat in this Convention, upon that side, there appeared every morning a beautiful bouquet, and I have never been able to ascertain whether it was the arguments of the ladies or the bouquets that changed his heart.

Now, Mr. President, I did not rise to make a speech. The chairman of the committee will do all there is in that direction. But I do rise to present the case as viewed by the committee. We have heard very many speeches. We have heard them from men and from women. Speakers have come before us, as they have before this Convention, and have stated that five or six hundred thousand separate petitioners, men and women, desired that this proposed amendment should be submitted to the people. Their arguments are founded very largely upon that proposition. If that is true, it is entitled to some consideration; if it is not true, if this number is grossly exaggerated, if it is magnified to an extent to make it absolutely ridiculous, then it is not entitled to credit. I have in my hand a part of this so-called great petition. There it is. It consists of three or four pages. There are five or six names upon it. And yet, fellow-delegates, you who are wavering as to how you shall vote on this question, I ask you to consider what I say. That paper (exhibiting paper) is said to represent 211,396 of these peti-

tioners. You have been led to believe that the names of 600,000 petitioners, or, as the gentleman from New York gave it to you to-night, 626,627, men and women, had asked to have the proposed amendment submitted to the people. Is that true? I say that you are obliged to strike off 211,396 names, because they are presented solely by the president and secretary of certain organizations putting their names to the petition. Again, we are told that 50,000 voters, or voters and those who would like to be voters, women, have petitioned, on behalf of the State Grange. I do not know how they got the exact number of 50,000, but, Mr. President and gentlemen, that (exhibiting paper) is the only paper before this committee or before this Convention. Upon that paper you are asked to give credit to the request of 50,000 men and women. That is a paper sent out by one person. His name is Goff, and he signs himself as secretary of a little meeting held in my own city, where were assembled a few farmers; I say a few farmers, and, perhaps, fifty or sixty people present, all told. They assembled in the city of Utica in a small hall and passed a resolution upon the subject. We are now asked to consider that paper as representing the petition of 50,000 men and women. That is the only paper which they present to the committee or to this Convention. That disposes of 261,000 of their petitioners. But I am not quite through with these petitions; and, fellow-delegates, listen to what I say and then see if this petition that has been trumpeted through the State as representing 600,000 men and women is worthy of the consideration that the two gentlemen, with extended arms and vociferous utterances, declared to you it was entitled to receive. I hold in my hand the petitions from Oneida county, which I represent. I may say, I do not claim for my constituents that which I have no right to claim when I say that for intellectuality, for culture, for education and morality, no county stands above her. That as a home of statesmen, lawyers, doctors, ministers and teachers, there is no county which stands above the one which I represent. And yet I hold in my hand all the petitions from that great county. I heard upon a certain occasion one of the foremost champions of this cause address a meeting in my own city. I heard her say that they would go into every city, town and hamlet, no matter how insignificant, and they would produce petitions to be presented to this Convention, and that they expected from that county alone to present here petitions signed by 30,000 men and women. It is true that the petitions were circulated in every town, in every hamlet in every quarter of the county; and, behold the result! In the county there have been obtained the signatures of 1,043 women and

of 582 men; total, 1,625; whereas, the vote in this county is more than 30,000. Now, Mr. President, that is not all. I find, in taking up the first book, that these names do not appear once only, but they appear twice, and, in some instances, they appear three times. On the very first page the name of one person appears twice, and upon the very next page it appears the third time. It chances to be a minister of the Gospel. Now, Mr. President, he did not, in my opinion, sign that name three times, and yet somebody did. I find also page after page in these books in the same handwriting, and no explanation of it. I call attention to these matters and what is true in this case, I say is characteristic of all the petitions. I have examined them very carefully. That is not all. I turn to the figures and I find that it is said that 171,000 women and 119,000 men have petitioned. I turn now to the Woman's Christian Temperance Union petitions. They present here, as they say, a petition a half a mile in length. I examined that petition. I have taken the general petitions from the towns in my county and have laid them side by side with this petition of the Woman's Christian Temperance Union, and I find that the same names appear on both petitions. I do not mean that they are absolutely identical, but I find that there for the fourth time many of those names appear. Now, fellow-delegates, you who believe that there has been a representative body of men and women of five or six hundred thousand in number asking you to vote to submit this question to the people, remember that the statement is not true. There are not to exceed, in my opinion, from the best figures that I am capable of making, 200,000 subscribers, men, women and children. When you consider that every city, ward, township, village and hamlet in the State of New York has been canvassed upon this subject, and no more petitioners than this is obtained, am I not right when I say it is a lamentable failure and that it is great assumption for them to come here and say that the women or men of this State ask for woman suffrage? Why do we speak against it? I have not constituted the gentleman from New York (Mr. Lauterbach) or the gentleman from Brooklyn (Mr. Towns) to speak for me as a champion of woman. I deny their right to stand upon this floor and say that they represent woman. No, sir; it is not the minority of this committee that represent woman. It is the majority of this committee. (Applause.) The gentleman from New York (Mr. Lauterbach) or the gentleman from Brooklyn (Mr. Towns) may weave a crown ever so beautiful, they may emblazon it as they choose, and they will find the majority of this committee will gladly place it upon the brow of woman; but, fellow-delegates, we are

not here to champion the cause of woman. That is right in its place, but it has no place here. The solemn duty imposed upon every gentleman who has taken an oath in this body, is not to champion the cause of a few women. It is to vote according to his judgment for the interests of the State, and nothing more. The arguments, so-called, of those who champion the woman suffrage amendment —

Mr. Lauterbach — Will you permit me a question? You say that you are arguing for the State; kindly tell us who is the State? (Applause.)

Mr. Cookinham — I will be very glad to answer the question of the gentleman from New York. He has always been courteous in our committee, always courteous upon this floor. I will be very glad to answer him. The State is a corporation. It is made up of men, women, boys and girls. The living part of it. I speak for the whole of them. The gentleman from New York speaks for 200,000 of them. The State demands something. The State demands that we should guard its interests, not alone the interest of woman, but the interest of men, women and children alike. I have heard every speech made in the committee and out of the committee on this subject. I have heard not one single argument — I have not heard the question mentioned — that it would be for the best interests of the State that women should vote. Every speaker in the committee and out of the committee has appealed absolutely and entirely to men in a manner to excite their sympathies for woman. Not one of them has mentioned the subject of what the interest of the State demanded. If it were not for the lateness of the hour I would be very glad to talk upon the subject. (Voices: "Go on.")

I would be very glad to talk on that branch of the subject, but, as there are two or three speakers to follow me, I must forbear. I will state this, that I expected, when I was elected to this body, to vote to submit this constitutional amendment to the people. My mind was changed by the arguments of the suffragists themselves. A prominent member of this committee came to this Convention with a fixed opinion that he would vote to submit it to the people. He has changed his mind in consequence of the character of the arguments of the suffragists themselves. I fail to see any force in the argument that has been made in their behalf when I consider that I was called upon to exercise judgment as to the propriety of submitting this amendment to the people. They start from a different standpoint; their aim is different from ours, and

they, therefore, reach a different conclusion. Their aim is different from ours. They appeal to our sympathies only. They remind me of an affidavit drawn by a person in our city for the arrest of a woman, a large property owner. A tenant has been evicted from one of her houses and she had threatened to shoot him. He appeared at the justice's office and drew his own affidavit for her arrest. The affidavit ran as follows: "Whereupon the said Elizabeth Bradstreet took a double-barreled shot gun, loaded with powder and shot, aimed it at the deponent's stomach, and swore she would blow deponent's brains out." (Laughter.) Now, fellow-delegates, that illustrates the manner of those who speak for woman suffrage. They start with what woman wants. Then they say she pays taxes, that she is intelligent and moral. We simply file a demurrer. Their statement of facts is all true, but it has nothing to do with suffrage. If I were to discuss this question on its merits, I should say that there are but two propositions to be considered. First, would it be for the benefit of the State to confer the right of suffrage; second, would it be detrimental to woman? The first proposition has never been argued before the committee or before this Convention; and that is, in my opinion, the sum and substance of the whole thing. For that reason, those who hold to the views that we hold to have said but very little upon the subject in this Convention. We may say to the other side that you do not make out your case. We demur to your pleading. I am one of those who would like to believe upon this question as I would like to believe upon the subject of capital punishment. When I heard the eloquent gentleman from New York (Mr. Blake) discuss that subject I sat near him. I longed to be convinced that he was right in advocating that the death penalty be abolished, but could not be. When I heard the gentleman from New York (Mr. Lauterbach) deliver his speech the other evening no one enjoyed it more than I, but I could not be convinced. I believe that we would entail upon the State and upon woman an untold injury, should we confer upon them the right of suffrage. I, therefore, believe it is illogical and unreasonable to say that we shall vote to submit to the people an amendment that, in our judgment, should not be adopted. The gentleman from Brooklyn (Mr. Powell) tried the other evening to draw a distinction between amendments. I fail to see any. There are but two ways, under the Constitution, that amendments can be submitted to the people. One is by their passage through the Legislature in different years; the other is that this Convention shall approve them, recommend them and submit them to the people. There is no third way. No matter with what reservation you

vote, when this amendment or any other comes before the Convention upon the third reading, you are to vote then in favor of or against the amendment.

Mr. Maybee — May I ask the gentleman a question? Was not precisely that thing done in Oregon?

Mr. Cookinham — A great many things have been done in Oregon; I am talking about the State of New York. The State of Oregon is not acting under our Constitution. Our Constitution provides two ways of submitting an amendment and but two; and this is neither of them.

Now, Mr. President, I do not propose to detain this Convention longer. I simply desire to say this: It has been circulated about this chamber that someone would vote against the report of the committee; solely that the amendment might go into the Committee of the Whole. It has been hinted that someone would vote for it simply to satisfy the request of somebody else. Is that acting up to the duty imposed upon us when we took the oath of office? Are we to trifle with our votes in that way? I say that the report of this committee comes before you and you are asked to say whether or not an amendment shall be submitted to the people allowing women to vote. We conscientiously believe, as I have no doubt a majority of those present believe, that it would be detrimental to the State to allow such submission. (Applause.)

Mr. Kellogg — Mr. President, I am glad, sir, that the discussion upon this question has been thus far conducted with candor and fairness and in a spirit of lofty patriotism. It is, indeed, with great reluctance that I rise to speak upon the question under consideration. That I do so is not, in the slightest degree, for any personal gratification of my own, but, sir, I feel compelled to respond to what I believe to be the overwhelming sentiment of the great constituency which I have the honor to here represent, and oppose, with my voice and vote, not only woman suffrage as a principle, but likewise its submission to the people of this State. In arriving at the conclusion, after conscientious and mature deliberation, to vote to sustain the report of the able committee which has so patiently and impartially considered this question, I have not considered it, sir, from its sentimental policy or partisan standpoint; neither have I wavered in my convictions, because it has been stated that the party in the majority is the great party of Lincoln, Seward, Grant or Garfield or because it is the party of free men, free thought, free speech, of equal rights and human liberty. I have rather kept in view the solemn oath which I took upon

myself the opening day of this Convention, in the fear of Almighty God, according to the best of my ability, to discharge the great trust confided to my care as should best subserve the interests of the people of the great State of New York. Instead of shirking the responsibility of my oath and of my duty to the State, as I understand it, I assume it.

We have heard so much during this discussion of the submission of the question of woman suffrage to the vote of the common people, to the decision of the sovereign people, in obedience to the petition of a small minority of the inhabitants of the State, though three or four hundred thousand in number, it be, that I deem it my duty to refer to it. Who are the common people? Who are the sovereign people? Where in our State, under the grandeur and glory of American institutions, does anyone reside who is not common and sovereign? He who advances such argument, it seems to me, sir, builds a man of straw for the purpose of knocking him down to amuse himself.

What becomes, I ask, of the protest of the hundreds of thousands of the virtuous and intelligent mothers, wives and daughters, which has come up to us from every portion of our great commonwealth? Before you drag them down into the dirty slough of politics or put them in jeopardy of having to assume the responsibility of citizenship, are they not to be considered? Are they not also the common and sovereign people? What do you say to the opposition of more than a million of our fathers and sons, all of whom, as you and I know, are unalterably opposed to the invasion of the sanctity and purity of their homes and firesides by the discordant elements of politics? You women knocking at the doors of this Convention for submission may well pause upon the threshold of what you believe to be the promised land, unless the feeling predominates in your breast, "I am holier than thou." It may be that you proceed upon the theory of the preacher, who, in reading his text, turned two pages at once: "And when Noah was one hundred and twenty years of age he took unto himself a wife," "which was three hundred cubits long, fifty cubits wide, made of gopher wood, and lined with pitch inside and out." Reading it over again to verify it, he turned to his audience and said: "This is the first time I ever read that passage in the Bible, but it only shows how fearfully we are constructed."

The apple which Mother Eve held in her hand was tempting; so, perhaps, is woman suffrage to you; but, if the mighty protest which is going up from the women of this State is turned lightly aside by you, I warn you of the neglect to heed the voice of con-

science in the Garden of Eden, which resulted in bringing untold suffering upon the human race, ever since the angel of wrath appeared at its entrance with a flaming sword. Oh, woman, poets have sung of you, and men gone mad over thy beauty, but before you decide to divorce yourselves from the sphere over which you have held undisputed sway from time immemorial, let me remind you of the sweet words of John Howard Payne — "Home, Sweet Home, there is no place like home." Let me recall to you before you further pursue the empty baubles of ambition and fame of the immortal words of Gray:

"The boast of heraldry, the pomp of power,
All that beauty, all that wealth ere gave,
Await alike the inevitable hour,
The paths of glory lead but to the grave."

It is said, however, that a woman convinced against her will is of the same opinion still, and I repeat, as a consolation for the adverse report of the committee, the priceless stanza —

"Full many a gem of purest ray serene,
The dark unfathomed caves of ocean bear;
Full many a flower is born to blush unseen
And waste its sweetness on the desert air."

No, Mr. President, the true glory of womanhood is not in sitting upon the jury, not in being clothed in judicial ermine, not in being sent to the halls of legislation, not in following the example of the publican, who prayed aloud in public places to be seen and heard of men, but rather by such fond devotion in that sacred place where she stands as a queen in the eyes of all mankind, unrivaled and unsurpassed, as will enshrine her forever in the hearts of the father, the husband and the son. Their pathway to enduring fame is in teaching their daughters lessons of virtue and their sons to be manly, self-reliant and independent. Would the sons of Sparta have been more heroic or patriotic, had their noble women possessed the ballot when they uttered the historic words: "Come back rather upon your armor than without it?" Would the influence of the noble women of the late war, God preserve the memory of their heroic deeds, have been more refining, had they been educated in the mire of politics? Would it have added delicacy to the touch of the hand upon the fevered brow of the dying soldier? No, Mr. President, a thousand times no! It would have robbed the flower of its beauty and fragrance.

With my last breath will I defend from the realm of politics and

partisan strife, the institution which has cost untold suffering, heroic sacrifice and the priceless blood of patriots to establish and preserve.

Let us forever be delivered from the possibility of a McGregor sitting at both ends of the table! The home is the hope of our country and the foundation of American institutions.

But, Mr. President, after carefully reading a deluge of pamphlets and papers, and listening attentively to many adroit speeches from the friends of woman suffrage, at last we have it from the lips of their ablest advocate, the one thing which is hoped to be accomplished by it. Give the ballot to the working woman so that her wages may be raised to the level of those received by men. This is the burning question in their opinion, and, let me say here, with the greatest respect, this sentence was applauded by dainty gloved hands. My eloquent friend from Greene (Mr. Griswold) rightfully asked the question: "How do you expect to raise wages by legislative enactment?" Give her justice is the cry in this respect. Having the right of dower, the responsibility of the husband for the debts of the wife, her present right of alimony and counsel fees, the right of action for breach of promise and betrayal, together with a long list of other rights not now claimed or possessed by men; wages is evidently the only question in the entire realm of political economy which they wish to have adjusted.

In the name of our great State, let me ask, are there not other great questions which demand consideration? Are we not struggling in this Convention with the great problem—"home rule for cities?" Have we not prison reform to accomplish? Are not the people calling for proper restrictions upon legislative enactment? Does not the sectarian school question agitate our citizens from the metropolis to Lake Erie? Shall we not heed the cry for judicial reform and speedier justice? Taxation, canals, the difficulties between labor and capital, and other complex questions confront us.

You might as well the deep caves of ocean fathom or attempt to gather the foam from its topmost billow as to try to solve, by constitutional or legislative enactment all the problems which confront the State and the nation.

But, in view of all these questions, and in consequence of the splendid recognition accorded woman in the past from the Empire of States, great in its charity, great in education, great in wealth, great in its industrial interests and great in the marts of commerce, can you not afford, as to this one right, or, indeed, as to others, if any there be, like Lamartine, "To place your frail bark upon the

highest promontory of the beach and await the rising of the tide to make it float?"

It has been stated upon the floor of this Convention, by one of its most distinguished and respected members, that the slavery of women has been gradually lifted since 1846 in this State, and that now complete emancipation is proposed by suffrage. I refute the assertion. The emancipation of women began long before the Magna Charta was proclaimed, years prior to the preservation of American liberty by the patriot, Wadsworth, in the famous Charter Oak at Hartford, centuries before the fathers of the republic signed and proclaimed the Declaration of Independence.

The Star of Bethlehem, which aroused the drowsy shepherds of the East, and the words of Him who spake as never did man, was the dawning day for their purity and independence.

Women of the great State of New York, the diffusion of christianity, no matter of what creed, will emancipate you more than the ballot can possibly do. Let the hand which rocks the cradle teach the coming young men and women of America the Lord's Prayer and the Ten Commandments, and you will do more for your emancipation and for every right which you may possess in the whole realm of human rights, than you can do with both hands full of white ballots. Do this and it will not be necessary for you to teach them political ethics or shine in the political firmament, to make them love you, fight for you and die for you. Do this and they will revere their country and love their flag.

A few of the excellent and worthy women who are in this Convention demanding the right to vote, I concede would do so. There are thousands of bad women who would also vote, at least, upon some questions, thus enforcing upon millions of modest and retiring mothers responsibilities from which they shirk, and rightly so. Upon authority, which I am compelled to believe, I make the assertion here that the result of female suffrage in Wyoming has not changed the general result of elections, neither has it accomplished a single reform. At the same time it has doubled expense.

Mr. President, I maintain that woman suffrage at this time would be not only a folly, but that it might precipitate upon the State questions fraught with the greatest danger to its safety and welfare.

For a number of years the best minds of our State have been engaged in solving the question how shall we purify our politics, how best can honest government be attained and how shall we defend the suffrage against bribery and corruption? That some progress has been made in the right direction, I think all good men will admit. But, sir, before doubling twice over the voting popu-

lation of the State, with its untold possibility of corruption, before we burden our taxpayers with a great expense to pay for such extension of the suffrage, let, rather, this Convention, under its solemn oath taken to support the Constitution of the United States and the Constitution of the great State of New York, use its time and bend its efforts towards purifying the Augean stables which we now have to contend with, rather than to incur the possibility of new evils which we know not of, and which it is not possible for the wisdom of man at this time to comprehend.

Gentlemen of the Convention, let us not at this time, by woman suffrage, or by its submission to the people, but rather by such wise efforts for entire religious liberty, for the diffusion of knowledge and the maintenance of our institutions of learning, for dispensing the greatest charity possible, consistent with the cause of good government, by demanding the strictest honesty in the discharge of all public affairs and by defending the sanctity and purity of the fireside, preserve this lovely land, this glorious liberty, this priceless legacy of freedom transmitted to us by our fathers. (Applause.)

Mr. Roche — Mr. President, it seems to me that when the debate upon this subject began on Wednesday evening last, with the magnificent address from the gentleman from New York (Mr. Lauterbach), that it also then ended. Without intending to disparage in any manner the remarks of any of the gentlemen who have since addressed the Convention, I make bold to say that no addition and no answer has been made to the demand which that gentleman then so eloquently presented. We should then have taken a vote upon this question, but gentlemen upon both sides have chosen instead to discuss it. The simple question is whether this Convention shall undertake to say that a proper opportunity shall not be given to the voters of the State to pass upon a question which is of deep interest and which has been agitated for many years. With the light which I now have I am not an advocate of the extension of suffrage to women. While firmly believing in the doctrine of manhood suffrage, I maintain that the exercise of the elective franchise is not a natural right. It is one which is to be regulated or withheld by the people, and is to be conferred in such manner as will best promote the interests of the State. My judgment is that it will not be conducive to the welfare of the women of the State, and, therefore, not to the State itself that women should be drawn into the arena of politics and the heat and differences and excitements of great political campaigns. But that, sir, is a question far removed from the one before us. Thousands of excellent men and

thousands of equally good women believe that the addition of a large force to the electorate of the State by conferring the franchise upon women will not only be an act of justice, but will greatly tend to the improvement of our political methods and the purification of our public life. They believe that in an age of Christianity, civilization and the arbitration of international disputes, there is no necessary relation between the right or privilege of voting and the ability to handle or fire the Gatling gun. These people have exercised the great American constitutional right of petition, and have come here with their petitions, signed by tens of thousands. They have been heard in this chamber and have advocated their cause with a modesty, a brilliancy and a force that charmed all who listened to them. They were replied to by their opponents at a later meeting. There was no comparison between the two gatherings. (Applause.) Or if one could have been instituted, that of the opponents, when set up against the other, was as the pale dying moon to the warm, cheerful and effulgent rays of the rising sun. (Applause.) These women ask that the men who compose this Convention will permit the men who go to the polls to express a simple yes or no upon the question of whether women may also go to the polls. You and I may believe that they should not, that they would be better off for staying at home and leaving the affairs of State and the activities of politics to be looked after by the fathers and husbands and the sons; but, sir, because we believe this, is it just, is it fair that we should deny to this great body of our fellow-citizens the right to be heard before the tribunal of the people? They ask for their day in court. Shall we sit here because we have the power, and arbitrarily refuse to grant it? Who are the petitioners? Why, the modest and intellectual women who addressed the Suffrage Committee in this chamber, and whom we were proud to recognize as the products of our American schools, our American liberty and our American institutions. (Applause.) They spoke for thousands of others of their kind throughout this great State. They are the class of women who have the care of the youth in the schools of the State; they uphold the charities, do the work of the churches, bless the homes, are to the front in every noble public endeavor, in the days of calamity, amidst the distresses of war, organize the hospital service, the sanitary corps, care for and relieve the suffering soldier, and are part and parcel of the great body of patriotic, educated and virtuous women who have helped to make this, the State of New York, the foremost commonwealth on God's footstool. (Applause.)

They may be mistaken, greatly mistaken in what they ask, but

the force with which they ask it, and the sincerity which characterizes the request are both undeniable and demand our respectful consideration. Gentlemen, this question cannot be smothered. It cannot be killed by a simple refusal to strike the word "male" from the Constitution. It will not down at your bidding. You cannot keep it out of the halls of legislation, nor silence debate in the press or upon the forum. The hooting of Phillips and the mobbing of Garrison only served to strengthen the movement for the abolition of human slavery. (Applause.) The danger of flood, the decimation of fever, the journey through unknown lands, the fierce encounter of the Saracen, only strengthened the heart, nerved the arm and steeled the purpose of the crusader of old to react and redeem the Holy Land, and such it ever has been with the people who unselfishly battle for what they deem to be a great principle.

Let us see what the Legislatures have done. The Legislatures have encouraged these women in their efforts. If we do not give heed to their request, it will be made to Legislature after Legislature until it receives sanction in some form and is presented to the people. They have been given the right to vote for school trustees. It was attempted to confer upon them the right to vote for school commissioners, but the attempt was defeated by the court. In some localities for several years they have exercised the right of voting upon questions which affect the taxpayers of those localities. They have felt, to a limited extent, the power of the ballot, and they ask for more. You but sharpen the demand when you turn a deaf ear to it. The true way to dispose of this matter, to stop the ever recurring agitation, is to let the people themselves pass upon it in our great court for the settlement of public questions, and decide it once for all. We have authority unquestioned for this in the present Constitution, and I respectfully call the attention of the gentleman from Oneida (Mr. Cookinham) to the fact. The judiciary article that was adopted by the Convention of 1869 and approved by the people in 1869, provided for an elective judicial system, but it also provided for the submission to the electors in 1873, four years afterwards, whether judges should be appointed instead of elected. This was done in deference to the views of a respectable and influential body of men who believed that better results would be secured by an appointed than by an elective system. It was debated in press and magazine. The people thought it all over. They voted upon the question, and wisely decided by a large majority to retain the power in their own hands. The result is that since that vote, that question has been considered as settled. It is not even broached in this Convention to-day, and the subject has

been removed from the realm of agitation and discussion. The same Constitutional Convention of 1867 and 1868 provided for submitting to the people in separate form a proposition as to whether a property qualification should be required for men of color in the exercise of the elective franchise; and I want to say to the gentleman from New York, who spoke the other evening, that the men who composed the Convention of 1867 and 1868 acted under the full obligation and with the full sense of their responsibility and their oaths, and they did not undertake to say that men of color who did not possess property should not vote, nor that men of color who did possess property should vote, but they left it to the people themselves to pass upon the question whether the elective franchise should be conferred upon men of color with or without property; and to-night we debate and we haggle upon the question of whether the great, intelligent, educated, patriotic women of the State of New York shall have the question of giving them additional rights and privileges submitted in separate form to the people of the State themselves.

In 1883 the Legislature submitted to the people the question of whether contract labor should thereafter be abolished in the precincts of the State, and in 1894 the question of whether a rapid transit system should be built in the city of New York at public expense, is to be passed upon by the people themselves at the polls. Why, the very law which provides for the election and assembling of this Convention contemplates that you will submit propositions separately to the people, and, further, that you may provide for these propositions taking effect at different times. Just let me call your attention to the words of the statute, section 10: "Said amendments or revised Constitution shall be submitted by the Convention to the people for their adoption or rejection at the general election in 1894. The said amendments or the said Constitution shall be voted upon as a whole or in such separate propositions as the Convention shall deem practicable, and as the Convention shall by resolution declare." It then goes on to provide that these propositions, if adopted by the people, shall take effect from and after the 31st day of December, 1894, unless the said Convention shall prescribe some other time in which the same shall take effect, and the Convention may, in its discretion, by resolution, fix a time other than the foregoing. Can it be? Mr. President, it seems to me that if gentlemen desire to oppose this matter, they should put forward some ground that has a better foundation in the law and common sense, than the argument that we are to sit here and absolutely determine what shall go into this Constitution, and that that,

and nothing else, shall take effect, if approved by the people, on the thirty-first day of December next. (Applause.) Can it be that the citizens of this State will arraign this Convention because the Convention submits it to them to determine the question? Can it be that the citizens of the State will be so angry with this Constitution this fall that they will vote it all down because we propose to let them pass upon another feature of it at the following fall election? Is that the idea the gentlemen have of the intelligence and discrimination of the electors of this State? I should judge it was, from the remarks of the gentleman from Oneida (Mr. Cookinham). I should judge it was, too, from a little pamphlet which I received this evening; and I can hardly forgive the writer, who hails from Kingston, for addressing it to me as simply, "Mr. Roche, Troy, New York." It is headed: "Some Reasons Against Woman Suffrage." It is a printed pamphlet, and one of the reasons, the second, reads as follows: "Any advantage, arising from the vote of women who are intelligent and high principled, would be utterly lost in the evil wrought by the ignorant and degraded women voters. Such women are the majority." And for fear there would be any mistake about it, the words, "Such women are the majority," are printed in italics. Gentlemen, is this true? Does the Convention adopt these reasons? Are they to be put forward to sustain the adverse report of the committee? Do you believe in this shameless, libelous indictment of the womanhood of this State of New York?

Now I wish to say to the gentleman from Oneida (Mr. Cookinham), that I think some of us may be a little too arrogant. We may assume too much when we undertake to speak for the State. I shall expect, Mr. President, to find that a gentleman who spoke for the State as he said, men, women, boys and girls, all except 200,000, would have such a sense of weighty responsibility upon his shoulders that he would speedily become round-shouldered. And yet I find the gentleman stands up straight and prim in his address before this Convention. Mr. President, permit me to suggest that it is the gentlemen who are in favor of this Tucker amendment who speak for the State of New York, who express their confidence in the people of the State of New York, who have that much faith in Democracy and Republicanism that they are willing to leave this great debatable question to be passed upon by the people themselves. (Applause.) Mr. President, I find that the Republican national convention of 1876 in its platform expressed its approval of the advances which had been made for equal rights of women, not only with reference to their property, but also their appointment and election as superintendents of charities, education

and other trusts; and continued in these words: "The honest demands of this class of citizens for additional rights, privileges and immunities should be treated with respectful consideration." Are the distinguished Republicans who are responsible for the work of this Convention willing to carry into effect that national declaration of their party by submitting this proposition to the voters of this State? If not, why not? If the concentrated wisdom of the Republican party from Maine to California thought that this was a just and sensible thing in 1876, in God's name what has occurred in the State of New York since that time that would justify the intelligent and clear-headed representatives of that party in this Convention in refusing to give even slight effect to the national declaration of the party? (Applause.)

Mr. President, we can afford to give women this hearing. They have come here in number sufficient to justify their request. I notice that an attempt has been made to pull these petitions to pieces, and the gentleman from Oneida (Mr. Cookinham), after a thorough examination (and I understand that the clerk of the committee was engaged several days in making a most critical inspection of these petitions), found the duplication of, I believe, five names, and they were all from his own county of Oneida (laughter), and I regret very much that they had a ministerial heading and approval. The mountain labored and produced not one mouse but five mice.

Mr. Cookinham — Mr. President, will the gentleman allow me to ask him a question?

Mr. Roche — Certainly.

Mr. Cookinham — Mr. President, what about five names?

Mr. Roche — I understood the gentleman to say that there was a duplication of five names.

Mr. Cookinham — I said no such thing, or anything that possibly could be construed in that way.

Mr. Roche — Well, what was it?

Mr. Cookinham — I said that they were triplicated and quadruplicated.

Mr. Roche — To what extent?

Mr. Cookinham — To thousands, tens of thousands.

Mr. Roche — Oh, tens of thousands! Well, it unfortunately happens that the people of the State do not all have separate names, and the gentleman has been looking through colored glasses. I think it would be better, and more in accord with what we owe,

and what we believe we owe, to the honest people of the State, to assume that there are many men with similar names and many women of similar names, and then what appears to him to be the same man or the same place may be accounted for by the fact that there are a good many men of the same name living in his own locality.

Now, Mr. President, I said that we could afford to leave this question, so that we can give the women this hearing. What excuse is there for not doing it? Gentlemen, let me ask you a question. Do you believe that the people will be with them? Do you believe that and still refuse the hearing? If you do, you thereby confess the justice of their cause and your own cowardice. (Applause.) Do you believe that the voters will be against them? If so, why hesitate to let that be determined, and thereby remove this subject from the realm of agitation. This is no mere species of crankism. It is no proposition for the invasion of personal liberty. It is not any of the ridiculous things that come here, backed by a mere handful of people. If it were it would receive short shrift in this Convention. On the contrary, tens of thousands of the best and most highly educated citizens of the State of New York believe that it is another step forward in the paths of progress that have been blazoned by the men of the Empire State. In the words of the poet:

"Men, my brothers, come; men, the workers, come;
Ever reaping something new;
That which they have done but earnest of the things that they shall do."

Let us have the courage, let us have the fairness to submit this question at the proper time, and in the proper form, to the people of the State of New York. Let us show our faith in them, in their intelligence and discrimination, and all good citizens will abide by the result. (Applause.)

Mr. Hirschberg — Mr. President, I shall speak in accordance with my convictions and not in opposition to them. The question before the Convention is whether or not we will adopt the report of the committee. The report of the committee is adverse to the proposition that the question of woman suffrage shall be submitted to the people at the general election immediately succeeding the adoption of our proposed Constitution. Directly involved, therefore, is the question of the justice, propriety and expediency of universal suffrage in this State, and no man can conscientiously vote against the report of the committee unless he is honestly of the opinion that

the time has come when women should be required to actively participate in political life. The advocates of this extended suffrage have indeed endeavored to obscure the real issue by the adroit suggestion that as only the question of submission to the people is presented, a delegate might vote for such submission even although he is opposed to the alleged reform; but it will at once occur to the thoughtful that this Convention can only submit questions to the people — that such submission is the sum of its province and its powers — that it cannot itself adopt anything, however meritorious — and that, therefore, submission of a question to the people necessarily implies that the question submitted has first received the approval of this body. In this same connection, it is also urged that the suffrage question is one on which the people are as well informed as the Convention; that its determination requires no scientific, expert or technical knowledge, and that, therefore, a delegate may safely entrust its decision to the people without paying the slightest heed to his own views or judgment. But, sir, are not the people equally well qualified to judge and to pass upon the merits of each and every other question which may come before this body for preliminary determination? Does not the law which compels the submission of our entire work to the people for their intelligent approval or rejection necessarily imply that they are competent to decide? And are we relieved from the duty of considering and deciding a question simply because it is easy of solution? Can we evade our responsibility by the mere assertion that the matter is one of which the people can judge as well as we? I do not, sir, for a moment admit that the suffrage question is so easy of solution. On the contrary, I think it is one which peculiarly requires thought, study, investigation and deliberation, and that no man should assume the responsibility of fastening by his vote to-night so radical an innovation upon our political system as is now contemplated without the most mature and thorough examination of its probable working; but whether it is an abstruse or a simple question, it is very clear that our duty requires us to decide it now upon the merits, just as we decide everything else which comes before us. (Applause.)

The argument is specious, is unsound, is dishonest, which would betray us into voting as members of the Convention contrary to our convictions, in order merely to enable the electors of the State to rebuke us at the polls. Let us vote, then, as we believe. If in favor of female suffrage, we will reject the committee's report. If we oppose such suffrage, we will sustain the report. We will present to the people for their acceptance only what we approve, and

so acting, we will have honorably discharged our trust, and we will not be placed in the false position of apparently lending the great weight of our affirmative support to a measure, of the wisdom and propriety of which we are in doubt.

Besides, sir, we must not forget that the people can always dispose of this question without our aid or intervention. If there is a general desire on the part of the people to vote on this question, the law is broad enough to enable them to do it. The Legislature, in obedience to public opinion, will cause a submission of this question to the people whenever public opinion on the subject is strong enough to make itself felt. So submitted it will be presented as a separate and independent matter, entirely apart from a general revision of the Constitution. But such a separate submission made at a separate election is precisely what is contemplated by the measure now before us, and, therefore, in adopting it we, in a limited sense, may be said to usurp the proper province of the Legislature.

The suggestions made by the advocates of the measure, that we should submit it separately, and not as an inherent and component part of our work, but at an independent and different election, and should disregard our personal and individual convictions in doing so, seem clearly to me to involve a confession of devious, unmanly and indefensible treatment of a great question, whose ill-advised decision may be fraught with infinite mischief and injury to the interests and welfare of the State. (Applause.)

Now, Mr. President, I have listened to the speeches which have been delivered here by the supporters of this movement, and on the merits of the question remain unconvinced. The burden of the case rests with those who would disturb the existing order of things, and, to my mind, nothing has been urged by them which should carry conviction. There has been considerable inflammatory declamation, a great deal of emotional sentiment, some rhetorical denunciation, a little good-natured poetical and trenchant buffoonery, but of pure and powerful argument, calculated to satisfy the sober judgment that the State is ripe for female government and control, there has been nothing. No advocate of the measure has demonstrated that active participation in the affairs of the State can be assumed at this time by our female citizens without injury to both. Until that is done — until it is shown that woman may become a politician without losing something of the precious charm of her personality, and that the State may exact her services in that capacity without imperilling its stability and tranquility, it is surely the conservative course of wisdom to retain the existing conditions under which we have achieved our great happiness and prosperity.

The present position of woman in this State is most enviable. She has education in its fullest and highest development. She has the absollute and unfettered ownership of her property. Every avenue of trade for which she is physically fitted is freely opened to her and in the enjoyment of her rights she is protected by equal laws, which are jealously and even sympathetically enforced for her benefit. Never has there been a time in the history of the world when her happiness has been so assured, her advancement so stimulated and encouraged, or her independence, within the limits of her physical possibilities and the necessity of a continuance of her domestic dominion, so ample and so protected. In the domains of science, of art, of literature and of charitable and religious labor, her position is that of a specially-invited and a favored worker. And with it all, she is still permitted to retain her essentially sweet and feminine qualities, which draw to her the respect, the deference and the homage of man, commensurate in its nature, extent, intensity and chivalry with the ennobling advancement of our civilization. She rules at the fireside, in the school-room, by the bed of pain and in the temples of charity; and her powerful influence pervades every department of human endeavor. industry and enlightenment, unmixed with baser matter. She is recognized as the great and tender ameliorating factor in every relation of our complex life. She sweetens and glorifies prosperity; she soothes and alleviates adversity. "Poverty is not felt amid the consolations of her companionship, and sorrow ceases in the presence of her smiles." I would not drag her down from this high and favored position at the instigation of thoughtless agitators to take her chances in the turmoil of our political life, without the clearest evidence that it is necessary for the maintenance of her independence and the preservation of her happiness. I would not apply the flame of partisan strife to the fuel of domestic discord. I would not endanger the quiet of our homes by an additional element of disruption, of contention, of bitterness and animosity, under circumstances, in which if there is union, the same voice would still be uttered at the polls, but in which, if there should be independent and differing thought and action, the house would become inevitably and forever divided against itself. (Applause.)

Should the time ever come when woman herself, by a fair preponderance in number, demands the ballot, and public opinion supports the demand with an unmistakable voice and emphasis, and should the time also come when party politics shall be so pure that the presence of woman at the polls would not be incongruous, and party feeling so subdued that opposition from those we love could

be freely tolerated by our better natures, the experiment of female suffrage might possibly be safely tried; but until then let woman be content with her present exalted and advancing sphere; developing to the fullest degree, within the lines and limits of her sexuality, all her capabilities for the good of humanity; rendering her share to the sum of civic happiness in the practice of domestic virtues; freed from the burdens of State which she is unfitted to endure, either in its defense in war or in its police in peace; not directly shaping its policy or framing and enforcing its government, but exercising an influence both powerful and benign in the education, the nurture and the training of its youth; depending for her advancement on the strength of her innate womanly power, and for her protection on a manhood which has as yet never failed her; guiding our lives by the gentleness of her nature, the purity of her impulses, the sweetness of her disposition, the uprightness of her principles, the tenderness of her heart and the magnetism of her love, and thereby wielding a control beyond the potency even of her ballot; and finding at all times and in all places, and in every walk and relation of life, her truest, and highest and holiest dominion in the effect of spotless precept and example.

"Filling the soul with sentiments august,
The beautiful, the brave, the holy and the just."

Such, sir, is the high and congenial place assigned to woman in the social and political fabric of the State, and such may it remain as long as the American heart shall throb to the music of domestic harmony. (Applause.)

Mr. Alvord — Mr. President, this question is, by the rule which has already been adopted, made the special order of business upon each legislative evening until it is finished. Very many of the gentlemen present to-night have been under the necessity of arriving here in the middle of the preceding night. To-morrow our three sessions a day will begin. It is asking too much of human endurance, in my opinion, to remain longer in session on this occasion. I, therefore, move you that the Convention do now adjourn.

Mr. Becker — Mr. President, I merely wish to have it understood one way or the other whether the three sessions a day begin to-morrow or day after to-morrow. I understand from the minutes they begin day after to-morrow.

The President — The gentleman understands it correctly.

The President put the question upon the motion of Mr. Alvord that the Convention do now adjourn, whereon it then adjourned to August 15, 1894, at 10 A. M.

Wednesday, A. M., August 15, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, at the Capitol, Wednesday morning, August 15, 1894.

President Choate called the Convention to order at 10 A. M.

The Rev. W. N. P. Dailey offered prayer.

On motion of Mr. A. H. Green, the reading of the minutes of Tuesday, August fourteenth, was dispensed with.

The President announced the order of petitions and memorials.

Mr. Dean — Mr. President, I have a memorial from Union Grange in reference to taxation.

Referred to the Committee on State Finances and Taxation.

Mr. Manley — Mr. President, I present a proposed amendment.

The President — That is not in order at present. It will require a vote of the Convention. It will come up in the order of resolutions, if you wish to take a vote of the Convention on it. Notices, motions and resolutions are in order. The Secretary will call the districts.

Mr. Jesse Johnson — Mr. President, I move that the article reported by the Cities Committee, general order No. 13, be recommitted to the Committee on Cities, with power to report complete, retaining its place on general orders.

Mr. Holls — With all amendments?

Mr. Johnson — And that all amendments be likewise referred.

Mr. Vedder — Mr. President, I make the point of order that no such motion is in order, for it in effect sends the proposition, after being reported by the committee complete, to the order of third reading, thus doing away with the consideration of the subject in the Committee of the Whole, or, in fact, in the Convention, except under the limitations provided by the rules, and it in effect cuts off all amendments, except such as may receive unanimous consent.

The President — The Chair is of the opinion that the motion is in order for consideration. The motion is made by Mr. Johnson at the request of the Committee on Cities, with the amendments proposed, and all amendments and substitutes be recommitted to the Committee on Cities, with directions to report complete.

Mr. Jenks — Mr. President, I had proposed this morning to offer some amendments to the article in its present form, and I would

ask whether Mr. Johnson would permit me, notwithstanding his motion, to submit the amendments this morning.

Mr. Johnson — I would include the amendments which Mr. Jenks wishes to submit in the motion.

Mr. Tekulsky — Mr. President, I intended to offer amendments to the home rule measure and submit them this morning.

The President —Will Mr. Johnson's motion cover all amendments now submitted or ready to be submitted?

Mr. Bowers — I assume that it covers the substitutes as well as the amendments.

The President — All substitutes or amendments now proposed or ready to be proposed?

Mr. Durfee — What will be the effect of the report of the committee reporting this proposed amendment complete?

The President — I understand that it will retain its place on general orders and will go to the Committee of the Whole for consideration.

Mr. Bowers — Why should we take the language "report complete?" Why should it not be sufficient to simply report it back to the committee?

Mr. Durfee — Mr. President, as I understand it, that expression, in the Legislature at least, carries with it the power to report a bill in a form for its final passage, and that it thereupon goes to a third reading without further consideration. Now, what may be the effect of it here would depend, perhaps, to some extent, or entirely, upon the question whether or not this body is to observe the rules that obtain in the Legislature, and it was with a view of ascertaining the sentiment of the Chair and of the Convention upon that point that I made the inquiry.

Mr. Johnson — Mr. President, this motion is made with the understanding that when the report comes in, if the motion is adopted, it may then be considered by the Convention without going into Committee of the Whole. I have stated what I understand. The reason for making the motion in that form is this, the Committee on Cities had apprehended that the Convention had heard this article discussed much longer than they desired. When it comes into the Convention, it is then open to amendment, then open to discussion, then open to consideration in every respect as now without this motion. It saves one stage of the process, having been fully discussed here. I think, Mr. Chairman, that it will

expedite business, that it will give no possible advantage, and will in every way tend to secure a more intelligent result.

The President — The Chair would remind Mr. Johnson, the maker of this motion, that amendments cannot be made except in Committee of the Whole.

Mr. Bowers — Mr. President, I move to amend Mr. Johnson's resolution, so that it will read that the report and all the amendments and substitutes be referred back to the Committee on Cities, with power to report anew to this Convention. The statement now made by the chairman of the Committee on Cities shows that he has inadvertently, perhaps, been drawn into the position of placing this Convention in such a situation that it can never again discuss the report that is made, except by the limitation of one hour, which is permitted by the rules, before the vote on final passage is taken. I scarcely believe that he could desire thus, without fair notice to the Convention, to limit debate, as he would by this means do, and it seems to me that when the rules are called to the gentleman's attention, that he himself will see the impropriety of requiring this report to be made complete and deprive us of the opportunity of again amending it and discussing it. I shall not at this time attempt to go over ——

Mr. Johnson — Does the Chair rule that it cannot be amended in the Convention?

The President — Not as a matter of right.

Mr. Johnson — I understood the rule was different. I do not attempt to say I know the rules. If that is the ruling of the Chair, I will withdraw the word "complete." I do not wish to have it in any way that we cannot have full opportunity to amend and discuss it. I withdraw the word "complete."

Mr. Bowers — Does the gentleman accept my amendment?

Mr. Johnson — I withdraw the word "complete." I did not understand that it precluded discussion and amendment.

Mr. Bowers — Will the Secretary now read the resolution as it stands?

The President — The Secretary will read the resolution as amended.

The Secretary read the resolution as follows:

"Mr. Johnson moves that general order No. 13, to provide home rule for cities, be recommitted, together with all amendments and

substitutes offered, to the Committee on Cities, with instructions to report anew, retaining its place on general orders."

The President put the question on Mr. Johnson's resolution, and it was determined in the affirmative.

Mr. Veeder — Mr. President, I was going to inquire how we can amend that report further. That says "amendments offered." I desire with several gentlemen to offer further amendments.

The President — All delegates having amendments to propose to the report of the Committee on Cities will please present them to the Secretary, so they can go to the committee.

Mr. Veeder — Very well, that is what I wanted to know.

Mr. H. A. Clark — Mr. President, Mr. Barnum was called away last evening, and requests that he be excused for the balance of the day.

The President put the question on granting leave of absence to Mr. Barnum, as requested, and it was determined in the affirmative.

Mr. Deyo — Mr. President, Mr. Platzek has been called away by the illness of his mother, and, on his behalf, I ask that he be excused for to-day.

The President put the question on granting leave of absence to Mr. Platzek, as requested, and it was determined in the affirmative.

Mr. A. H. Green — Mr. President, I move that the report of the Special Committee on Transfer of Land Titles, general order No. 5, be recommitted to the special committee, with power to report, and that it retain its place on general orders.

The President put the question on the motion of Mr. Green, and it was determined in the affirmative.

Mr. Becker — Mr. President, I desire to move that the privileges of the floor be granted to the Honorable Martin I. Townsend, of Troy, N. Y., a member of the Constitutional Convention of 1867.

The President put the question, and it was determined in the affirmative.

Mr. Dickey — Mr. President, I ask leave of absence on Saturday of this week, as I have been appointed referee to sell some real estate at home on that day.

The President put the question on granting leave of absence to Mr. Dickey, as requested, and it was determined in the affirmative.

Mr. Tibbetts — Mr. President, I desire to be excused from attend-

ance on Saturday of this week and Monday of next week, on account of business engagements.

The President put the question on granting leave of absence to Mr. Tibbetts, as requested, and it was determined in the affirmative.

Mr. Hirschberg — I ask to be excused to-morrow and Friday.

The President put the question on granting leave of absence to Mr. Hirschberg, as requested, and it was determined in the affirmative.

Mr. Cornwell — Mr. President, I ask to be excused from attendance on Friday and Saturday of this week on account of business engagements.

The President put the question on granting leave of absence to Mr. Cornwell, as requested, and it was determined in the affirmative.

Mr. Acker offered the following resolution:

Resolved, That the proposition introduced by Mr. Andrew H. Green, and reported by the Select Committee on Further Amendments, and referred to the Committee on State Finances and Taxation, entitled a proposition relating to money collected for the State, cities, counties, towns, villages and school districts, be printed.

The President put the question on the resolution of Mr. Acker, and it was determined in the affirmative.

Mr. Doty — Mr. President, I desire to move that the Secretary be directed to transmit to each county clerk and each clerk of the board of supervisors in each county, a copy of Document No. 50, which seems to contain very valuable information.

The President — Will you please send that up in writing, so that the Secretary can make a proper record of it.

Mr. Cookinham — Mr. President, my district is passed, but I desire to offer the following resolution:

R. 171.— Resolved, That the Committee on Rules fix a time limiting the debate upon the adverse report of the Committee on Suffrage on Mr. Tucker's amendment.

The President — Gentlemen, hear the resolution of Mr. Cookinham, that the Committee on Rules be directed to propose a limitation of debate on the suffrage amendment, proposed by Mr. Tucker, which is a special order for this evening.

Mr. Pratt — Mr. President, I move to amend by extending it to all debates in the Convention.

Mr. Goodelle — I hope that the amendment will not be pressed. That can come up some other time as well.

Mr. Pratt — In deference to the wishes of the chairman of the Suffrage Committee, I will withdraw the amendment.

The President put the question on Mr. Cookinham's resolution, and it was determined in the affirmative.

Mr. Jacobs offered the following resolution:

R. 172.— Whereas, The delegates to this Convention from the Sixth Senatorial District were unjustly deprived of their seats and prevented from taking any part in the deliberations of this body during the period from May 8, 1894, to August 2, 1894, and

Whereas, The said delegates have made demands upon the proper disbursing officer of this Convention for their mileage and *per diem* allowance, as provided by law, for such period, which has been refused,

Now, therefore, be it

Resolved, That the said delegates from the Sixth Senatorial District are entitled to the mileage, as provided by law, and to the *per diem* allowance of ten dollars per day for every day for the period from May 8, 1894, to and including August 2, 1894, and that the President of this Convention be, and is hereby requested to certify the amount thereof to the Comptroller for payment.

Mr. Bowers — Mr. President, I object to the consideration of this resolution to-day on the ground that it will be debated.

The President — It stands over, under the rules, for to-morrow.

Mr. Doty's resolution will now be read.

The Secretary read the resolution as follows:

R. 173.— Resolved, That the Secretary transmit to each county clerk and the board of supervisors of each county a copy of Document No. 50, relating to the cost of printing official ballots.

The President put the question on Mr. Doty's resolution, and it was determined in the affirmative.

The President — The Chair is of the opinion that the constitutional amendment asked to be presented by Mr. Green cannot be received without a motion in the Convention.

Mr. A. H. Green — I move that it be received.

The President — The Secretary will first read the amendment offered by Mr. Manley.

The Secretary read the title of the proposed amendment introduced by Mr. Manley as follows:

O. 378.— "Proposed constitutional amendment to prohibit the use of land for cemetery purposes in certain counties of the State without the consent of local authorities."

Mr. M. E. Lewis — Will the Secretary kindly state what counties are affected by this proposition?

The Secretary read the proposed amendment, which showed that the counties of Westchester, Kings, Queens, Rockland and Richmond were the counties affected.

The President put the question on permitting this amendment to be received and referred to the select committee, and it was determined in the affirmative.

The Secretary then read Mr. A. H. Green's proposed amendment, entitled:

O. 379.— "Proposed constitutional amendment to abolish the office of loan commissioner."

The President put the question on receiving this amendment and referring it to the select committee, and it was determined in the affirmative.

The President — Reports of committees are in order, and chairmen of committees will remember that to-day is the day fixed by the vote of last week for each chairman to state the condition of business before his committee.

There will be a meeting of the Committee on Rules immediately in the President's room, and the Second Vice-President is requested to take the chair.

Mr. Goodelle — Mr. President, may I make a motion at this time? There seems to have been a little question as to whether or not overture (introductory No. 194), the special order which was considered last evening and, also on Thursday evening, in view of the resolution passed on Thursday night, may have been affected. I, therefore, move that the special order which was made a special order for last evening be made a special order for this evening.

The President — The Chair understands that it is a special order, and the only effect of the adjournment last night, was to carry it over. However, it won't do any harm to have another vote upon it.

The President put the question on the motion of Mr. Goodelle, and it was determined in the affirmative.

Second Vice-President Steele took the chair.

The Secretary called the list of committees.

Mr. Francis — Mr. President, I offer the report of the Committee

on Preamble and Bill of Rights as to the work of the committee and six separate reports.

The Secretary read the report of the chairman as follows:

All proposed constitutional amendments referred to the Committee on Preamble and Bill of Rights have been reported, except the proposed amendment of Mr. Tekulsky, which is withheld by the committee for the purpose of considering amendments thereto now pending in the committee.

JOHN M. FRANCIS,
Chairman.

Mr. Francis, from the Committee on Preamble and Bill of Rights, to which was referred the proposed constitutional amendment, introduced by Mr. Goodelle (introductory No. 261), entitled, "Proposed constitutional amendment to amend section 6 of article 1 of the Constitution, providing that in all criminal prosecutions, the party accused shall be confronted with the witnesses against him," reported in favor of the passage of the same, which report was agreed to, and the proposed amendment committed to the Committee of the Whole.

Mr. Francis, from the Committee on Preamble and Bill of Rights, to which was referred the proposed constitutional amendment, introduced by Mr. Francis (introductory No. 211), entitled, "Proposed constitutional amendment to amend section 3 of article 1 of the preamble and bill of rights in regard to religious liberty," reported in favor of the passage of the same, with some amendments, which report was agreed to, and the proposed amendment committed to the Committee of the Whole.

Mr. Francis, from the Committee on Preamble and Bill of Rights, introduced:

O. 380.— Proposed constitutional amendment amending the phraseology of section 6 of article 1.

The President *pro tem.*— This proposed amendment will be printed and take its place upon general orders.

Mr. Francis, from the Committee on Preamble and Bill of Rights, introduced:

O. 381.— Proposed constitutional amendment, striking out section 17 of article 1 certain useless matter.

The President *pro tem.*— This proposed amendment will be printed and take its place upon general orders.

Mr. Francis, from the Committee on Preamble and Bill of Rights,

to which was referred the proposed constitutional amendment, introduced by Mr. Roche (introductory No. 177), entitled, "Proposed constitutional amendment to amend the Constitution, relative to the distribution of the powers of government," reported in favor of the passage of the same, with some amendments, which report was agreed to, and the proposed amendment committed to the Committee of the Whole.

Mr. Francis, from the Committee on Preamble and Bill of Rights, to which was referred the proposed constitutional amendment, introduced by Mr. Parker (introductory No. 327), entitled, "Proposed constitutional amendment to amend section 7 of article 1 of the Constitution, so as to include therein the right to construct and maintain necessary drains and ditches for agricultural purposes across the lands of others," reported in favor of the passage of the same, which report was agreed to, and the proposed amendment committed to the Committee of the Whole.

Mr. Veeder — Mr. President, may I ask if the chairman of the Committee on Preamble and Bill of Rights has made any report, favorably or adversely, upon the proposition in regard to gambling.

The President *pro tem.*— The Chair will inform the gentleman that he understood from the report, as read here, that there was one proposition now before the committee that was held for further action by the committee, which I suppose refers to the matter that the gentleman inquires about.

Mr. Veeder — Then it is not reported?

The President *pro tem.*— It is not reported; as I understand the report, as read by the Secretary, that amendment is not reported at all this morning.

Mr. Veeder — May I have that part of the report read?

The President *pro tem.*— Yes, sir; the Secretary will read the report again for the gentleman from New York.

The Secretary read again the report of the chairman of the Committee on Preamble and Bill of Rights.

The President *pro tem.*— The Chair would ask the chairman of the Committee on Legislative Organization, Mr. Becker, whether he has a report to make, according to the resolution passed by the Convention some days since.

Mr. Becker — Mr. President, I have no written report, but I can state briefly the status of the business, if that will be sufficient.

The President *pro tem.*— Will the chairman please send up a written report?

Mr. Becker — With great pleasure. I may state to the Chair and to the delegates that I thought that resolution was to take effect on the twenty-first inst. I so undersood it, that all reports were to be in on the twenty-first, or a statement of the business at that time. For that reason I made no——

The President *pro tem.*— The gentleman is correct in reference to a part of the matter, but the resolution was that all chairmen should report at this time the status of the business before their committees, for the information of the Convention.

Mr. Becker — I shall be very glad to make the report, and will do so inside of five minutes.

Mr. Cady — Is the Chair confident that that resolution calls for these reports on the fifteenth or the sixteenth? I am not confident about it; I ask for information.

The President *pro tem.*— It appears from the Secretary's desk that the reports are due on the sixteenth. That would be to-morrow. Then this will be passed by until to-morrow, which will give the gentlemen ample time to make their reports.

Mr. Veeder, from the Committee on Legisative Powers and Duties, to which was referred the proposed amendment introduced by Mr. McMillan (introductory No. 11), general order No. 3, entitled, "Proposed constitutional amendment to amend section 16 of article 3 of the Constitution of the State of New York," relating to legislation, reported in favor of the passage of the same with some amendments.

The Secretary read the report.

The President *pro tem.*— It is referred to the Committee of the Whole.

Mr. Vedder, from the Committee on Legislative Powers and Duties, to which was referred the proposed amendment, introduced by Mr. Nichols (introductory No. 352), entitled, "Proposed constitutional amendment to add a new article regarding soldiers and sailors' homes of the State of New York," reported in favor of the passage of the same with some amendments.

The Secretary read the report.

Mr. Vedder — Mr. Dean wishes to have me state that he dissents from this report, and wishes to have it so entered on the Journal.

The President *pro tem.*— The entry will be so made.

Mr. Vedder, from the Committee on Powers and Duties of the Legislature, to which was referred the proposed amendment, introduced by Mr. Foote (introductory No. 325), entitled, "Proposed

constitutional amendment to amend section 7 of article 1, to authorize the Legislature to provide for the construction of dams and reservoirs for the improvement of water powers, and to assess the expense therefor on the property benefited thereby," reported in favor of the passage of the same.

Referred to the Committee of the Whole.

Mr. Vedder — With reference to the proposition introduced by Mr. Foote, I desire to dissent from the report, and have it entered upon the Journal.

The President *pro tem.*— The gentleman will be so recorded.

Mr. Vedder — Do I understand from the statement of the Chair, a short time since, that the reports from committees with regard to their work may be made now?

The President *pro tem.*— I suppose they may be made now. They are to be made, as I understand it, on or before the sixteenth. The Chair sees no objection to the making of reports at the present time, if gentlemen are ready to report in writing.

Mr. Vedder — Perhaps, then, they better be made to-morrow, if it is understood that they are to be made to-morrow.

The President *pro tem.*— As the gentlemen prefer.

Mr. Hawley, from the Committee on Corporations, presented a minority report from members of that committee dissenting from the committee's report on the amendment (introductory No. 375, printed No. 395) as to trusts or combinations.

Mr. Rogers — I call for a reading.

The Secretary read the report.

The President *pro tem.*— The report will take the ordinary course.

Mr. McDonough, from the Committee on State Prisons — I desire to report, Mr. President, that our work is substantially done ——

The President *pro tem.*— Will Mr. McDonough please submit his report in writing?

Mr. Gilbert, from the Committee on Industrial Interests, to which was referred the proposed constitutional amendment, introduced by Mr. Gilbert (introductory No. 321), entitled, "Proposed constitutional amendment to amend article 3 of the Constitution, by providing for the establishment of boards of arbitration," reported in favor of the passage of the same with some amendments.

The Secretary read the report and it was referred to the Committee of the Whole.

Mr. Hawley — I wish to make an inquiry. I understand the Vice-President to say that the chairmen of committees were expected to report in writing to-morrow. I made inquiry of the President of the Convention last evening, as to what was expected in that behalf, and he said that it was only desired that the chairmen of committees should make brief verbal statements for the information of the Convention. I had, for myself, prepared the draft of a written report, but I think that the chairmen of committees should all do the same thing, and I do not know why it is necessary for us to encumber the document room of the Convention with thirty written reports, when all that is desired is that the Convention should have a general knowledge of the state of business before the respective committees; and I, therefore, in order that the question may be settled — and I do not care which way it is settled — move that the chairmen of committees report to-morrow morning, verbally, as to the state of business before their respective committees.

The President *pro tem.* put the question on the motion of Mr. Hawley, and it was determined in the affirmative.

Mr. A. H. Green, from the Special Committee on Transfer of Land Titles, reported a substitute for the amendment heretofore proposed by said committee (Document 27).

The Secretary read the substitute.

The President *pro tem.*— The Chair sees no other mode of disposing of this amendment than to treat it as a new proposed constitutional amendment. Therefore, it will have its first and second reading and be printed.

The substitute then received its second reading by title, and was referred to the Committee of the Whole, as O. 382, p. 421, proposed constitutional amendment as to transfer of land titles.

Mr. A. H. Green — I move, Mr. President, that the special report retain its place on general orders, by the direction of the Convention.

The President *pro tem.*— It is so ordered unless there is objection. It retains its place on general orders.

Mr. Francis — Mr. President, I ask unanimous consent to present a petition which I omitted to send up at the proper time.

The President *pro tem.*— If there is no objection the petition will be received.

The Secretary read the petition offered by Mr. Francis, relating to primary elections.

The President *pro tem.*— The petition is referred to the Committee on Powers and Duties of the Legislature.

Mr. Augustus Frank — I would also like to present a brief petition.

The Secretary read the petition presented by Mr. Frank, from the citizens of Warsaw, N. Y., favoring an amendment to the Constitution making persons who sell intoxicating liquors, and the persons owning the premises upon which the liquor is sold, liable for any damages or injuries caused to the purchaser.

The President *pro tem.*—What committee would you desire to have that referred to?

Mr. Frank — I do not know, sir, what committee it ought to go to.

The President *pro tem.* — It will be referred to the Committee on Powers and Duties of the Legislature.

Mr. Doty — I have a similar memorial from the citizens of Livingston county.

The Secretary read the memorial presented by Mr. Doty, relating to civil damage provision in the Constitution.

The President *pro tem.*— That will have the same reference as the former petition. The special order for this morning is the proposed constitutional amendment (No. 81) to amend section 9 of article 3 of the Constitution, in regard to two-thirds bills, reported adversely. The question is on agreeing with the report of the committee.

Mr. Goodelle — Mr. President, I understand the proposer of that amendment desires to discuss it, and as it is a matter which affects the locality from which I come, I desire to be present and perhaps say something at the time of the discussion. I was not aware till this morning that this was made a special order for to-day. I have talked with Mr. Barrow, from Onondaga, and I think he consents that this matter may stand over until one week from to-day; and I make a motion, therefore, that it stand over and be made a special order for a week from this morning.

The President *pro tem.*— This motion, being for the postponement of a special order, requires a two-thirds vote.

Mr. Barrow — Mr. Goodelle, my colleague from Onondaga, is entirely correct, and at his earnest solicitation I have consented to the postponement of this special order for one week, until next Wednesday morning.

The President *pro tem.* put the question on the motion of Mr. Goodelle, and it was determined in the affirmative.

Mr. Root — I was absent from the chamber during the call of

the committees, and I ask consent to submit a report of the Judiciary Committee.

Mr. Durfee — Mr. President, in view of the length of that document and its importance, which will undoubtedly make it necessary and proper that every member of the Convention should have it before him, I move that the reading be dispensed with and that it be printed and placed upon the desks of the members.

The question on the motion of Mr. Durfee was put, and it was determined in the affirmative.

The President *pro tem.*— The Chair would suggest to Mr. Root that he is informed that there is an amendment attached to this report. If so, the question will come before the Convention as to whether that amendment should not be read and go on general orders.

Mr. Root — I supposed that as a matter of course, under the rule, this will go to general orders. We report a judiciary article, a proposed amendment to the Constitution.

The President *pro tem.*— It will go upon general orders.

O. 383, P. 422.— Proposed constitutional amendment to amend article 6 of the Constitution, relating to the judiciary.

Mr. Vedder — Under the standing rule of the Convention, all adverse reports which may have been made by a committee, as I understand it, are to be made in the Convention upon the request of the introducer of the proposition.

Mr. Root — Will the gentleman give way for a moment?

Mr. Vedder — Certainly.

Mr. Root — Mr. President, I suppose that the proposed amendment to the Constitution just reported by the Judiciary Committee will be printed and go to the Committee of the Whole, under the rule.

The President *pro tem.*— So the Chair understands it.

Mr. Root — It is accompanied by an explanatory report, which will not in the nature of things be printed in bill form, and if I am in order I move that that be printed as a Convention document.

The President *pro tem.* put the question on the motion of Mr. Root, and it was determined in the affirmative.

Mr. Root — I should very much like, if the members of the Convention do not think that it is a waste of time, that before they take up the examination of the text of the proposed judiciary article, they should hear the explanation which is contained in that report. It

is not very long, and I should think that it would not be a waste of time if it were read.

Mr. McClure — Now?

Mr. Root — Now. I move that it be read.

The President *pro tem.*— If there is no objection it will be read.

The Secretary then read the explanatory statement of the committee accompanying the text of the proposed judiciary article:

DOCUMENT No. 53.

Explanatory Statement of the Judiciary Committee Relative to the Proposed Judiciary Article.

To the Convention:

Your Committee on Judiciary report herewith a new judiciary article, and recommend its adoption.

The principal changes proposed are the following:

I. The nine General Terms which now exist, five in the Supreme Court and four in the Superior City Courts, are to be abolished. The State is to be divided into four departments. In each department an appellate tribunal is to be constituted of five justices selected by the Governor from all the justices elected to the Supreme Court. The name "Appellate Division of the Supreme Court" is adopted in place of the now meaningless expression "General Term." All appeals, except in capital cases, are, in the first instance, to be to the Appellate Division.

We propose to make this tribunal a more efficient and satisfactory court of review than the old General Term.

(*a.*) By making its judgments final in a much wider range of questions, through limitations imposed upon the jurisdiction of the Court of Appeals and upon appeals to that court.

(*b.*) By giving it stability and independence through the establishment of fixed terms for its members and power to control its own sessions and appoint its own clerk and designate the place of his office.

(*c.*) By making it large enough to insure full discussion and the correction of individual opinions by the process of reaching a concensus of opinion.

(*d.*) By relieving its members from all other duties, so that there shall be the fullest opportunity for consultation and deliberation, undisturbed by the demands of Circuit of Special Term assignments, and so that no litigant shall be obliged to argue his appeal before a court of which the judge from whom he appeals is a member.

II. The Court of Appeals is to be enlarged to nine, the highest number with which the unity of the court and its consistent declaration and development of the law can, in our opinion, be maintained.

III. The Court of Appeals is to be strictly limited to its proper province of reviewing questions of law (except in capital cases), leaving the judgments of the Appellate Division final upon all questions of fact.

IV. The right of appeal to the Court of Appeals is to be limited to final judgments and orders, leaving the decision of the Appellate Division final upon all matters of interlocutory practice and procedure, which do not enter into the final judgment as affecting substantial rights.

V. The provision for a Second Division of the Court of Appeals is abrogated.

VI. The Superior City Courts of New York, Brooklyn and Buffalo are to be consolidated with the Supreme Court with which they now have equal jurisdiction within their territorial limits. The judges of those courts are to become justices of the Supreme Court, but the service of the present incumbents is to be confined to the counties by the people of which they were elected, and their salaries are to be paid by those counties. Their separate clerks' offices, their needless multiplication of judicial machinery, and their varied rules of practice are to be done away with.

VII. The number of Supreme Court justices is to be increased by the addition of twelve. This number is deemed sufficient to permit the entire withdrawal of the justices of the Appellate Division from trial work, and, with the other changes proposed, to relieve the existing delays in bringing causes to trial. The addition will not, however, make the total number of justices so great in proportion to the population of the State as it was after the last increase by the constitutional amendment of 1882; the saving by abolishing the separate clerks' offices of the Superior City Courts, and judicial pensions, will more than pay for this additional expense.

VIII. Circuit Courts and Courts of Oyer and Terminer are abolished and all their jurisdiction is conferred upon the Supreme Court, by whose justices it is, in fact, now exercised. Since side justices were dispensed with, the separate existence of these courts has been useless, and the continuance of the form and name without the substance merely mystifies laymen and embarrasses lawyers and law-makers.

IX. Courts of Sessions are abolished, and their jurisdiction is conferred upon the County Courts. This dispenses with the side

justices, who have long been superfluous members of Courts of Sessions, and as without them the county judge would preside alone in the Court of Sessions, there seems to be no reason for preserving the form and name of a separate court.

X. The jurisdiction of County Courts is enlarged to include actions against residents of the county for the recovery of money only to the amount of $2,000, and the Legislature is prohibited from enlarging it further in such cases. County judges and surrogates in counties having a population exceeding 100,000 are prohibited from practicing law, and the Legislature is authorized to impose a similar prohibition in other counties.

XI. Provision has been made for preventing a repetition of the process by which, through constantly enlarging the jurisdiction of local and inferior courts, local rivals of the Supreme Court are built up. The trial of small causes is just as important to the people who have them as the trial of large causes is to others. When a court is organized for the purpose of trying small causes, enlargement of its jurisdiction necessarily withdraws its attention, interest and efforts from its original field of work. Therefore, while we leave power in the Legislature to establish inferior local courts, we provide that they shall not be courts of record, and that the Legislature shall not confer upon them any equity jurisdiction or any greater jurisdiction in other respects than is conferred upon County Courts.

XII. The provision for judicial pensions, or retired pay, is abrogated, saving only rights acquired under the existing Constitution.

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The principal evils which we have sought to remedy in our treatment of the courts of general, original and appellate jurisdiction are:

First. The delay in getting causes to trial in the first instance — a difficulty which exists chiefly in the large cities; and,

Second. The delay in final disposition which results from the overcrowding of the Court of Appeals calendar.

The first difficulty, we are satisfied, will be fully met by the moderate increase of judicial force which we recommend, and by the economy of judicial force which we anticipate from the consolidation of courts in the large cities.

The second difficulty we have treated with the following views:

Every State is bound to give to its citizens one trial of their controversies and one review of the rulings and results of the trial by a competent and impartial appellate tribunal. When this has been done, the duty of the State to the particular litigants involved in any case is fully performed. There is no consideration, either of

public duty or of the private interests involved in litigation, which requires a second appeal and a second review.

The only adequate reason for allowing two successive appeals in this State to review the same judgment is to be found in the fact that the volume of business is so great as to render it impossible for any one appellate tribunal, or any two, or possibly any three such tribunals, to properly review all the decisions of courts of first instance. The review to which litigants are entitled must, therefore, be furnished by at least three or four different tribunals; and to their conclusions another conclusion of the highest importance applies. Three or four separate tribunals, uncontrolled by higher authority, can never settle the law. Their opinions are certain to vary, differ and conflict. The public interests demand that the law should be settled; that it should be the same for the whole State; that it should be a consistent and harmonious system; that it should be declared clearly and authoritatively by some supreme power, in order not merely that litigants may have their right, but that the whole people may know what is the law, by which their contracts and conduct shall be regulated, and by the observance of which they may, if possible, keep out of litigation.

It is this necessity alone which justifies the existence of a Court of Appeals superior to the appellate tribunals which first review the decision of trial courts. But for this the whole difficulty could readily be solved by abolishing the Court of Appeals, allowing only one appeal, and constituting four strong appellate courts whose judgments should be final.

The occasion which gives rise to a second single appellate tribunal marks the limit of its proper and necessary function to settle and make certain the law, not only for litigants, but for all the people. Whatever limitations upon its jurisdiction or the scope of its action, and whatever provisions regarding its constitution and procedure are consistent with the full and effective exercise of that function, are permissible. Whatever interferes with the exercise of that function should be, by all means, avoided.

The theory of the judiciary article of 1867, and of the legislation under it, was that the review afforded by the various General Terms would sift out appeals and would bring so many litigations to an end that the residue which went on to the higher tribunal for a second review would be fully within its power to hear and determine without undue delay. This was, at first, the case; and so long as it was the case, it was of no consequence that many questions of fact, in which only the particular litigants were interested,

and many questions of mere interlocutory practice and procedure were allowed to come before the Court of Appeals.

The review by the General Terms, however, no longer effectively accomplishes the desired result. Want of finality in their judgments decreases the respect for their authority and their sense of responsibility. The small number of the justices composing them, and the frequency with which one of even that small number is obliged to retire because he is the very judge appealed from, reduces to a minimum the possibility of consultation, discussion and the correction of one mind by another, which is essential to satisfactory conclusions by an appellate court. The pressure of other judicial engagements upon the members of the court, in many cases shortening their sessions and preventing the full hearing of counsel, and frequently separating the justices with their work unfinished, tends in the same direction. In the meantime the disposition to take a second appeal grows, and the Legislature constantly enlarges the opportunity. The result is that the Court of Appeals is overloaded with work, a very considerable portion of which is wholly outside of its proper and necessary function of settling the law.

Our purpose is to draw the line distinctly around the questions which the Court of Appeals, and that court alone, ought to determine finally; to leave all other questions to the court first reviewing the cause, and to make that a court fully competent to protect satisfactorily every right of a litigant.

For the purpose of effectively limiting the Court of Appeals to questions of law, we have added to the general statement of that limitation a clause specifically precluding review of an unanimous decision of the Appellate Division, that there is evidence to sustain a finding of fact or a verdict not directed by the court.

This closes the door through which, under sections 993 and 1037 of the Code, the whole question of fact in many cases is brought before the Court of Appeals. It does not affect cases of nonsuit, or of verdicts directed, or of reversals by the Appellate Division, or cases where there is a dissent in that court.

It does require that when a trial court or jury has decided that a fact is proved, and five judges in the Appellate Division have unanimously held that it is proved, controversy about that fact shall end; and that any question of law mixed with that fact shall be separately raised and presented, in order to be reviewed by the Court of Appeals.

We believe this provision to be precise, logical, necessary to give effect to the main limitation, and just.

In reaching our conclusion we have considered the following alternatives as possible expedients to secure more speedy final review:

1st. We would enlarge the Court of Appeals so that it would sit in two divisions, or so that only a little more than half of the court being present at once, the members could rotate in their services. Either of these expedients would, doubtless, secure the disposition of more causes, but either of them would frustrate the sole purpose for which the court exists.

The unity of the court, the consistent harmony of its views upon the fundamental questions which underlie the determination of causes, the certainty of the law, the authority of its opinions now respected throughout the Union, and just cause for pride, by every member of the State — all these would disappear, and in their place would be the varying utterances of a divided or fluctuating body, less valued and less respected than the opinions of the courts which it reviews.

2. We could limit the jurisdiction of the Court of Appeals by fixing a minimum amount, and permitting no appeal in any case not involving that amount. We deem this decidedly objectionable. Important questions of law arise in small cases, as well as in large ones. A great majority of the people have only small cases to be determined, and this should be their court, if they choose to avail themselves of it, as well as the court of their wealthy fellow-citizens.

On the contrary, we have thought it wise to prohibit the Legislature from ever making the right of appeal to the Court of Appeals depend upon the amount involved.

3d. We could limit appeals to specified classes of causes, as the Judiciary Commission of 1890 proposed to do, and as the Federal Circuit Court of Appeals Act has done. But this is complicated and uncertain. Human foresight could hardly prevent mistakes in enumeration and definition which would require amendment; and while such an attempt may do very well in an act of Congress, which can be revised every year, it is exceedingly unsafe to attempt in a Constitution which is to stand for twenty years. There are, moreover, two substantial objections to this course. One is, that there is an element of unfairness toward those citizens who are interested in the particular classes of cases excluded from the numeration; and the other is, that similar questions of law arise in different classes of cases, so that there would be different courts of last resort passing on the same questions.

4th. There is the present provision for a Second Division. This has some advantages, but they are much more than counterbalanced. Relief in this way necessarily involves great delay and injustice, while a sufficient number of causes are accumulated upon the calendar of the Court of Appeals to justify a Second Division. It means merely to allow an evil to grow to such proportions from time to time that extraordinary measures are necessary for relief. It has in it no element of protection. When resorted to, it deranges the work of the Supreme Court, and causes great annoyance and inconvenience by the withdrawal of the justices of that court from the fields in which their services are needed.

5th. There remains the plan which we propose. We are of the opinion that the new appellate courts will be more efficient; that their opinions will be more highly respected; that their judgments will be less frequently reversed; and that, for all these reasons, there will be fewer appeals from them to the Court of Appeals than there are from the existing General Terms. We are also satisfied that the limitations upon the jurisdiction of the Court of Appeals and the right to appeal thereto will further very largely reduce the number of appeals to that court; and that the increase in the number of judges of the Court of Appeals will slightly increase the working power of the court. We are confident that, under the operation of all these causes, the court will be able to keep pace with the demands upon it.

We have adopted and included in the article reported portions of the following proposed constitutional amendments:

No. 5. Introduced by Mr. Dickey
No. 33. Introduced by Mr. Lauterbach.
No. 41. Introduced by Mr. Maybee.
No. 42. Introduced by Mr. Moore.
No. 66. Introduced by Mr. Roche.
No. 101. Introduced by Mr. Moore.
No. 128. Introduced by Mr. Woodward.
No. 164. Introduced by Mr. Marshall.
No. 183. Introduced by Mr. Marshall.
No. 172. Introduced by Mr. Lincoln.
No. 179. Introduced by Mr. McLaughlin.
No. 181. Introduced by Mr. McArthur.
No. 238. Introduced by Mr. Roche.
No. 249. Introduced by Mr. Lester.
No. 268. Introduced by Mr. Parmenter.
No. 269. Introduced by Mr. A. B. Steele.
No. 273. Introduced by Mr. Nelson Smith.

No. 279. Introduced by Mr. Dickey.
No. 227. Introduced by Mr. Carter.
No. 338. Introduced by Mr. Vedder.

We beg to acknowledge the very valuable suggestions, explanations and information received from the gentlemen who introduced these and many other proposed amendments to the judiciary article.

Respectfully submitted,

ELIHU ROOT,
Chairman.

Mr. Vedder — This, Mr. President, is one of the most important proposed amendments which has been before the Convention up to this time, or which will come before the Convention during its session. The highest function of government is to make law; the next highest is to pronounce judgment upon the law. After hearing the report of the committee read, it is obvious to everyone that not a slight change has been made, but a radical change, in which every citizen of the State of New York is deeply interested. The people of the State ought to know precisely what these proposed amendments are. The newspapers of the State, everyone of them, ought to publish the amendments themselves, and the report of this committee. For the purpose, therefore, of enabling all the papers and all the lawyers and all the people of the State to know officially, as it were, what the proposition is, I move that at least 2,000 — I will put it 2,000 — copies of the report and the proposed amendments be printed for the use of this Convention.

Several members — Make it 2,500.

Mr. Vedder — I will accept the amendment of 2,500. Perhaps that is too small.

Mr. Towns — Make it 3,000.

Mr. Vedder — Well, 3,000 would only give each member about eighteen or twenty. I will say 3,000.

Mr. Maybee — I move to amend by substituting 5,000.

Mr. Vedder — A very practical printer, since the amendment was suggested of 5,000, says that when 2,000 are printed the cost of the other 3,000 is exceedingly slight. If that is so, let us have the 5,000. We cannot have too much of this, and the people cannot have too much knowledge of what it is proposed to do in this behalf.

Mr. Alvord — Mr. President, all I have to say in this regard is that the way the lawyers are going on at present, in adding to our

printing account in this Convention, they will bankrupt the State and leave nothing to quarrel over among themselves before the courts. I trust, therefore, that no such amount as 5,000 will be printed. If it is so important an amendment as stated by the gentleman from Cattaraugus, the newspapers will print it as a matter of course. They will not hesitate in that regard, and the distribution of it through the papers of the State will cost, so far as the people of the State of New York is concerned, but a small amount of money. I trust, therefore, that the original proposition, made by the gentleman from Cattaraugus of 2,000, will be considered, after members reflect a little, entirely sufficient for the occasion.

Mr. Dean — Mr. President, I rise to a point of order. Under rule 51 this must, of necessity, go to the Committee on Printing.

Mr. Hamlin — If it is necessary that this should go to the Committee on Printing, of course, I do not object. It seems as if it might just as well be determined now, as immediate circulation is desired. What I was going to suggest, however, was in the interest of economy — that, I think, perhaps, 2,000 copies better be printed in the first instance, and then, if there is necessity for 3,000 more, it will be a very easy matter, as the types are kept up, as I understand. So that, if ultimately it should be desirable to have 5,000 copies or 3,000 copies additional, there would be no difficulty in obtaining them. I ask, Mr. Chairman, unanimous consent of the Convention to suspend the rule and to pass this motion.

The President *pro tem.*— Unanimous consent is asked by Mr. Hamlin that the Convention shall suspend the rule and that this resolution, instead of being referred, as, of course, to the Committee on Printing, may be acted on now by the Convention. Are there any objections? There being none, it is so ordered by the Convention. The Chair would ask Mr. Vedder if he accepted all the amendments as they were offered?

Mr. Vedder — I did.

The President *pro tem.*— The Chair failed to understand whether there were any further amendments made to this resolution, in reference to the printing of 5,000 copies of this report. If there are no further amendments, the question now before the Convention is upon adopting Mr. Vedder's motion that 5,000 copies of these reports and the amendments be printed for distribution throughout the State.

The President *pro tem.* then put the question, as stated, and it was determined in the affirmative.

Mr. McMillan — I have been authorized by the Committee on

Rules to make the following report, in reference to the limitation of time on the suffrage debate.

The Secretary read the following report from the Committee on Rules:

"Resolved, That the limit on debate shall be three hours. The Convention shall sit from three to five o'clock this day, and again at 8 P. M. The time from three to three-thirty shall be given to those sustaining the adverse report; the time from three-thirty to five shall be given to those opposing the report, and the time from eight to nine shall be given to those sustaining the report; and that the vote be taken at nine o'clock."

Mr. McMillan — Mr. President, I desire to state to the Convention that the chairman of the Suffrage Committee (Mr. Goodelle), and also the leader of those opposed (Mr. Lauterbach), were before the committee and agreed to the provisions of this resolution.

Mr. Lincoln — Mr. President, it seems to me hardly worth while for this Convention to break in upon its other work to introduce this suffrage amendment into the day's session. We voted last week to use the evening sessions until the subject was exhausted. We have used three evenings. We voted last night, I suppose, to continue it to-night. There is important work to be done before the committees this afternoon, which will engage the time of some who might desire to participate in this debate. I think this question can be disposed of this evening by beginning promptly at the usual hour, without taking any time this afternoon. As I understand it, nearly all the arguments upon each side have already been presented. There may not be more than two or three speeches more, in any event. I object, so far as I am concerned, to the consideration of this question this afternoon.

Mr. McClure — Mr. President, I agree entirely with the gentleman in his suggestion as to this innovation on the understanding reached, with reference to this matter of suffrage and the general business of this Convention. By reason of the fact that it was understood that the matter of suffrage was to be discussed and disposed of at an evening session, several important committee meetings have been arranged for, among them, that which has been deemed by a great many members of this Convention as very important, the matter of the preservation of the State forests. In that matter a public hearing was arranged, to attend which gentlemen have come from New York, and it is a matter, in my judgment, that far exceeds the present question of woman suffrage. Upon that matter gentlemen have come from New York to be heard.

In that matter a great many members of this Convention have expressed an active interest, as have men who are dwelling in the neighborhood of the forests, and who know something of the needs of the occasion. I say, sir, that it is a great mistake to ask members who seek an attendance upon committee matters to absent themselves from the discussion at the end of this suffrage matter, and that there is no necessity for intruding or trenching upon the afternoon for its disposition. I think that it may be discussed and voted upon to-night, and allow the arrangements that have been made, in view of the fact that it was not to be heard during the afternoon, not to be interfered with. If in order, I move that the portion of the report which provides for an afternoon session be amended so as to provide that there shall be no afternoon hearing, but that the Convention shall assemble at seven o'clock this evening and that the time, as fixed by the report, shall be allotted in the same way and a vote he had this evening.

Mr. Storm — Mr. President, I, for one, fail to understand the position we are in, in regard to this matter. According to the resolution that I understand was adopted, the suffrage question was made a special order for to-night. Therefore, it seems to me that this is out of order.

Mr. Barhite — Mr. President, I certainly hope that the report of the Committee on Rules will not prevail. I admit that this subject which has been under discussion for the last three evenings is a very important one.

Mr. Storm — Mr. President, I rise to a point of order. I am of the opinion that the matter has been disposed of, in regard to the woman suffrage question — that it was to be a special order for to-night. Therefore, why take up the time in considering the subject of a session this afternoon?

The President *pro tem.*— The ruling of the Chair is that this Convention has a right to make special orders and do away with special orders. This matter of the Committee on Rules, by the rules themselves, is always in order, and the debate upon it seems to be perfectly in order.

Mr. Barhite — We have already had some seven or eight hours of eloquent and logical debate upon both sides of this suffrage question. The question has already been discussed most thoroughly *pro* and *con* in the committee. I do not believe that this Convention should take any more time than that provided by the committee for the evening session. I certainly hope that the report will not

prevail, but that we may go on, as we intended, this evening and finish the matter up at that time.

Mr. McMillan — Mr. President, from the hearing before the committee by those in charge of this discussion, it appears that a vote was expected last evening; it further appears that at least three hours' time will be necessary to satisfy all of the parties in the further discussion. If this matter is put over until eight o'clock this evening, a vote cannot be reached before eleven, and, with the three to five minutes' time allowed to members to explain their votes, it will be midnight before the roll-call will be completed. It was for this reason that the committee were impelled to report to the Convention that, in their judgment, two hours of this afternoon should be devoted to the discussion of this question, fixing the hour when the vote should be taken at a specific time so that every delegate who might desire to cast his vote might be present at that hour of nine o'clock this evening. This will not interfere in any manner with the sittings of committees this afternoon, because I apprehend that not more than one-half of the delegates desire to be present at this discussion, unless some vote is to be taken.

Mr. Veeder — Mr. President, is a motion to amend in order?

The President *pro tem.*— A motion to amend is in order.

Mr. Veeder — Then I move to strike out of the proposition or the rule reported so much of it as classifies the particular time assigned to individuals to speak on one side or the other of the proposition. I know of no instance when such a rule was ever adopted in any legislative body. It is a dangerous precedent.

Mr. McMillan — Will the gentleman give way for a moment? Our rule expressly provides that when an assignment of time is made it must be equally divided between those in favor and those opposed. That is the rule of the Convention.

Mr. Veeder — I submit that the proposition is a dangerous one to undertake to divide the time by hours, as the proposition intends to do, saying that certain individuals on one side of the case shall be heard at a particular time, and those on the other side shall be heard at another time. That does not involve the simple question of allotment of time equally between the contestants. That can be done by the President or by some one rising to a point of order. But here is a separate proposition, dividing the time by periods in a particular direction. I submit it is a dangerous precedent, a very dangerous precedent. Delegates may desire to speak at a particular juncture of debate and not at some other period of time. It should be left to them and the recognition they receive

from the Chair. I do not object to dividing the time of debate equally, if it is necessary.

Mr. H. A. Clark — Mr. President, I hope this resolution will prevail. Whilst several have spoken upon the different sides of this question, I consider that there is no great issue necessarily to be determined. There is nothing to interfere with this Convention meeting this afternoon, except the meeting of several committees. It seems to be well agreed that these committees may meet and go on with their duties, that no one is needed here this afternoon, except those who wish to speak. (Laughter.) The gentlemen from the Committee on Rules say it is not necessary for us to appear here; we can attend to our duties, with the understanding that delegates can go about their duties in the committee room and that the speakers only shall appear here this afternoon. I agree with the Committee on Rules that this rule should be adopted, it being understood that a vote shall not be taken until the evening session.

Mr. E. R. Brown — Mr. President, I dislike to take the further time of the Convention in this matter, but I know there are a number of men engaged on committees, who are very much interested in the suffrage question (and I am not one of them), and who desire to be heard on that subject, and whose presence in committee is absolutely essential this afternoon to the carrying on to a successful conclusion the work of those committees. I, therefore, hope this matter will be recommitted to the Committee on Rules, with instructions to report a rule on this subject which shall not provide for hearing this afternoon.

Mr. Choate — Mr. President, after conferring with several members of the Committee on Rules and hearing what has been said here, I second the motion made by Mr. McClure to amend the rule offered by the Committee on Rules, by providing that the Convention meet at seven o'clock this evening, instead of this afternoon; that it be made a special order for that hour; that the vote be taken at ten o'clock and that the distribution of time be left as it is provided in the committee's report. It has been said here that very few gentlemen wish to be heard. I desire to state that last evening as many as sixteen names were sent to the Chair of gentlemen desiring to be heard. It was only possible to hear six of them. I understand that each of the other gentlemen has something entirely new and original to offer. (Laughter.) I, therefore, hope that the amendment proposed by Mr. McClure will be adopted. (Applause.)

The President *pro tem.*— The question is on the amendment

offered by Mr. McClure that the Convention meet on this special order this evening at seven o'clock, and that a vote upon the question be taken at ten o'clock.

Mr. Choate — And the distribution of time be left as otherwise provided in the rule?

The President *pro tem.*— The Chair understands that one-half hour is to be devoted to those in favor of sustaining the adverse report, that the succeeding hour and a half be given to those who are opposed to it, that the following hour be given to those who are in favor of it.

Mr. Veeder — Mr. President, do I understand the proposition to be to give one side the opening and closing of the discussion?

The President *pro tem.*— That is the proposition.

Mr. Veeder — And that is the side that favors the report of the committee?

The President *pro tem.*— Yes.

Mr. Veeder — What could be more cowardly? I submit that my proposition is a fair one. Let the time be divided equally, if it is desired; but to designate a particular time when a party interested in a measure shall press it or oppose it, is an unheard of proposition. It will result disastrously in the future. Divide the time equally, but do not assign the opening or closing to one side of the case.

The President *pro tem.*— Will the gentleman be kind enough to state his amendment?

Mr. Veeder — I move to strike out all of the resolution which provides for the assignment of time as therein stated. I am willing to leave the division of time equal between the two sides.

Mr. Lauterbach — Mr. President, I think it but fair to say for the Committee on Rules and for the majority of the Suffrage Committee, that the suggestion of the procedure was acquiesced in, perhaps, mistakenly by myself, representing the opposition as a member of the Suffrage Committee, and that there has been no intent, either on the part of the Committee on Rules or of the Committee on Suffrage, to deprive the opposition of their fair allotment of time and of a fair position, in respect to the juncture at which the arguments should be made upon the respective sides. The suggestion originally made was that the opposition should originate the debate, as they felt that they had not been very fully advised of the full character of the argument in support of the report; and, as no report had emanated from the committee on either side, either

a majority or a minority report, except the formal report adversely, it was thought proper that the opening of the argument should be made by those in favor of sustaining the report of the committee, so that the first portion of time was allotted to them. The chairman of the committee, who has reserved his argument, and who, whether absolutely within parliamentary rule or not, has claimed the right of closing the debate, having an argument fully prepared which will require nearly an hour in its delivery, would take the last hour of the debate. That would leave the intermediate period for those who are to be heard in opposition to the report; and it is but just to make the statement that it was after consultation and deliberation and because it was deemed fair, that the allotment of time should not only be made, but that it should be made in view of the fact that the chairman had not yet addressed the Convention, and claimed the right of closing, which seems to be conceded, and seems to be regular in the case of a report submitted as this is. If the usual method obtained of simply allotting the time between two parties and endeavoring to alternate the debate, confusion would arise in which the order intended to be preserved could not be fully preserved. I think the friends of woman suffrage cannot feel that any injustice has been done them, if the hour and a half after the opening half-hour is devoted to a discussion of their interests, and the final hour is allotted to the chairman of the committee.

Mr. Dean — Mr. Chairman, I believe the friends of suffrage are entirely willing to go to a vote after Mr. Goodelle has spoken. Therefore, I move the previous question.

Mr. Veeder — I will withdraw my amendment.

Mr. I. S. Johnson — I ask Mr. Dean to withdraw his motion for the present.

Mr. Dean — I withdraw the motion.

Mr. Goodelle — I thought it but fair that I should state that I fully concur in what has been stated by Mr. Lauterbach. Mr. Lauterbach, with myself, was called before the Committee on Rules, and, after a discussion of the matter, the time was allotted and agreed upon by the respective sides, as has been suggested, as being the most satisfactory conclusion, perhaps, to which we could arrive. I hope, therefore, that the amendment offered by the President of this Convention will be adopted.

The President *pro tem.* put the question on whether the main question should now be put, and it was determined in the affirmative.

The President *pro tem.* put the question on the amendment of

Mr. McClure, as amended by Mr. Choate, and it was determined in the affirmative.

The President *pro tem.* put the question on the original report, as amended, and it was determined in the affirmative.

Mr. Vedder — Mr. President, I gave way a short time since for the report of the Judiciary Committee, and I desire now, under the rules, to make an adverse report.

The Secretary read the report offered by Mr. Vedder as follows:

Mr. Vedder, from the Committee on Powers and Duties of the Legislature, to which was referred the amendment introduced by Mr. Arnold (introductory No. 115), and entitled, "Proposed constitutional amendment to amend article 3, section 18, by requiring all private and local bills to be printed in the locality affected thereby," reports adversely thereto.

The President *pro tem.*— The question is on agreeing with the adverse report of the committee.

Mr. Arnold — Mr. President, I move to disagree with the adverse report of the committee, and ask to have the proposition, as now presented, as amended and on file, read by the Secretary.

The Secretary read the proposition as follows:

Section 18 of article 3 is hereby amended by adding at the end thereof as follows:

No local or private bill shall be passed, unless notice of the general character thereof and of the intention to apply therefor, shall have been published for at least fifteen days in the newspapers designated by the boards of supervisors to print session laws in the county where the matter or thing to be affected may be situated, or, if such papers are printed weekly, then in two such papers twice in each paper, prior to the introduction of such bill into the Legislature. Evidence of such notice having been published shall be submitted to the Legislature before such bill shall pass; provided, however, that such publication shall not be required, if the necessity for the immediate consideration of such local or private bill shall be certified to by the chairman of the board of supervisors, mayor of the city, supervisor of the town or president of the village in which the matter or thing to be affected by such local or private bill may be situated.

Mr. Arnold — Mr. President, since that amendment was proposed, some of the delegates have suggested further amendments, and I think it would, therefore, be proper to go to the Committee of the Whole so that the principle which I seek to maintain here

may be recognized, namely, that there shall be some opportunity for localities to say what legislation shall be passed for those localities. This principle has already been recognized in this body, in the bill of Mr. Vedder. The object of my amendment is not only to prevent the passage of bad laws, but also to put good laws in better shape by enabling the people interested to discuss the matter and so put them in form that they may be properly and readily passed upon when they come before the Legislature. The only remedy that the people have to relieve themselves from a bad law is to move for its subsequent repeal. I have in mind a bill introduced into the Legislature affecting the village of Westchester. This bill created a board of seven commissioners who had very great powers. It became a law. There was great objection to it, and last year it was repealed. My object is to prevent such legislation. We all know, in the passage of such bills, that frequently the member introduces them and by an interchange of courtesies the bill goes through to a vote and the people have no means of ascertaining what law has been introduced. By my amendment they must have an opportunity. It will also be noticed that there is a provision that in case of an emergency it may be certified to by the supervisor of the locality to be affected. It has also been suggested by a delegate that a copy of such bill shall also be filed in the office of the Secretary of State at least fifteen days prior to its introduction, unless consideration thereof shall be certified to as aforesaid. Now, I ask that the principle go before the Convention so that amendments may be made that shall perfect my amendment in the principle of giving localities a right to guard the legislation affecting them, and I, therefore, move that the report of the committee be disagreed to.

Mr. E. R. Brown — I feel it my duty to say at this time that I regard the principle embodied in this amendment as one of the most important principles before this Convention for consideration. It is a principle, carried much farther, but a principle that is now, and for a long time has been, in operation in other countries. For my own part, I do not believe in imposing undue restrictions upon the power of the Legislature, but I believe, if we impose proper restrictions upon the methods of legislation, we will do more to accomplish what we desire to accomplish, in raising the tone of legislation in this State than we can by cutting off the power to legislate.

This bill looks toward improvement in methods of legislation. There is nothing unreasonable in the idea that a private and local act should be published in the locality which it is to affect before it is enacted into law in the State of New York. Every man knows the custom of the Legislature in relation to these private and

local acts. They are introduced solely upon the responsibility of the members from the district affected by them. They are often presented late in the days of the session and rushed through the Legislature. And there lie the means and the opportunity for improper legislation more than in any other class of legislation. I trust, Mr. President, if a vote is not now taken to disagree with the report of the committee on this subject, that the Convention will not close the door against some relief in this direction. It should not be hastily passed upon. It should be deliberately considered. I regard it as the most important step that could be possibly taken by the Convention to raise the tone of legislation.

Mr. Becker — Mr. Chairman, I fully sustain the position taken by Mr. Brown in this matter. I earnestly believe that if there is any amendment before this Convention which would accomplish the measure of legislative reform, tend to elevate the methods of legislation and purify them, it is this. I sincerely hope this motion will prevail, so that the matter can go on the calendar, as I understand it will go, if the report of the committee is not agreed to, and be carefully discussed and have a full opportunity for a hearing before the Convention.

Mr. Roche — Mr. President, the Committee on the Powers and Duties of the Legislature had three separate propositions on this subject before them, one introduced by Mr. Arnold, one introduced by Mr. Root, and one introduced by Mr. Bigelow, all looking toward improvement in the methods of legislation. Now, the committee has reported this one adversely. I dissent from the report of the committee. I believe that the report should be disagreed to and the matter should be brought into the Committee of the Whole, where the subject can be carefully and thoroughly discussed. I think that the proposition, or the amended proposition of Mr. Arnold, is one which should receive the favorable consideration of this Convention. It seems to me that it will be a great step forward in the work of improving the methods of legislation; and above all, of securing to persons and corporations, the people and localities interested in private or local bills, due notice of the proposed introduction of a bill, in order that they may ascertain how it affects their interests. We all know that one of the great troubles of the Legislature, one of the abuses accompanying our present legislative methods, is the hasty, almost secret introduction of measures of the most important character, even if on their face they appear to be private or local; and the first thing that is known by the corporations, or by the individuals, or by the localities interested, is that such a measure has passed the Legislature. Now, sir, it seems

to me, that we should do something to get rid of this abuse, and to enable the people who are interested, to have a fair opportunity of ascertaining the character of the bill and how it affects their interests, so that they may be heard before the committees of the Legislature in due season. This will be secured, among other ways, by requiring that a copy of the measure shall be filed in the public office, namely, the office of the Secretary of State. I know it is proposed by the gentleman from Cattaraugus (Mr. Vedder) that some of these abuses shall be removed, and that better consideration, more deliberate action upon the part of the Legislature, shall be secured by his measure, requiring that all bills shall be printed and be on the desks of the members for at least three legislative days. In my opinion, Mr. Chairman, it is a very good measure, but I think it a mistake to regard it as a panacea for all the evils and all the abuses connected with our legislative methods. It does not secure to localities, nor to the parties interested, reasonable and adequate notice of the measure which is proposed to be introduced. There is no good reason that I can see why, if public officers propose to amend the charter of the city, that public notice of the fact, in order that the citizens may have an opportunity to know what is proposed affecting their public or private interests, as taxpayers or otherwise, should not be published in the official newspapers, that they may consider it in due season, have ample time therefor, come together, if need be, in public meeting, talk it all over, and determine what they will do. The same would apply to any corporation or to any class of individuals who may be affected upon a matter on which it is proposed that legislative action shall be taken. It will also facilitate the passage of bills. The hearing can be had at home, the consideration of it will be had at home, and time can be saved and money saved to the individuals and localities interested, by having it considered and perfected at home, instead of being compelled to come to hasty meetings of the committees of the Legislature, and, perhaps, frequent meetings for the consideration of the matter. It seems to me, that under these circumstances, Mr. President, in view of the number of gentlemen who have introduced measures bearing upon this subject, and upon the general desire that this Convention should not adjourn without taking some steps that will tend to secure more deliberate and satisfactory legislation and legislative methods, that this report should not be agreed to, but that the matter should be sent to the Committee of the Whole, in order that there it may be perfected, and the Convention determine with greater deliberation than it can now, what disposition shall be made of this amendment.

The President *pro tem.*— Does the gentleman desire to be regarded as dissenting from the report of the committee?

Mr. Roche — Yes, sir.

Mr. Alvord — Mr. President, I desire to say that so far as this matter is concerned, it strikes a very serious blow at the third house of the Legislature. I shall in vain look, if I live long enough, over the Legislature of this State, to see the familiar faces and hear the familiar voices of the so-called lobbyists. I trust, therefore, sir, that the proposition will receive the approbation finally of this Convention. It is, as has been said by the gentleman from Rensselaer (Mr. Roche), in the right direction. It will give us pure and clean legislation, which now, God knows, we do not in all cases have.

Mr. Choate — Mr. President, I wish merely to say that I heartily concur in everything that has been said adverse to this report. I think it is a subject that is entitled to the serious consideration of the Convention in Committee of the Whole. I believe that no proposition would do more to reduce the total amount of this pernicious local and private legislation, than some such proposition as is now inaugurated.

Mr. Dean — Mr. President, I want to go on record distinctly, as dissenting from this clap-trap arrangement for delegating the legislative power of the State to local committees. We have in the first section of the article a dignified declaration that the legislative power of this State shall be vested in the Senate and Assembly, and I am unalterably opposed to going into every local community and into every newspaper office for the purpose of legislation. I do not believe in it. It is pernicious. It takes away responsibility from responsible representatives, and places it in the hands of the mob. It is vicious, un-American, and ought not to prevail.

Mr. Vedder — Mr. President, the committee had this and other similar propositions of similar nature under consideration for some time, and heard every one who desired to come before the committee and be heard on these propositions. There are two or three of the same nature which have been reported adversely by the Committee on Legislative Powers and Duties. Some of the gentlemen here have expressed themselves as desiring that this should be heard in the Committee of the Whole. If it could be made a special order, and all propositions of a similar nature could be heard at the same time, I should myself have no objection to it, so that the whole Convention might hear the discussions and the reasons why the Committee on Legislative Powers reported these adversely. I believe that the proposed legislation is vicious in principle, and will be more

vicious in practice; it will simply lull the people of the localities to sleep, and its effect will be the merest "sounding brass and tinkling cymbal." The proposition which is now upon third reading is sufficient for all practical purposes. It permits the people of the locality to know what the bill is that is in a form to be passed. Of what earthly use is a bill, notice of which should be given in a locality, and even if the whole thing was spread in the local papers which come to the Legislature, and the whole meaning, all of its provisions, everything except its name is entirely changed, and, in the language of Mr. Root, from New York, changed in the twinkling of an eye?

Mr. Roche — May I ask the gentleman a question? Has not the Committee on Powers and Duties of the Legislature reported a proposition which will effectually prevent the changing of bills in the twinkling of an eye?

Mr. Vedder — What proposition is that?

Mr. Roche — A proposition submitted here forbidding the changing of any bill on its passage through the Legislature after its introduction at any time in the House, which would change the subject-matter of the bill.

Mr. Vedder — Precisely. The gentleman who has just spoken took bodily the provisions, I believe, from the Constitution of Pennsylvania, that a bill should not be changed in form or changed in substance, which also is a mockery and a snare and a delusion. It is full of "fat contentions and flowing fees," and this Convention, I believe, if by reason of having sufficient rest between these numerous sessions, can maintain their sanity, will never pass it, and the people, who are always sane, will never ratify it if this Convention should pass it. But let the Convention, which may not and cannot know what these suggestions are, because they are not before them in printed form, have them in printed form before them, and then let us debate the question, when everything is before us, and we can see just the effect of these provisions. I want to deal in practical things and not in sentiment. I want to deal in those things which will make legislation practical, which will prevent bad legislation, if I can. I want to put those things in the Constitution which will work to that end, and not be a delusion. I am, therefore, Mr. President, as chairman of the committee, which reported these two propositions adversely, willing that the proposition of Mr. Arnold and the other propositions shall go into the same Committee of the Whole, and have the matter there discussed, and have the amendments proposed by either of the gentlemen printed and upon the

desks of the members, so that we may know about what we are talking, and not be deceived by the suggestions of good, wise and perfect legislation.

Mr. McClure — Mr. President, I only desire to say here that it seems to me that this subject has assumed proportions that make it desirable that it should go into Committee of the Whole. On the face of it, I am in favor of it, but a suggestion made by the venerable gentleman behind me (Mr. Alvord) caught my attention, and that is that possibly the adoption of some such rule would make less familiar than heretofore the voice and the appearance of the lobbyist in the halls of legislation. I am, therefore, in favor of this matter going to the Committee of the Whole, upon the theory that perhaps we can amend it so that it will prevent lobbying in the halls of the Constitutional Convention. No such lobbying, in my opinion, has ever been seen in any hall of legislation, not even in the halls of Congress, as has been witnessed every day since the opening of the Convention within the halls of this chamber. (Applause.) I say, sir, whatever the objects, whatever projects they have had in hand, it has been a disgrace to the career of this body that men cannot venture from their chairs or desks to pass about the aisle without being button-holed upon one subject or another that is pending before this Convention. I am averse to lobbying, and if the passage of this amendment will extend to Constitutional Conventions as well as to Legislatures, then I should be willing to put my general objections to it under my feet and vote for it. I hope, sir, that it will be carried to the Committee of the Whole, so that we may amend it to meet every possible exigency.

Mr. Choate — Before a writ *de lunatico inquirendo* is taken out on me, as threatened by the gentleman from Cattaraugus, I move the previous question.

The President *pro tem.* put the question whether the main question should now be put, and it was determined in the affirmative.

Mr. Dean called for the ayes and noes upon the motion.

Mr. M. E. Lewis — I rise to a point of order, that the question has already been decided by the Chair to have been carried.

The President *pro tem.*— The previous question has been carried.

Mr. Dean — I withdraw my request for the ayes and noes.

The President *pro tem.*— The question before the Convention is on agreeing with the report of the committee.

Mr. Roche — Did not Mr. Arnold move to disagree with the report of the committee?

Mr. Arnold — That was my motion.

The President *pro tem.*— That question is already before the House. The question on disagreeing or agreeing is immaterial.

The President *pro tem.* put the question on agreeing with the report of the committee, and it was determined in the negative.

The President *pro tem.*— The report of the committee is disagreed to, and the matter goes upon general orders.

Mr. Vedder — Now, Mr. President, in order to have practical legislation, let us have the proposition of the gentlemen from Rensselaer (Mr. Roche) and the gentleman from Oswego (Mr. W. H. Steele), who is occupying the chair at this moment, and that of Mr. Arnold, all in the Committee of the Whole together, so that they may be considered at one and the same time.

Mr. Roche — The proposition I referred to is that of Mr. Arnold; I want him to have the credit of it.

Mr. Vedder — Well, they are all substantially alike. I make the motion that when they are considered, they be considered together.

Mr. Bowers — I make the point of order that there is nothing before the House at the present moment. The matter has been disposed of, and the amendment has gone to the Committee of the Whole, and when we get there we can amend it.

The President *pro tem.*— The Chair decides the gentleman's point of order is well taken.

Mr. Dean — Mr. President, has there been any provision for printing the several proposed amendments?

The President *pro tem.*— There are no amendments before the House. There is nothing before the House, as the Chair understands it, at present, except the regular order of business. The regular order now is general orders. The Secretary will read the calendar.

The Secretary called general orders Nos. 2, 6, 49, 7 and 14, which were not moved.

The Secretary called general order No. 16, which was moved by Mr. Vedder.

The House resolved itself into Committee of the Whole, and Mr. Acker took the chair.

The Chairman — The Convention is now in Committee of the Whole on general order No. 16 (printed No. 382, introductory No. 216). The Secretary will read the first section.

The Secretary read the first section as follows:

Section 10 of article 3 of the Constitution is hereby amended so as to read as follows:

Sec. 10. The majority of each House shall constitute a quorum to do business. Each House shall determine the rules of its own proceedings and be the judge of election returns and qualifications of its own members; shall choose its own officers, and the Senate shall choose a temporary president to preside in the case of the absence or impeachment of the Lieutenant-Governor, or when he shall not attend as President, or shall act as Governor.

Mr. Vedder — Mr. Chairman, if Judge Countryman will state where his amendment is to come in, I would be pleased to accept it so far as I can.

Mr. Countryman — In line nine, strike out the words "not attend," and insert in place thereof the words "refused to act."

Mr. Bush — Mr. Chairman, I would like to hear from Judge Countryman the purpose of his amendment. It seems to me at first glance to be a somewhat dangerous innovation. The question that would arise when the president refused to act would be one to be usually determined by the majority of the Senate, and they might be very arbitrary sometimes in their judgment. For instance, if the president should refuse to put a question, or declare it out of order, it might be in the heat of partisanship, and it might be declared by the then majority that the president was in that case refusing to act as president of the Senate, and it seems to me it might cause a great many complications. I have not thought of this subject before or heard of the amendment, but I would like to hear from Judge Countryman what the purport or the effect of the amendment would be in his judgment.

Mr. Countryman — Mr. Chairman, the object of the amendment is to meet one of the contingencies which the gentleman last on the floor has suggested, where the presiding officer of the Senate refuses to put a question to a vote of the Senate or Assembly. Such a contingency occurred in the history of legislation last winter, in the Senate of this State, where the Lieutenant-Governor, sitting in his chair, refused to put a question to the Senate, and the motion was put and disposed of by the Senate as to whether or not the contesting Senator from the Sixth Senatorial District of the State should be declared a member of the body. In other words, the presiding officer of the Senate refused to allow that body, in its own right and in its own behalf, to determine a question of a quasi-judicial character, as to who were and who were not members of that body; and

this occurred after a committee had been appointed by the Senate and had reported, deciding who was entitled to the contested seats. In other words, the action of the Lieutenant-Governor operated as a complete obstruction to any decision on the part of the Senate, in reference to a question which was specially committed to it by the Constitution; and this is to prevent any such action as that on the part of the Lieutenant-Governor. The Lieutenant-Governor, by the Constitution, is not a member of the Senate. He is merely a presiding officer there, for the purpose of obeying its orders, carrying out its instructions, and simply presiding over its deliberations; and this is intended to confine him to a proper exercise of his duties as an *ex-officio* presiding officer. It would also apply to a case where the Lieutenant-Governor, as presiding officer, was personally interested in the matter before the House; as in a case involving his own impeachment. Suppose the question was before the Senate as to whether or not a vote should be taken on a proposition to impeach the Lieutenant-Governor. Should he be permitted to sit in the chair and to refuse to put that question to a vote? Such a case occurred in the State of Colorado within the last few years, where the speaker of the Assembly refused to put such a question to a vote of the House; and, as there was no provision in the Constitution upon the subject, the House could only act by a member of the body rising in his seat and putting the question to a vote, and thus obtaining the result of the deliberations of the legislative body on that important question. The matter had to go to the courts, where it was finally decided that it was properly voted upon in such case where the presiding officer refused to act.

It strikes me that such a matter as this ought to be especially provided for in the Constitution itself. A similar thing occurred in the House of Commons more than two hundred years ago, where the speaker refused to put a question to a vote of that body in a matter involving his own action. There were charges against himself of corruption as a member of that House, and it was necessary in that case to override his action and ignore him entirely in order to get any legislative action on the part of the House of Commons. It strikes me, sir, that this matter ought to be settled by some express provision in the Constitution.

Mr. Bush — Mr. Chairman, this amendment proposed by Judge Countryman is a very far-reaching one, one fraught with great danger to the orderly proceedings of the upper House of the Legislature of the State of New York. It seems to me that the adoption of this amendment would absolutely destroy the functions of the Lieutenant-Governor as the presiding officer of that body. The Senate of

the State has power to make its own rules. They may make such rules as they see fit, and it is the duty of the Lieutenant-Governor, as the presiding officer, to be bound by those rules, and guided by them, in conducting the business of the Senate. If he declines or refuses to obey the rules, the remedy is provided of impeachment. But now it is proposed by this amendment to add another and a distinct remedy; in other words, to simply have it declared by the majority that he is refusing to act as president, and in that case to set him aside. There is scarcely a question comes up where party differences are involved, but what there is a political struggle between the parties; the Lieutenant-Governor is always of one party or the other, and where he is opposed to the majority, the majority would invariably adopt a resolution declaring that he was refusing to act as presiding officer and setting him aside, and in that way absolutely destroy the dignity of the position, and bring the entire proceedings of the body into contempt. It does seem to me that we must, to a certain extent, assume that any man, who is great enough and large enough to be elected to the position of Lieutenant-Governor of the great State of New York, has honor and dignity enough not to attempt to preside over a body where the question of his own moral turpitude is at stake, or where any act which would reflect on his own honor in his official capacity would be determined; and particularly that he would not attempt to obstruct any such thing as his own impeachment, or any question of that character. It seems to me that it is undignified in us to assume that any man of that character will ever be elected to the position of Lieutenant-Governor of this State. On the contrary, it seems to me that the objections to this amendment are fraught with such great danger that this Convention should hesitate long before it adopts this amendment. I concede a great many things that the gentleman who proposed this amendment says, that there are times in the heat of political debate and excitement, when a presiding officer may stretch the rules, and even step beyond their limits; but that is comparatively insignificant in comparison with the opposite proposition of absolutely destroying the dignity of the presiding officer, or eliminating the power which is given to him by the rules of the body over which he is called to preside; and for that reason, I do not think that this amendment should be adopted, because if you do adopt it, it seems to me that it will be one source of constant regret in the upper House of the Legislature of this great State.

The Chairman — The question arises on the amendment proposed by Judge Countryman.

Mr. Vedder — I hope, Mr. Chairman, that the amendment will

prevail. Instances referred to by Judge Countryman, and also our experience of the last five or six years, more than justify an amendment of this kind. It is in the interest of order and orderly proceeding, and nothing more, and it ought to prevail.

Mr. Lincoln — I would like to hear the amendment read, Mr. Chairman.

The Chairman — The amendment of Mr. Countryman is, in line 9, to strike out the words "not attend," and insert in place thereof the words "refuse to act."

Mr. C. H. Truax — It seems to me, Mr. Chairman, that if this proposition is carried, there will be no provision in the article allowing the Senate to appoint a temporary officer in the absence of the presiding officer.

Mr. Countryman — It is in the previous clause.

The Chairman put the question on the adoption of the amendment proposed by Mr. Countryman, and it was determined in the affirmative.

Mr. Vedder — Mr. Chairman, I move that the committee do now rise, report this proposition to the Convention, and recommend its passage.

Mr. Hawley — Mr. Chairman, I don't know whether that motion is debatable or not.

The Chairman — Certainly, the question is debatable.

Mr. Hawley — Mr. Chairman, when this proposed amendment was last before the committee, I briefly expressed what seems to me to be a serious and, in my judgment, fatal objection to its passage; and that is, that this amendment confers the power upon a hostile Assembly, at any moment when it chooses, in the heat of party feeling, to dethrone the Senate by the simple act of preferring against its presiding officer articles of impeachment. Answer was made to that suggestion by the venerable gentleman from Onondaga that the objection was unsound, inasmuch as the Lieutenant-Governor was not impeached until the Senate itself had taken action upon the articles of impeachment. Such is not my understanding of the facts. On the contrary, the Constitution says in express language that the Assembly has the power of impeachment, and when it has discharged its duty in that behalf, the officer assailed is impeached; and the provisions of the Constitution are such, from the character of a judicial office, that when that is done the power to exercise judicial functions is taken from the judges of courts. And in like manner with this amendment, the power to exercise the functions

of the presiding officer of the Senate would be instantly taken from the Lieutenant-Governor upon the preferring of articles of impeachment by the Assembly. I believe that that is a dangerous innovation. If, perchance, I am wrong, and the gentleman from Onondaga is right, that the Lieutenant-Governor is not impeached until the Senate has taken action upon the articles of impeachment, then the very purpose of this amendment utterly fails, because not being impeached he presides over the deliberations of the Senate in respect to his own impeachment, and he remains, notwithstanding the articles of impeachment, a full-fledged presiding officer of the Senate until he shall have been convicted.

As I said the other day, this amendment, in its spirit and operation, is a reversal of all the fundamental principles of our jurisprudence. It injects into the Constitution the idea that a man is guilty as soon as accused, and not that he is presumed to be innocent until he is convicted. For these reasons, Mr. Chairman, I think that the amendment should not be reported to the Convention with a recommendation for its passage.

Mr. Lincoln — Mr. Chairman, I am unable to appreciate the force of the objection made by the gentleman who last addressed the committee. It seems to me that he must have failed to examine the statutes bearing upon the question of the organization of the Court of Impeachment. Section one of the judiciary articles — article six of the Constitution — prescribes what shall constitute a Court of Impeachment, but the details of the practice in that court and the organization of that court are not prescribed by the Constitution itself. They are left for statutory regulation by the Legislature. Now, the statute prescribes, and the gentleman will find it in the Code of Criminal Procedure, that the presiding officer of the Court of Impeachment shall be, first, the Lieutenant-Governor, unless he is impeached or is absent, and second, the chief judge of the Court of Appeals, or in the absence of both of these officers, then the court itself shall select a presiding officer for the time being. And the Code further provides, that when articles of impeachment are preferred against any officer, he shall cease to perform the functions of his office until the question of the impeachment is disposed of by the court. And it provides further that when the Assembly prefers articles of impeachment against the Lieutenant-Governor, it is the duty of that body to notify the Senate at once, so that it may select a president *pro tem.* The practice in this respect is regulated fully by the Code of Criminal Procedure. So that, as the Constitution now stands, a hostile Assembly could deprive the Senate of its constitutional presiding officer, and provide for the election of another by

simply preferring articles of impeachment against the Lieutenant-Governor. This amendment providing for the election of a presiding officer, a president *pro tem.* of the Senate, in the case of the impeachment of the Lieutenant-Governor, simply puts into the Constitution what is now a statutory provision. I had the privilege of examining the draft of the report of the Judiciary Committee, and I understand that that committee, in revising the section relating to the Court of Impeachment, has put into that section that part of the Code which provides that any officer, after articles of impeachment are preferred against him, shall cease to perform the functions of his office until the question is disposed of by the court. Now, in view of the statutory provisions for the organization of the court, and the present constitutional provisions, I do not see the force of this objection made by the gentleman from Seneca (Mr. Hawley). It seems to me this constitutional provision as it now stands is eminently proper, and that this motion of the chairman of the committee ought to prevail.

Mr. Cassidy — Mr. Chairman, I move the previous question.

The Chairman — The gentleman is out of order. The previous question cannot be put in Committee of the Whole. The question recurs upon the motion of the gentleman from Cattaraugus that the committee now rise, report this proposition to the Convention, and recommend its passage.

The Chairman put the question on the motion of Mr. Vedder, as stated by the Chair, and it was determined in the affirmative. Whereupon the committee rose, and the President resumed the chair.

Mr. Acker — Mr. President, the Committee of the Whole have had under consideration proposed constitutional amendment (printed No. 382), entitled, "Proposed constitutional amendment to amend section 10 of article 3 of the Constitution," have gone through with the same, made some amendments thereto, and instructed me, their chairman, to report the same to the Convention and recommend its passage. I therefore make that motion.

The President put the question on agreeing to the report of the Committee of the Whole, and it was determined in the affirmative.

The President — The amendment goes to the Committee on Revision.

Mr. Mantanye — Mr. President, I move that the Convention now take a recess until seven o'clock this evening.

The President — Before that motion is put the Secretary will announce meetings of committees for this afternoon.

The Secretary read announcements of committee meetings for to-day.

Mr. Goeller — Mr. President, I desire to be excused from attendance to-morrow on account of important business.

The President put the question on the request of Mr. Goeller to be excused from attendance, and he was so excused.

Mr. E. R. Brown — Mr. President, I ask to be excused from attendance to-morrow and next day, on account of pressing business.

The President put the question on the request of Mr. Brown to be excused from attendance, and he was so excused.

Mr. Carter — Mr. President, I desire to be excused from attendance on Saturday next.

The President put the question on the request of Mr. Carter to be excused from attendance, and he was so excused.

The President put the question on the motion of Mr. Mantanye, and it was determined in the affirmative; whereupon recess was taken until seven o'clock this evening.

EVENING SESSION.

Wednesday Evening, August 15, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber in the Capitol at Albany, N. Y., August 15, 1894, at 8 P. M.

President Choate called the Convention to order.

The President — The matter under consideration to-night is the consideration of Mr. Tucker's proposed constitutional amendment (introductory No. 194, printed No. 195).

Mr. Tekulsky — I move, Mr. President, that we take a recess for half an hour. There seems to be no quorum present, and no one seems ready to go on.

Mr. Cochran — Mr. President, if there is no quorum we cannot take a recess.

Mr. Hill — Mr. President, I object to taking a recess, unless the time be extended for those who are in favor of sustaining the report of this committee.

The President — The Chair has no power to extend the time.

Mr. E. A. Brown — I move a call of the House.

The President — The Secretary will call the roll to ascertain

whether there is or is not a quorum present, the Chair being in doubt.

Mr. Goodelle — Mr. President, I ask that unanimous consent be given that the call of the roll be dispensed with, and that the question of a quorum be not raised. I ask the gentleman who made the point to withdraw it.

Mr. E. A. Brown — Mr. President, I do not desire to take the time of the Convention with the calling of the roll, and I, therefore, withdraw my motion.

Mr. Goodelle — Mr. President, I move that we proceed with the regular order of business.

Mr. McClure — Mr. President, I did not until to-day contemplate making any remarks, certainly not indulging in anything longer than a speech of a few minutes upon the subject now before the Convention, and I would decline to be heard at all were it not for the fact that having been a member of the Committee on Suffrage, before which committee this subject has been pending for several months, I have thought it perhaps not improper that I should make some suggestions by way of an explanation of the position which I am disposed to take upon the pending question. As I understand this question, Mr. President, it is whether we shall abdicate the functions and the duties which have been put upon us by the people of the State of New York in regard to the question of woman suffrage, or retain the responsibility and discharge it, the same as in respect to every other matter which comes before us as delegates to this Convention. The great important article concerning the judiciary of the State, the important matter of canals, the matter of the preservation of the State forests, of our charities and of education, of the government of the State, are deemed of sufficient importance by the members of this Convention, so far as I have heard, that the Convention shall act in accordance with the spirit of the act of the Legislature calling this Convention together, and decide upon the amendments which are to be submitted to the people bearing upon those subjects, carrying with them the approbation of this Convention. I cannot appreciate the consistency which actuates the advocates of the proposition now before the House with reference to woman suffrage. Either the question of woman suffrage is an important question, Mr. President, equalling in gravity and in responsibility, so far as it weighs upon the members of this Convention, the great subjects to which I have referred, or it is not. If it is not of great importance, if it is not a subject so sacred as it has been represented to us as being, then the time of this Con-

vention should not be taken up with any suggestion or recommendation that the matter should be submitted to the people for their decision. If it is an important question, ranking with and going side by side with those to which I have referred, then the judgment, the discretion, the action of this Convention should be had upon it, and if submitted to the people with the amendments proposed by the Convention on canals, government of the State, judiciary, cities and other important questions, it should have attached to and connected with it and sealed upon it the positive approbation of the delegates of this Convention. Mr. President, this is not a new question, entitled to be taken and treated in a way different from the other questions that are presented to us. This year of our Lord 1894 is not the first year in which the suggestion that suffrage should be given to women has been heard. It is a subject that has been presented to the Legislatures of this State for many years, and action by those Legislatures looking towards an amendment to the Constitution has been sought; and I do not remember within my time that there has ever, in the years that have gone, been such an uprising of the people of this State in favor of woman suffrage as called for extraordinary action on the part of any legislative body. And this is extraordinary action on our part that is asked. We were not elected, Mr. President, for the purpose of receiving suggestions from portions of the public of the great State and submitting those suggestions to the people without action decisive and positive on our part. The act which brought this body together provides that we shall submit to the great people who are our constituents, not queries, not conundrums, but shall submit amendments, proposed, not by people sending up petitions here, but proposed by us.

Mr. Root — Will the gentleman give way for a moment? Mr. President, I raise the question of no quorum. There is not a quorum present.

The President — That has been raised and withdrawn. The Chair rules that Mr. McClure is in order.

Mr. Root — I wish the members of the Convention to listen to anything that the gentleman from New York has to say. I think he is entitled to it.

The President — The President will enforce the orders of the Convention if he has the power to do so. Mr. McClure has the floor.

Mr. McClure — I was saying, Mr. President, that we were not elected for the purpose of avoiding the full performance of our

duties. We might as well, if this proposition now before the Convention is carried, adjourn; allow the clerk to receive propositions and proposed amendments, have them duly printed and submitted to the people for their action, without any action being had *pro* or *con* upon the merits of such propositions by this Convention. I have taken occasion, Mr. President, once or twice in my place, to urge upon this Convention that we should not present any proposition looking to the amendment of the Constitution of this State unless there accompanied it the endorsement of a large proportion of the members of this body. Not alone a bare majority, but such a vote as would assure the people of this State that the wisdom, the industry and the intelligence of the Convention had been exercised upon the proposition and the full endorsement of the Convention accompanied it. I think the people of this State have the right to expect from us that we shall take the responsibility of determining whether woman suffrage is a wise thing to be engrafted upon the laws of this State, or not; and I, for one, Mr. President, do not desire to avoid any responsibility. My convictions are clear and settled upon this question. I have never had any doubt about the propriety of my action in this regard. If I believed that woman suffrage is a proper measure, I would be ready to say it by voting to strike out from the Constitution the word "male." As I do not believe that, as I am not prepared to go to that length, I am not willing to shelter myself in safety behind a proposition which enables me to say that I have not taken any position upon the question, and that I have submitted the responsibility to the people, who have not asked me to submit it to them. The proposition relative to woman suffrage before the people when we were elected was, should there be granted woman suffrage or not? And the Convention was elected to in part positively determine whether it would recommend woman suffrage or not. We were not elected to say that we would dodge the question and submit it to the people; we were not elected to say that we had no convictions and no opinions upon the question; and I consider that we are avoiding our duty when we seek to shelter ourselves behind this referendum proposition.

That brings me, Mr. President, to the question which is behind it all, and I am prompt to declare that, in my judgment, woman suffrage should not be engrafted upon the Constitution at this time. Suffrage is not a right. The right of suffrage does not rest in anyone. It is an obligation; it is a trust; it is a duty, which the State, when it thinks it wise, imposes upon its citizens; and the citizens, who have the duty imposed upon them of deciding whether or not it shall be given, must perform that duty intelligently, influenced in

their action by their knowledge of the subject and their convictions as to whether or not it will be for the best interest of the State to grant that suffrage. I believe that it would be unwise at this time to say to the woman population of this State that, "You shall be, whether you see fit or not, whether you desire it or not, you shall be invested with this duty of exercising the right of suffrage." Why, Mr. President, the last time that I made any set remarks upon this floor, it was in opposition to the proposition made in this Convention, in all soberness, that the male citizen should be coerced into and be compelled to exercise the right of suffrage; that the State should take into its hands the operation of his conscience in the matter of voting and should say to him that in a political campaign, whether he conceded the propriety of the election of either one or two candidates or not, that he must, by reason of his obligation to the State, see to it that he deposited his vote for either one of them, or lose the right of franchise; and yet, shortly after that occasion, we were asked to pass an amendment to the Constitution which contemplates that another large body of our citizens shall be compelled, in self-defense, perhaps, or in the performance of a solemn duty, to exercise the right of suffrage. Mr. President, I believe that the women of this State do not desire that this duty, this obligation, shall be thrust upon them. I have not in my own life, in my own business circle, in my own social circle, met any woman who desires it. Of course, there are petitions here. Petitions can be gotten for any purpose whatever, to any extent that the ingenuity, the industry and the persistency of manhood or womanhood can go; but many of the people, no doubt, who have signed these petitions, have signed them as a relief from the persistency of those who sought signatures; and the great body of women of this State, the wives, the mothers, the daughters, those who form part of and beautify the home circle, so far as my knowledge goes, do not want, and would consider it a mortification, an annoyance, almost a degradation, to be called upon to exercise the right of suffrage. Because, Mr. President, it is not, as some of my friends have said who favor this amendment, the mere dignified going to the ballot-box and placing in it a ticket — that is not a fair and intelligent exercise of the right of suffrage or a performance of the obligation any more, on the part of a woman, than of a man; but the proper performance of the duty requires that there shall precede the act of depositing the ballot, the attendance at the convention and the caucus, the taking part in the selection of the candidates. Are the women of this State who desire that this trust shall be confided to them willing simply to vote for the candidates that the men shall present to them,

or do they propose, Mr. President, that they shall exercise intelligently and to the full the obligation, the trust and the duty which will be put upon them if suffrage be given to them? If men are indifferent and indisposed to the full performance of their duty in going to the caucus, convention and ballot-box, manning the polls, canvassing for delegates, seeking the suffrage of the citizens, how can women, real refined, retiring women, be expected to welcome the performance of such a duty? It is because woman does not desire, will not perform, this duty and this obligation to the full, and, therefore, ought not to possess the right, and with it the duty of exercising the suffrage, that I am indisposed at this time to give to them that right. It is said that we are flooded with petitions, and that a great many people come to this chamber anxious that this boon shall be given to woman. Mr. President, I have noticed in the city of New York that the women who favored female suffrage, speaking in the different districts in the city, were, without exception, the same speakers, the same half dozen; ten or twelve ladies enlisted in this cause moved about New York city like a judge in the olden days on his circuit, issued certificates to the effect that, speeches having been delivered by these ladies, the meetings resolved that the delegates representing the several districts should be requested to vote for woman suffrage. I have not seen in this chamber, asking for this privilege, any but the faithful few. I made some remarks this morning, which I intended to apply solely to the question of woman suffrage, and I repeat that since this Convention met the most persistent attempts have been made to induce the members of this Convention to agree to the amendment desired; and it did occur to me, Mr. President, that if woman could be so persistent in seeking within the halls of this chamber, in the seats of delegates, in the aisles and corridors, this boon of woman suffrage, what would happen to us when women so persistent should have rights to seats in the Legislature, would be great influences and factors in conventions? I only find, Mr. President, a select few anxious for woman suffrage. I do not find the body of men, or the body of women of the State, to any great extent, desirous or willing to put upon women the burthen of the performance of this duty; and, therefore, upon the main question — and I do not hesitate to reach it at once — I am not in favor of submitting this question to the people as to whether or not woman suffrage should be ordained. I am not in favor of saying to the people that I approve of woman suffrage, either directly or indirectly; and I take it to be the most courageous act of a member of this Convention to promptly say that the reason why he is not willing to delegate the performance of his

duty to someone else is, in the first place, that he is not disposed favorably towards the relief desired; and, secondly, he is not willing to avoid the performance of his duty.

Now, Mr. President, I have spoken longer than I intended. I do not wish to deprive anyone else of the opportunity of being heard on this side of the question. I only say that I have not heard any arguments or suggestions sufficiently strong to induce me to deviate from the course that I have set out to pursue in this Convention. I desire, Mr. President, that the work of this Convention shall be a success. I have sought to contribute to it, and shall so seek to the end, so far as lies in my power. I want a complete Constitution, or a complete set of amendments to go out, behind which every member can take his stand and position, and say: "This was in part my work, and I propose to submit it to the people of the State for indorsement." But I cannot indorse the giving of woman suffrage, and I think it the best performance of my duty to refuse to vote in favor of submitting to the people the proposed amendment. (Applause.)

Mr. Church — Mr. President, it is with some reluctance that I arise in my place to occupy the time of this Convention with remarks upon this great question of woman suffrage. But as I have studiously avoided in the past occupying the time with talk, I may be borne with for a very few moments.

I have, Mr. President, very firm convictions upon this question, and the people of the Thirty-second Senatorial District, composed of the counties of Chautauqua, Cattaraugus and Allegany, have spoken in no uncertain terms upon the matter. The petitions which are filed here show that the county of Chautauqua, in 1893, cast a vote of 13,993. Five thousand eight hundred and seventy of those voters have signed this petition asking for the word "male" to be stricken from the Constitution, and 6,628 women of that county. The county of Cattaraugus cast, in 1893, a vote of 11,514. Four thousand five hundred and five of those voters have signed this petition, and 6,210 women. The county of Allegany, which county I more nearly represent, has spoken still more strongly upon this question through this petition. That county cast, in 1893, a vote of 7,759. Three thousand nine hundred and seventeen of those voters, more than half of them, have signed this petition asking that the word "male" be stricken from the Constitution, and 5,019 women. I, therefore, feel safe, sir, in saying that the county of Allegany is fairly committed to this proposition. It has been asserted upon this floor, at least before the committee who had this matter under advisement, that it is fair to assume that those who have

failed to sign this petition are against it. I am credibly informed, sir, and I believe it to be a fact, and state it as such, that in the county of Allegany the petition against this proposed amendment was as vigorously circulated as was the petition in its favor, and I am informed that it met with such poor success, so few were willing to commit themselves upon that side of the question, that that petition has not been filed here. I, therefore, think it safe to assert that not only those of the county of Allegany who have signed this petition in favor of striking the word "male" from the Constitution, but those also who did not sign it, cannot be said to be against it, in view of the fact that they failed to sign the petition against.

Now, sir, I desire very briefly, if I am able to do so, to emphasize the point made by Mr. Lauterbach, and alluded to by Mr. Titus, in their remarks the other evening. I assert, sir, that the male citizens of this State have brought about the conditions which make it right and just for women now to demand the suffrage, and which make it unjust and tyrannical for men now to refuse it. Whatever theory may have held when our government was organized as to the suffrage, whatever theories may be held now, the conditions which exist in the State of New York to-day are so entirely different from the conditions which existed when our State was organized, that those theories cannot prevail, it seems to me. When the common law of England was the law of this State, and married women had no identity, were merged in their husbands, had no property rights, it might well be said that they had no reason to demand the suffrage. But, sir, beginning in 1848, the male citizens of the State of New York, not at the clamor of women, as I understand it, but actuated by a sense of justice, began to remove the disabilities under which women labored at that time. Gradually, from that time on, as the years went by, the barriers have one by one been stricken away, until at last, in 1893, I believe, the last impediment, the last inequality between a husband and wife as to their property rights, as to their control over children, were removed. Now, sir, keeping abreast of this movement, which has enabled women to go out into all the avenues that men occupy in the world, enabled them to acquire property in all the methods by which men acquire property, the doors of education have been opened to them, and to-day no man claims but that the women of the State of New York stand the peers of men in respect to education, as they stand his equal in respect to property qualifications; and, I believe, it is conceded that they are his superiors in point of moral excellence and all those attributes which have been extolled here by the opponents of this

movement. Now, sir, we propose, after having done all this for woman, after having brought about the conditions which make it absolutely necessary for her, as it is for man, to have the ballot for the protection of her rights, we propose to stop here and refuse her the one thing that all men, all classes of men, in this country have demanded and received for their protection.

Again, sir, it has been asserted that the burden of proof rested upon woman to show that if the ballot is conferred upon her it will result in good to the State. Mr. President, I deny that proposition. I do not believe that it is true that this great body of women should be called upon now to show conclusively or otherwise, that the extension of suffrage to them will bring good to the State. Was that question asked of the white male citizens of the State of New York when the property qualification was removed from them? Was it asked when the property qualification was removed from the colored voters of the State? Was it asked when the suffrage was conferred upon four millions of ignorant black men just released from the bondage of slavery? No, sir. In every instance, I believe, and I say it to be a fact, the suffrage was conferred upon those classes of people, not upon the theory that it would confer a benefit upon the State, but that it was absolutely necessary for the protection of those persons themselves in the rights that had been conferred upon them. I say that that is true of women to-day. Situated as they now are, they need the ballot as much as men need it; it is as much their right to demand it. But, sir, if it be conceded that the burden does rest upon the women to show that the extension of the suffrage to them would result in good to the State, I believe it is susceptible of proof. I think it is conceded, in fact, it has been practically asserted upon the floor of this chamber, that women are more moral, that they are more God-fearing, that they are more conscientious than men. If that is true, then the next proposition which I shall state must be beyond dispute — it must be true that in a republic the people who take part in the affairs of the government must influence its destiny along the lines of their nature. If the two propositions are true, what other conclusion can be reached, sir, than that the extension of the suffrage to this great body of citizens will result in benefits to the State? Now, sir, in conclusion, I assert that if one million men of the State of New York, to whom the suffrage had been denied during all the years that this State has been in existence, were situated as these women are situated, and should present to this Convention a petition, not of 600,000, but of even 100,000, the members of this Convention would not dare — on their lives they would not dare — to refuse to confer the suffrage upon them or to submit

the question to the people of this State to pass upon it. And I assert, sir, without reference to any of these matters of expediency — my time is too short to go further — that we have no right to refuse to send this question to the people of the State of New York to pass upon because of any questions of expediency, or political or party policy. (Applause.)

Mr. Phipps — A number of proposed constitutional amendments have, as we know, been submitted to this Convention, and in turn referred to the Committee on Suffrage, and not even one, in the judgment of the committee, has seemed to have sufficient merit to permit them as a committee to submit it to this Convention. Of all the proposed amendments, this one, I think, is entitled to consideration by this Convention in Committee of the Whole, and I trust it may not be said of this Convention that on this question, which has called forth the petition of 600,000 people of this State, we, the delegates of the people, have allowed this, as well as other proposed amendments, to be decided by the committee alone.

It is not my purpose or desire to speak at length on this important subject, nor do I feel that mere words at this time will prove of effect. I feel it my duty, however, as a member of this body, and with personal views on the justice of the submission of this proposition, that I should add my voice and influence in advocating this measure.

The discussion has been extended, and able arguments presented, and at this time it is unnecessary for me to discuss the merit as to the extension of suffrage to that portion of the people of the State, who, while permitted to pay their proportion of the expenses of our government, have no choice whatever in saying who shall and who shall not disburse the money raised by taxation upon their property. They need no champion in me, for they themselves have presented their case in a clear, logical light, much more ably than I would ever attempt.

I desire to ask your indulgence for a few moments to a consideration of this subject as it appears to me. Permit me to draw a picture, or, rather, a comparison of the difference between petitions — the petitions, on the one hand, of 600,000 to this Convention meeting in the interests of the people of the State and not to convene again for twenty years, and the petition, on the other hand, of say, less than fifty citizens of a town, praying that questions of minor importance be placed before the people, not at a general election, but at a special meeting of the voters of the town called for that purpose. To-night there are being counted, in the town from which I hail, the ballots of the voters on a question of appro-

priating a certain sum of money for road improvements, and the decision as to the sale of a certain stretch of sandy beach. This special meeting of the voters of the town was called upon the petition of less than fifty citizens, and has been held at an estimated expense of $2,500.

On the other hand, we, the delegates of the people of the State of New York, in Convention assembled, have had presented to us a petition of the people of this State to the number of hundreds of thousands, praying that that which is now and has been for years a burning question be presented to the people for their decision. The advocates of this measure have, in season and out of season, presented their case and ably argued its merits, and now ask that boon which we can grant of going before what I consider a higher tribunal than this Convention, the voice of the sovereigns of the State.

It is claimed that if we submit this question to the people, we endanger the work in which we are engaged; that is to say, that the people will rise in their might and rebuke us for the crime of countenancing the cause of woman suffrage by submitting to the people to say whether they shall have it or not.

I give the people of the Empire State credit for too much good common sense to think for a moment that they would take any such action. We will, I believe, present to the people this year a revised Constitution which will merit and meet with their approval, and to say that the judgment of the voters upon the revised Constitution will be influenced by the submission of a separate proposition is poor compliment, indeed, to their intelligence.

For sake of argument at this moment, let us admit that there is merit in their claim. Cannot we also imagine that by ignoring the petition of 600,000, we place ourselves and our work in a position not altogether enviable? Have the petitioners no voice, no influence? Will they, after years of earnest labor, submit without reproof to our adverse action?

The number of petitioners has been attacked on the ground that many were not honest in their signatures; that is, they did it to oblige, they did it without thought, or they have changed their views. I am perfectly willing to cut down the number for argument sake, and so we may say that one-half did not know what they were doing, and to help along still further, say that one-half of the 300,000 have changed their views as expressed in their petition; we must admit that the balance did know what they wanted and were intelligent beings. I hold that if this number desired to exercise the influence which they possess, they could and would control a great

number to reprove us for ignoring the petition of their greater number. I do not say they would seek to use their influence in this direction; neither will I admit that voters of this State, on the other hand, would take the same course to rebuke us for submitting the proposition. But I do say that if there is any merit in the argument for one side, there is the same weight of argument on the reverse side of the proposition.

To borrow words: "This is a condition, not a theory, which confronts us." It would, no doubt, have been more to the peace and comfort of this Convention had the subject not been introduced, but introduced, as it has been, we should meet it manfully, without fear of punishment or hope of reward. Looking at this subject of submission to the people in its practical light, as it is given me to comprehend, I contend that we should not ignore the prayers of these petitioners, but present their case for the decision of the people of the State, and whatever their decision may be, I am convinced that it will be for the good of all concerned. (Applause.)

Mr. Fraser — Mr. President, I have listened intently to the remarks of each speaker who has addressed this Convention upon the subject now under consideration, expecting to hear some reasons which were, at least, plausible why this amendment should not be submitted to the people. Having observed the strong sentiment in the Convention against the submission of this proposition, it was but natural to expect that reasons, having some foundation in logic and in justice, could be advanced in support of this sentiment. But, if any such reasons have been given, they have escaped me.

We have upon the face of this proposition, standing out in bold relief, unanswered, and, as I have come to believe, unanswerable, the fundamental doctrine upon which this government is based, that all just power is derived from the consent of the governed. And can it be maintained, in the face of this principle, embodied in our Declaration of Independence, for which the revolutionary heroes fought, that laws which control the action of every citizen, which impose a tax upon every property holder in our commonwealth, but in the enactment of which one-half of our population has absolutely no voice, derive their just power from the consent of the governed? We have listened to learned arguments here, maintaining that the right of suffrage is not a natural right, but is a privilege accorded by the government to certain of our citizens. But who in this country constitute the government? This is a government of the people, by the people, and not until a majority of the whole people shall impose a limitation upon the right to vote, will that limitation have any foundation in right or justice.

I am a Republican by inheritance and by conviction, and it has been urged, in the private discussions, at least, relative to this matter, that the responsibility for the submission of this amendment by this Convention will rest with the Republicans, they being the majority here, and that it will injure the party — that it is not good party policy to let this matter go to the people at this time. In answer to this allow me to say that I have yet to learn of the Republican party sacrificing principle to policy. Our party at its inception was the very embodiment of principle, and of the very principle which is here involved, that of liberty and equality before the law. It was Pilate who, from policy, washed his hands before the people and permitted the murder of the Man of Galilee, an example we should have no ambition to emulate. But I do not understand that the party lines are drawn upon this issue or that it can be made a party matter; for it enters every home, and should appeal to the sense of justice which, I have faith to believe, can be found somewhere in the heart of every man. If this matter is submitted, it certainly will have the effect of calling out a full vote, and so obtaining an expression of all our citizens upon the issues and candidates to be presented at the coming election, and this we do not fear. Again, it is urged that many of the best women of the State do not wish the right of franchise. This has nothing to do with the principle involved. The fact that there were those in revolutionary times who did not wish to dissolve the relations with the mother country, in nowise clouded the plain principle for which the colonists contended. And, if there is one woman within the confines of this State who desires to give expression to her judgment at the ballot-box, upon the living issues of the day, it is manifest injustice to deprive her of the right. We have heard in this chamber an eloquent and just characterization of those men who do not care to exercise their high prerogative; and when woman shall be accorded this privilege, either now or hereafter, for we nearly all concede that the time is coming, then strictures will be entirely proper upon that pseudo delicacy which impels some who are bound to be ladies, even if need be at the expense of their womanhood, to say they do not care for this privilege. Life is real, life is earnest, for woman as well as man, and when the ability to render effective aid to a right cause shall be placed within the reach of the purer and better half of mankind, they will prove recreant to the God-given sentiments of pity and mercy and love, that ever swell from the heart of woman, if they do not embrace the privilege, and, I believe, that on all matters involving moral questions they will be found eager and anxious to exert their power, for they are ever alive to right. Go

through the jails and the penitentiaries and the State prisons of our State, and you will find that the vast majority of the criminals are men; go through the churches, and you will find the vast majority of the members are women. And where you find a woman criminal, if you trace her history, you will almost invariably find that the hand of a man guided her in her first downward step. Many of the most glorious achievements recorded in history were accomplished largely through the instrumentality of women, and women whose delicacy and refinement have never been questioned. It was the pen of Mrs. Stowe that gave world-wide entrance to the cabin of the slave, and to her must be attributed more, perhaps, than to any other person the proud distinction of awakening the great moral upheaval which called to arms the hosts of the North.

"All through the confiict, up and down,
Marched Uncle Tom and old John Brown,
One ghost, one form ideal,
And which was false, and which was true,
And which was mightiest of the two,
The wisest Sybil never knew,
For both alike were real."

It was largely through the influence and counsel of Josephine that Napoleon the First, fixing his eye upon the rugged icy steps of the Alps, muttered: "It is not probable, it is barely possible," gave the command "Forward," and in a few weeks his cannon thundered on the plains of Italy; but when his fame became world-wide, he divorced his faithful, loving wife, and from that moment the star of his prosperity began to wane, until at last it sunk in the far distant sea, behind a lone, barren isle, in utter darkness.

Victoria, Queen of England, riding in state, with the wealth of immortelles at her side in sacred memory of her honored dead, furnishes an illustration of constancy and faithfulness never equalled by man, and who shall say that when her reign shall cease and her noted — I had almost said notorious — son shall succeed to the throne, his accession will be the signal for an uprising which shall herald the morning sun of liberty?

It is further urged that as woman cannot perform military service or do police duty, therefore, she is not entitled to the ballot. This argument is based upon the assumption that brute force governs the world. There was, no doubt, a time when this was the fact, but that time has long since passed away, and the tendency of this age is toward that time of which Tennyson sings:

" Where the common sense of most shall hold a fretful realm in awe,
And the kindly earth shall slumber, lapt in universal law."

Even in the athletic world of to-day science triumphs over simple strength. Corbett can knock Sandow out in one round. Mrs. Cleveland, miles away, with her finger, touches the button that starts the ponderous machinery at Chicago, and there is a suspicion in the minds of many that to her gentle hand might well be committed the guiding of the ponderous and laborious pen of her illustrious husband.

Another reason urged is that the bad women will exert a powerful influence upon the ballot. But until the evil women are more potent than those of the mothers and the wives of the land, this argument can have no force.

The claim that polling places are not fit places for women to frequent has little foundation in fact; but where this condition does exist the introduction of woman would be the most effective remedy that could be applied, for the native chivalry of the American man would never permit at the polls that which would jar roughly upon the sensibilities of their sisters and their mothers. Does anyone believe that the scenes of riot and bloodshed enacted at Gravesend, at Troy and at other places in the last election would have occurred if there had been women present at the polls?

All the conditions would be changed, and, where riot and crime now exist, law and order would prevail. And, if there is anything in reason and justice, in present conditions or in the signs of the times to indicate that the ballot should be withheld from woman, I fail to see it, and I am, therefore, opposed to the report of the committee. (Applause.)

Mr. Arnold — Mr. President, had the advocates of woman suffrage insisted upon the Convention striking out the word " male " from the Constitution, their proposition, in my opinion, would have met with defeat. They have wisely modified their request into asking for a separate submission of the vital question, shall the word " male " be stricken from the Constitution? No question then arises as to what our individual opinions may be upon the merits of the subject; we can only differ, if at all, upon the interpretation of our duties as public servants. I conceive it to be my duty in this case not to use my vote arbitrarily to deprive the people of the right to pass upon this important question, since so large a number of citizens of the State have asked an opportunity to let the people decide it. If I fail to correctly understand the duty with which I am charged, who can accuse? Not the people, for to them I leave the determination. Who then, only those who are opposed to woman

suffrage, and in their opposition are unwilling that at some time, in some manner, the women may go to the jury, composed of the voters of the State, and there submit their case? To deny them this opportunity would be unjust. It may not be entirely out of place for me to call attention to some facts which have influenced my opinion that an extension of the franchise would be too vast an experiment to be tried at this time. The common good of the people must be the first incentive for this or any other political change, and the burden of proof is upon the woman to show that an extension of the suffrage, which shall ignore sexual differences and home life and duties and compel an innovation in governmental policies, shall be accepted. Upon the question of common good no proof can be obtained of any value.

Wyoming has been referred to as the only State where some positive evidence has been procured as to the result of woman suffrage. Bryce, in his "American Commonwealth," speaking of elections in Wyoming, says, that from a trustworthy source he learns that "after the first excitement is over it is impossible to get respectable women to vote, except every two or three years on some purely emotional question, like prohibition or other temperance legislation. The effect on family life seems to be *nil*, certainly, not bad, but after a year or two it is found that the women of the lower class are those that most regularly go to the polls."

It must be borne in mind that there is a vast difference between the character, manner of life and other conditions of the people composing the State of Wyoming and those composing the State of New York.

The experience of every delegate, who is at all familiar with public school matters, is in harmony with the statement that women will not, to any great extent, exercise the right of suffrage, if granted to them. Since 1880, when they were given the right to vote for school trustees, they have voted so infrequently that it is a rare instance to have a single vote by a woman at school meeting, and without any positive proof then, by which to determine the effect of woman suffrage, we are left to the claims of the suffragists themselves as to the supposed advantages of more than doubling the present vote of the State.

A newspaper clipping puts the matter in better shape than I can:

"The men of New York have been tested and minutely studied for a hundred years. Who can predict, from year to year, how they will vote? After almost every recent election the general feelings has been one of surprise, with regard to the outcome of all these uncertainties. And yet we are assured that when, for the first time,

more than a million entirely untrained and hitherto uninterested women are called to the polls, we shall not be surprised — we shall forsee how they will act and shall know that their actions will be distinctly for good. We should not know. We cannot dare to predict. We can only guess. In this case it would be hard to overestimate the magnitude of the risk. It would mean an innovation of unparalleled significance, with regard to the future of our women and our men, with regard to our political course, our social conditions and the status of the home and family. And it would mean an innovation affecting not merely our State, but the country at large.

No restriction is placed on a woman, in regard to business. In every position she may be found in increasing numbers. There is no calling for which she is physically fitted in which she is repelled, and all this has been done without politics, and done by and for women not in politics and who do not wish to be.

Whatever may be said by the advocates of woman suffrage relative to the need of woman's voting, it cannot be successfully urged, and, in fact, it has not been urged very strongly, that she needs the ballot for any practical purpose.

Mr. President, I believe the foundation of every government must, necessarily, and as a last resort, rest in force. The advocates of woman suffrage undertake to ignore this proposition, referring to the peace congress arbitration, and other amicable arrangements of either national, State or individual differences, as indicating the tendency of modern thought to drift away from force and to seek the gentler ways of peace.

Proof, however, that it would not wholly be safe to disband our armies and militia and to resort entirely to arbitration has been found in the repeated necessities for calling on armed intervention, not only in this State, but elsewhere; and whether it be always necessary to resort to arms to enforce a decree of State, no edict will be a binding force on the minority, unless it be known that the majority have sufficient strength to compel obedience to their mandate. It is an undoubted fact that women are physically incapable of carrying into execution any law she may enact, and woman suffrage, under certain conditions, becomes government by women alone on every occasion where a measure is carried by the aid of women's votes.

Several times in the history of our nation a vote for candidates has been conceded a declaration of war. It has been said, suppose a proposition for prohibition in some form was before the people, a majority of men voted against it, a minority of men for it, a

majority of women voted for it, a minority of women against. The numerical majority might then be for prohibition. Would the majority of men submit to the decree enacted by the minority of men, assisted by non-combatants?

I do not attach much importance to the argument that to refuse women the right to vote means taxation without representation. All property must be made to bear its just burden, and aliens, infants and lunatics must all contribute to the cost of maintaining and enforcing the law. No distinction is made in any case, and, if property alone were the basis of the franchise, the millionaire should have a thousand votes, if the man taxed for one thousand has one. The individual is the representative, and we give the right to vote because it goes with the duty of enforcing governmental decrees.

The people of the State of New York will be carefully watched, and, should the franchise be granted to the 3,000,000 women of the State, or such of them as shall be qualified voters, it would have a very important influence beyond the limits of the State; and in this connection it may be profitable to note what other States are doing for and against woman suffrage. I find in 1891 municipal female suffrage bills were defeated in thirteen States, in 1892, in eight States, and in 1893, in fifteen States.

In not a single State where amendments have been submitted has there been a majority of females. In this State the women outnumber the men by 44,000, according to the census of 1890. The States voting against amendments for woman suffrage and the dates when such amendments were voted down, the male majorities, according to the same census, are as follows:

Michigan, 1894, majority of males	89,000
Minnesota, 1878, majority of males	63,000
Nebraska, 1882, majority of males	86,000
Oregon, 1884, majority of males	50,000
Washington, 1889, majority of males	86,000
South Dakota, 1890, majority of males	32,000
Wyoming voted for majority of males	18,000

Colorado, in 1893, voted for female suffrage, the majority of males being 79,000. And in Kansas, where the amendment, as I understand, is to be voted on this year, the males exceed the females 78,000.

I have studiously avoided the sentimental side of the question, and it is not necessary for me to enter into and furnish discussions of the merits of the controversy. Arguments as strong as genius

and ability could make, and forcible as language could express, have been presented to the Convention upon this subject; but this fact still remains that this benefit to the people rests in theory alone, and no argument can anticipate results. I believe, however, that when the question is submitted to the people, that men will be left to perform the duties inseparably connected with voting, and that women will be undisturbed by political duties in their undisputed sway over our homes — "useless each without the other." (Applause.)

Mr. Campbell — Mr. Chairman, I rise to this question simply, perhaps, for the purpose of explaining my vote. I mean to vote to disagree with the report of the committee, and to say a few words in explanation of my course.

The main argument advanced against extending to women the right to vote is the assertion that it would be a grave and serious danger to the State. That argument, if based on facts, is entitled to the earnest consideration of the delegates assembled here. If the character of the danger were specified, or, if any facts were brought to your notice by delegates, then, indeed, it would demand attention.

But no such thing has yet been done, and we are left to imagine wherein the danger lies, and we ask ourselves the question, is it possible that a wider interest in and a fuller knowledge of the science which has no other end than the material well-being of a people, are dangerous to that people? That would be impossible, unless the State is not a government of the people and by them and for them. But it is such a government, and, while we live and for ages to come, let us hope that this State will be always the State of and for the people.

That fear, then, is groundless. What, then, is the hidden danger? It may seem to be and is a paradox, but the paid advocates of the opponents of woman suffrage would have us believe that the more people there are who are vitally interested in the making and extension of just laws, then the more corrupt will become the means to that end.

They assert that there are many, dangerously many, corrupt voters now, when men alone do vote, and they would have us infer, as a necessary conclusion, that when women do vote, the corrupt vote would then be doubled. But they give no proof, show no facts, but, like a lawyer with a hopeless case, abuse the other side.

And thus one of the most distinguished pleaders, who have been allowed to speak on the subject here, makes the statement, without evidence to support it, and points out to you exactly where he

thinks the danger lies. He estimates the addition to the corrupt vote, he pretends to give the almost nameless thing a local habitation and a name. I refer to the statement made by Mr. Matthew Hale in this chamber. He has published his statement and put it broadcast to the world. You will find it in the Forum of June, 1894. With your permission, I will read it:

"Republican institutions are threatened by the prevalence of bribery and corruption more than by any other cause. Is there any reason to believe that any less proportion of women than of men will be subject to such influences? In answering this question, an unsavory fact must be plainly stated and squarely looked in the face. The number of prostitutes in the city of New York alone has been estimated at from 30,000 to 50,000. Every city in the State adds its quota to this disreputable army. These women, who live by selling themselves soul and body to-day, would, of course, sell their votes."

If the one-tenth of what Matthew Hale here says be true, then the city of New York richly deserves the fate of the city of the plain. It is time for the averaging and purifying fires of heaven to descend and blot her from the earth. But let us put this monstrous slander to the pitiless analysis of figures, not figures of speech, but cold, hard numerals of commerce, the figures that tell no lies, and follow me as closely as you please. I find by the eleventh census of the United States (pages 755 and 756), the only one which gives the necessary factors, that in 1890 the city of New York contained 389,000 females between fourteen and forty years of age, the only ones to whom the falsehood can apply; call it 400,000, of you will, then add 10,000 for the benefit of Matthew Hale and his story. He says that 50,000 of these women and girls, he estimated, are prostitutes. In other words, one woman out of every eight wards and matrons of our city is hopelessly lost, dead to everything that man and woman holds most dear, but living among us, festering centres of moral and physical corruption.

Can this monstrous, hideous thing be true? If any portion of what he says be true, then a condition exists there unparalleled and unheard of in the modern or ancient world. It is impossible. The figures confute the slander. Am I wrong when I say he is answered? He is dishonored. At the time this unmitigable slander was uttered it was allowed to pass unheeded. It then needed no more attention that the yelping of a mangy cur by the wayside, but since our honored colleagues have intimated there is some hidden danger to the State if the suffrage is extended to women,

and since they may be wrongly charged with having admitted by their silence that this is the danger, I think, in justice to them, it needed an answer before this debate is closed. I know they would be the first to indignantly repel the imputation that they believed him, and their eloquent tributes to woman's purity and virtue uttered here from their hearts, testifies to the world that there is no place in their manly bosoms where the vile slander can take root.

But the charge he makes is specific, and directed alone at the city of New York.

That city is my birthplace and my home, the home of my ancestors and of my children, the home of my people. I love her as a patriot loves his native land. I have lived there for over fifty years. She has honored me by sending me here, one of the humblest of her delegates, and I cannot sit here and hear her fair name maligned without a protest. She has sent here a body of delegates, myself excepted, the peers of any in the wide world in intellect and in culture, in honesty and purity of life. Could they and their wives and children live and move and have their being in such a moral charnel-house? I speak to my fellow delegates from that great metropolis. Do I state more than the naked facts when I say that there are hundreds and thousands of women there of whose loveliness and whose purity and virtue the most eloquent praises to women that have been uttered on this floor would be nothing but the literal truth, united to and beloved by men whose integrity and manliness, and whose spotless lives make them worthy to be the husbands, sons and brothers of such women? On this behalf, my fellow delegates, I rightfully demand for you and for myself, that whoever reads or hears the foul slander against their fair fame will deny it with all the power of his soul, and defend their virtue as he would his life. (Applause.)

Mr. McKinstry — Mr. President, in my remarks last Thursday evening I placed considerable stress upon the memorial of the New York State Grange, presented to this body in behalf of equal suffrage. Last evening a gentleman challenged that memorial as representing a very few persons — that it was not the voice of the members generally. I simply wish to say in this Convention that the gentleman is mistaken. Possibly the memorial presented may have been agreed upon by a few persons. It was the composition of one person, a talented lady of Chautauqua county, but it was formally adopted by the State Grange in its twenty-first annual session, and it represents the sentiment of that body as repeatedly expressed in years past.

The State Grange is composed of the masters and past masters of

the subordinate granges throughout the State, over 600 in number. Delegates are also sent, so that the annual State meeting comprises about a thousand members, a large proportion of those members being women. You can see how absurd it would be for a male member to rise in his place and argue that these women were able enough and good enough to hold any office, no matter how exalted, in their beloved order, but not able and good enough to vote at a general election. I have attended many meetings of subordinate and county granges, and I never have heard a member advance such a proposition, or say even in private confidential conversation, that he regretted that the order was founded upon the basis of absolute equality between the men and women members.

The grange has been a great educator in the line of recognition of the capacity of women for organized proceedings. Its effects upon the women members have done much to convince me that all women would be improved by having a voice in public affairs. I have been astonished at the development of women in their capacity to fill various grange offices, including that of master, and at their skill in debate and their efficiency upon committees. I once heard a plain pioneer woman read to a country grange an original address, which would have been creditable to any member of this body. I had the honor of being a charter member and lecturer at the first grange ever established, and we celebrated its quarter centennial last year. During the past twenty-five years I have been very familiar with the membership and sentiments of the order, and I assert most positively that the memorial we have received does represent the overwhelming sentiment of the 50,000 members in this State, and they should be counted here as praying for the submission to the people of a constitutional amendment making men and women equal before the law — not only equal as subjects of the law, but equal as makers of the law. In saying this, Mr. President, I would not cast any reflection upon Mr. Cookinham's candor or desire to be fair. There is no more conscientious and justly-disposed man in all this Convention than Henry J. Cookinham, nor one upon whose statement of a fact I would more absolutely rely when he states a fact of his own knowledge and not upon information and belief. In this matter I simply claim that I am in a better position to know the facts than he is.

Mr. President, we were challenged last evening to present an argument showing wherein woman suffrage would benefit the State. I have testimony bearing exactly on that point. Two years ago I was making an excursion through California, and one morning found myself seated in the same section of a sleeping coach with a gentle-

man and his wife from Cheyenne, Wyoming. A more charming lady I never met, and I had conversed with her some time before it suddenly occurred to me that this lady was a voter; that I had actually been talking to one of those horrible monstrosities into which woman suffrage would convert all our women, if the theories of some of our wise men of the east are correct. The sudden realization of my proximity to such a frightful product almost took my breath away, but I managed to say: "Madam, residing in Wyoming, you must be a voter." "Oh, yes," she replied, "I have voted nearly twenty years, and I would not live where I could not vote. I expect to vote for President this year," and she seemed to grow an inch taller as she said it. There she was, a refined lady, and a bright, delightful companion, and yet she not only voted regularly, but prized the opportunity as her dearest right. She was of the class who, according to the statements of gentlemen upon this floor, do not want to vote and would not vote if they could. I immediately turned to the husband of this lady and, while my wife engaged her in conversation, I asked him confidentially, what he thought of woman suffrage in Wyoming. I want to say right here that there was nothing of the sentimental dude about him. He was a sensible, intelligent, practical man, and, as I afterwards learned, has considerable wealth and extensive business interests, and takes an active part in politics. He weighed 250 pounds, was six feet high and well proportioned. Talk about chivalry disappearing when women vote! I should like to have seen a man treat his wife disrespectfully, or insult any woman in his presence. The offending loafer would have been literally mangled. But to the Wyoming gentleman's testimony. It was simply to this effect: That the fact of women voting in that State had long ago ceased to be a matter of discussion. It was accepted as a matter of course; that their women kept well posted on public affairs and were inclined to be strict partisans. They nearly always voted the straight ticket of whichever political party they favored, and were not numerous at caucuses and conventions, "but," said he, "if either party puts up a notoriously bad man, the whole body of women will spot him every time." "And," he added, "it makes both parties mighty particular whom they nominate to important offices."

Now, gentlemen, is not that a desirable influence to have in every State? To have a large body of voters somewhat removed from politics, and yet ready to vote only for good men. The great curse of the State is the extent to which bad men get into office. We are deluged here with propositions and contrivances to keep rascals in office from defrauding the people. Such measures are always a

failure. The only effective safeguard is to keep rascals out of power, and then you will have good government under any Code. To the gentleman who, last evening, challenged us to mention a benefit that might accrue to the State by doing justice to the women of the State, I commend this testimony from Wyoming.

Mr. Lincoln — Mr. President, the question before this Convention is whether the proposed constitutional amendment introduced by Mr. Tucker, with an addition made by the Committee on Suffrage, shall be put into the Committee of the Whole. That, I understand, is the effect of disagreeing to the report of the committee. While the question is directly upon agreeing to this report, those who vote against agreeing to the report thereby vote to put this amendment into Committee of the Whole, where it may be perfected, if not already perfect, by those who favor the general proposition, and where amendments may be offered to it of such a character as to fit it for final submission to the people, if a majority of the Convention shall finally be in favor of that course.

Now, I take it for granted that every delegate here, who is in favor of submitting any proposition to the people, will vote to disagree to the report of the committee, whether it be the proposition of Mr. Tucker, whether it be one submitting the question to a vote of the women themselves, whether it be an amendment to submit to the people next year, or in whatever form delegates may think best to submit a question of this sort to the people, they will vote to disagree with this report, so that they may put this entire question where it may be modified and made satisfactory to a majority, if a majority are in favor of a submission at all.

Now, I beg to make this suggestion, that in the interest of economy of time, for considerable time has already been consumed upon this question, it will pay this Convention to vote to disagree with the report of this committee. A large number of delegates in this Convention are in favor of submitting some proposition in some form. Whether we agree with this one or not is not material, but I think I speak for those who favor a submission when I say that if the report of the committee is disagreed to and this whole matter is thereby put into Committee of the Whole for general consideration and amendment, the whole subject will be there discussed and disposed of. But, I think, I also may safely say that if this report is agreed to, the general consideration of this question will be brought before the Convention again, and the opponents of woman suffrage, if voting to agree to this report, simply for the purpose of saving time, will waste their votes and will waste time, because when the

general amendments offered by the Committee on Suffrage come before the Convention in Committee of the Whole for consideration; for instance, the first section of article 2, or the section relating to registration, or the section relating to the educational qualifications of voters which the committee suggest, to some one or more of these proposed constitutional amendments amendments will be offered on the line of the thought embraced in the amendment now before this Convention. That is why I say that everyone, who is in favor of disposing of this question in the shortest way, will vote to disagree with the report of this committee so that we may have it where we may agree upon a form of amendment to submit to the people.

Now, I am free to say that I am not quite satisfied with the form of this amendment, but I shall vote to disagree with the report of the committee for the purpose of putting it where it may be perfected, and if this it not the best form, then some other form may be made. I believe, Mr. President, that a majority of this Convention are in favor of submitting some form of amendment to the people upon this question; whether it shall be the proposed Tucker amendment, which will be a rider attached to section 1 of article 2, or whether it shall be an independent proposition, is a question which we can dispose of if we get into Committee of the Whole; but of course we can make no amendments here. My own thought is that it would be better to submit this question as an independent section; either an independent section providing for the submission of the question next year or some other year, or what I think may be done, submit a proposition directly for the vote of the people next year or some other year, so that if the delegates favor eliminating this question of woman suffrage from the proposed Constitution which we may submit to the people this year, that may be done. I think this Convention has complete power to take that course, because this Convention is a sovereign body, and if we submit an amendment to the people to be voted upon next year, without the people first voting for it this year for the purpose of submitting it next year, then if that question is voted upon and ratified by the people it becomes a part of our fundamental law.

It has been urged here, I think, by some who are opposed to any submission at all, that it is inconsistent for us now to vote to submit a proposition for amendment independent of section 1, which is the general article relating to suffrage. We have very high authority, Mr. President, for submitting an independent proposition. The members of this Convention will recall the fact that in 1846 the Constitutional Convention perfected the section relating to suffrage, but it did not give equal suffrage to colored

persons. The Convention provided for a separate submission of a separate section to be voted upon separately with the provision that if a majority of the votes upon that separate submission were in favor of equal negro suffrage, then that that section should stand as far as negro suffrage was concerned, instead of the one that was finally perfected and placed in the body of the Constitution itself; that submission was made accordingly, and the separate vote was not in favor of equal negro suffrage. The same proposition was submitted in substantially the same form by the Constitutional Convention of 1867.

So, that, Mr. President, we have two Conventions offering us this precedent that we may perfect our article on suffrage and make it a part of the body of our fundamental law as finally submitted by us to the people, and then submit an independent question to the people with the provision that in case a majority of the votes are in favor of the question submitted by the independent proposition, it shall have the effect to nullify and set at naught the other proposition which stands in the body of the Constitution. It seems to me there is no constitutional or legal objection to the submission of this question in the form suggested either by Mr. Tucker's amendment or some other of a similar character, and so I say that all who are willing even that this matter should be considered in Committee of the Whole for the purpose of perfecting a possible amendment, should vote to disagree with the report of the committee. I have voted at least twice in this Convention to disagree with the report of a committee where I was not in favor of the proposition reported adversely by the committee, but I was in favor of the principle involved in it, and for that purpose I was willing that the advocates of the measure should have their day, should have an opportunity to perfect their scheme if they might, and get it in shape where it would be agreeable to the majority. So I appeal to the generosity of the Convention in favor of the advocates of woman suffrage who are in favor of submitting some proposition to vote to put this question where these people, these advocates of submission, may have the opportunity to put their amendment in proper form. Enough upon that.

I have listened, Mr. President, very attentively to every speech that has been delivered so far in this woman suffrage debate. I have listened with great expectancy, but in vain, for some reason why suffrage should not be extended to women. We have not yet heard from the chairman of the Suffrage Committee. What thunderbolts he may have in reserve I do not know, but we shall probably hear to-night. I suppose that according to ordinary parliamentary practice it would have been his duty to open the debate, and give the

other side the benefit of an opportunity to reply to his arguments, if he had any. But he was chosen to take the other course, quite unusual in deliberations of this kind, and chooses to close the debate, so that whatever he may have to say, in a carefully prepared and written speech, as I understand, will be without reply by the advocates of submission.

A good deal has already been said upon this general question, and my time is too limited to permit me, if I desired to go over this ground again, but there is a suggestion that I desire to make. All the suggestions, all the arguments, if they can be called arguments, in opposition to the submission of this question, and in opposition to the extension of the elective franchise to women, have been arguments based upon expediency only. Now, an argument of expediency is the argument of tyranny always; because it is based upon the suggestion that persons who have the power may deem it expedient, or inexpedient, according to their sweet notions, whether they shall extend any power to others or not.

The question of the right of this matter has not been touched upon here, as I have observed, by any of the opponents of woman suffrage. Whether it may be alluded to by the distinguished chairman of this committee, we are yet to hear.

Last night, the gentleman from Oneida (Mr. Cookinham) took pains to say that it was not for the interest of the State to have the suffrage extended to women. He was interrogated as to the definition of the word "State," and he replied by saying that the State included every man and every woman, and every boy and every girl. Now, it struck me with great force at that time, Mr. President, that the definition destroyed his argument; because when he says that it is not for the benefit of the State, and that the State is composed of these various component parts which he has mentioned here, his argument, if there is any, leads to the conclusion that a part of the State shall determine what is best for the remainder of the State, who are the constituent elements of it. (Applause.) A more consistent definition of the State is that given by Louis XIV, who said, "I am the State." Is that what the gentleman from Oneida means when he said, we, that is, the opponents of woman suffrage, the majority of the Committee on Suffrage, are the State? The French king spoke more truly in the sense in which he understood it, and in which it was understood at that time, than it is now declared by this member of the Suffrage Committee, because when he said, "I am the State," he spoke that which was literally true with him, because, in his day and in his government, there was in him

absolute and complete authority over every subject in his whole dominion.

I heard, with surprise, last night the gentleman from Oneida say further upon this question: "We," as I understood him, "the majority of the Committee on Suffrage, represent the women of the State of New York." I would like to ask when they received their power of attorney? (Applause.)

Now, if civil government were to be reorganized, upon what basis would that reorganization take place? Would it be reorganized upon a basis that would give women a proper status in political society? While Robinson Crusoe lived alone upon his island, he could truthfully say that he was monarch of all he surveyed, and his right there was none to dispute. But when the second man came upon that island there was presented the problem of civil government; and one of four things must have occurred; one or the other of those men must be killed, or driven from the island, or put humself in subjection to the other one, or else there must have been a compromise. There was a compromise; and, Mr. President, the whole complex machinery of modern civilization is simply a net-work of compromises. On another day another person — a woman — comes to the island, and now another question is presented. Will these two men divide their power and authority and compromise further by giving the third person one-third of the powers and privileges which they have created and agreed upon for themselves? That would seem to be the logical result of the situation. Here is a creature coming upon the island who has the right to life, liberty and the pursuit of happiness. She has the right of self-defense. No, they do not do that; they put their heads together and they say: "This woman, poor thing, is a weaker vessel. We can overcome and subdue her. We won't divide power with her. We will compel her to be a servant for us, and she shall only share such things as we may see fit in our generosity and our charity to give her." So, upon that arrangement woman receives her status in civil society, not as matter of right, but by might. And ever since that day, ever since society was organized, woman has occupied that position, with here and there a solitary exception.

And now comes the question, shall authority be extended further? Shall woman be raised to the same place as men in the political organization which we call civil government? Is there any right which she is not entitled to, which men may enjoy? If she owns property has not she the same right to protect it that man has? If she wants to go out into the world and do business, has she not the

same right to the protection of the law that man has? You say yes, but she lacks one thing. Let me state the situation as it now exists in modern society. Here is a family where a boy and a girl are growing up together. The girl takes advantages of the educational facilities which we have accorded to her. She grows up into womanhood, she outstrips her brother in the race for education; she goes out into the world and tries to engage in one of the professions or one of the classes of business now open to her, but she goes handicapped by the lack of the protecting power of the ballot. That she has a right to the ballot just as much as her brother has, cannot be denied. Mr. President, it is not worth while to pursue this argument, because the exclusion of women from the right of suffrage cannot be sustained for a moment on principle. It is purely a question of expediency, as has already been suggested by the opponents of woman suffrage, and when they talk about expediency, they rest upon the power which they now possess. They have the power, I admit. Suppose I should ask one of these gentlemen who represent the majority in the Committee on Suffrage, where did you get the right to vote? Why, they say the Constitution give us the right! Who made your Constitution? Our fathers made it. Who authorized your fathers to make the Constitution for men only? Who gave them the power to make a Constitution in that form? They took it, and they have exercised it ever since.

And so I say, as I said before, that the argument of expediency is the argument of tyranny, and I ask this question: Why cannot the opponents of women suffrage be candid and admit that the secret of their opposition to the extension of the elective franchise to women lies in the selfishness of power? That is where it is. You say that women are not fit to vote, that they are not educated up to it, that it would be wrong for them to vote, that it would divide families, and make trouble in society. Let us see. Men and women own their property separately, do they not? Is there any quarrel about that? Does that divide families necessarily? The mother has as much right to speak for the guardianship of her children as the father has. Has that disrupted families? They may buy and sell land together. They may buy of each other and sell to each other, they may give notes to each other, they may form partnerships for business purposes with each other. They do all these things, and the family is not disrupted. We have gone so far as to permit them to vote for school officers, a matter in which they are very much interested. The family has not been disrupted on that account, has it? Not at all. And if they can vote for school trustees, is the family in danger

if they vote for a supervisor? And if they can vote for a supervisor, is the family in danger if they vote for Governor? Not at all.

But, Mr. President, my time is nearly exhausted. I say this: Woman suffrage is the inevitable result of the logic of the situation of modern society. (Applause.) It must come. We cannot stop it. Every man in this Convention may vote against submitting any question of this sort to the people; we can only hinder, we cannot prevent it. (Applause.) If universal suffrage is a mistake, that mistake was made ages ago; because if women are not to have all the rights which the logic of the situation gives them, then we ought to have kept women in subjection, in the same subjection in which the Roman women were kept in the early days of Rome, when she surrendered her person and her property and every interest she had to the possession and dominion of her husband. Women ought to have been kept in the situation in which they were placed by the old English common law, which we have been accustomed to boast of so much. But when we opened the door, we opened it to all this growth, all this progress, and all this improvement, and we have brought society to this one point now where nothing is lacking for the complete enfranchisement of woman, except the ballot. The despot who first yielded an inch of power gave up the field. That power could never be recalled. Reforms do not go backwards. Everything goes forward. We, to-night, stand here upon the threshold of a great opportunity, to push this movement still further forward, and not try to avert the natural and irresistible result of all this improvement which we have fostered up to this present moment. We cannot stem this tide, it is irresistible. Canute may forbid the rising of the tide, but the tide rises. Xerxes may whip the Hellespont to subdue its raging, but its raging goes on. (Applause.) What are the feeble efforts of man against the resistless energies of the universe? We are simply standing here now, possibly in our own light, certainly in the light of the best interests of the State of New York, when we stand in the way of this forward movement. And I say that we ought to get out of the way and permit this movement to go on, and not to resist further this claim for enlargement, for improvement, which the women demand, and which every man, I believe, in this chamber to-night will admit that the near future will bring. Carlyle says that "the moment is the mother of ages." It has been so, often in the history of the world, when the decisions of a moment have changed the destinies of nations, and of the world. This moment may be the mother of ages. Many times in the past has that saying of Carlyle proved true. It was at Runnymede, when King John gave to the

barons of England, and to us, immortal Magna Charta. It was so at Concord Bridge, when that shot was fired that was heard around the world. It was so in 1861, when the boom of the first gun fired on Sumter sounded the death knell of human slavery. It may be so to-night if we rise to our great opportunity. Pass some amendment which shall give to the people of this great State the right to express their own judgment, in their own way, upon this transcendent question, and this moment may be the mother of ages; ages of a more exalted womanhood; ages of a nobler womanhood; ages of a broader civilization, and ages of a loftier patriotism. (Applause.)

Mr. Goeller — On this question of female suffrage, as it is before us in various propositions, I desire to address myself to one part of it, the proposition to send it to the people.

The delegates have been sent here by the people to formulate principles. You are the doctor to prescribe for the patient, but by sending this question in this manner to the people you bring forth the anomalous position of the patient being asked by the doctor to prescribe. Voters have made you their agents to do this work, and, for the confidence they have shown in your intelligence, you make return by doing nothing on this momentous subject.

Now, gentlemen, right here you must act. Say not, "We know not how." You were sent here as architects to design this structure of suffrage, or design something material, something of substance. You are here to decide and the people to pass upon your decision. Shirking is not doing a duty. My vote and influence are not for a policy, to pursue which means that this Convention is not to decide but to send the question to the people. I am against it, and will vote that we now decide whether women are or are not to have the ballot. "'Tis ours the chance of fighting fields to try."

Mr. Lauterbach — Mr. President, I regret that I will not be able to know what the arguments of the other side are. They are yet to come. I do not consider that the usual confectionery that is afforded to women on every occasion in which their rights are discarded, such as was given to the women in lieu of their rights last night in a very ornate and beautiful speech, is argument. That is the usual method in which their requests are treated. There was no argument of any other character that I know of. There has been none presented which cannot be answered, that I am now conscious of.

I have a few minutes, or perhaps a minute, in which to address the members of this Convention. I ask both parties that are represented in this Convention to carry out the boast that has character-

ized them from the beginning of this session, to be absolutely non-partisan and fair. I ask that upon this question, in which the rights of women, the wives and sisters and daughters of Democratic members and of Republican members alike, are involved, the boast that has been made that there is no partisanship, shall really prevail. This is a question that should be without partisanship, a question that should be considered absolutely upon its merits, if any question here should, and yet I feel that the only reason that will prevent, if any reason shall prevent, the women from receiving the poor boon of presenting their claim to the people of the State in November, 1895, is that of political expediency. (Applause.)

The President — The floor now belongs to those who are in favor of sustaining the report of the committee.

Mr. Root — Mr. President, the courtesy of the chairman of the Suffrage Committee has accorded to me fifteen minutes of his time. I am opposed to the granting of suffrage to women, because I believe that it would be a loss to women, to all women and to every woman; and because I believe it would be an injury to the State, and to every man and every woman in the State. It would be useless to argue this if the right of suffrage were a natural right. If it were a natural right, then women should have it though the heavens fall. But if there be any one thing settled in the long discussion of this subject, it is that suffrage is not a natural right, but is simply a means of government; and the sole question to be discussed is whether government by the suffrage of men and women will be better government than by the suffrage of men alone. The question is, therefore, a question of expediency, and the question of expediency upon this subject is not a question of tyranny, as the gentleman from Cattaraugus has said, but a question of liberty, a question of the preservation of free constitutional government, of law, order, peace and prosperity. (Applause.) Into my judgment, sir, there enters no element of the inferiority of woman. There could not, sir, for I rejoice in the tradition and in the memory and the possession of a home where woman reigns with acknowledged superiority in all the nobler, and the higher attributes that by common, by universal, consent, determine rank among the highest of the children of God. No, sir. It is not that woman is inferior to man, but it is that woman is different from man; that in the distribution of powers, of capacities, of qualities, our Maker has created man adapted to the performance of certain functions in the economy of nature and society, and women adapted to the performance of other functions. One question to be determined in the discussion of this subject is whether the nature of woman is such that

her taking upon her the performance of the functions implied in suffrage will leave her in the possession and the exercise of her highest powers or will be an abandonment of those powers and on entering upon a field in which, because of her differences from man, she is distinctly inferior. Mr. President, I have said that I thought suffrage would be a loss for women. I think so because suffrage implies not merely the casting of the ballot, the gentle and peaceful fall of the snow-flake, but suffrage, if it means anything, means entering upon the field of political life, and politics is modified war. In politics there is struggle, strife, contention, bitterness, heart-burning, excitement, agitation, everything which is adverse to the true character of woman. Woman rules to-day by the sweet and noble influences of her character. Put woman into the arena of conflict and she abandons these great weapons which control the world, and she takes into her hands, feeble and nerveless for strife, weapons with which she is unfamiliar and which she is unable to wield. Woman in strife becomes hard, harsh, unlovable, repulsive; as far removed from that gentle creature to whom we all owe allegiance and to whom we confess submission, as the heaven is removed from the earth. (Applause.) Government, Mr. President, is protection. The whole science of government is the science of protecting life and liberty and the pursuit of happiness, of protecting our person, our property, our homes, our wives and our children, against foreign aggression, against civil dissension, against mobs and riots rearing their fearful heads within this peaceful land during the very sessions of this Convention. Against crime and disorder, and all the army of evil, civil society wages its war, and government is the method of protection, protection of us all. The trouble, Mr. President, is not in the principles which underlie government. Men and women alike acknowledge them and would enforce them, honor and truth, and justice and liberty; the difficulty is to find out how to protect them. The difficulty is to frame the measure, to direct the battle, to tell where and how the blows are to be struck and when the defenses are to be erected.

Mr. President, in the divine distribution of powers, the duty and the right of protection rests with the male. It is so throughout nature. It is so with men, and I, for one, will never consent to part with the divine right of protecting my wife, my daughter, the women whom I love and the women whom I respect, exercising the birthright of man, and place that high duty in the weak and nerveless hands of those designed by God to be protected rather than to engage in the stern warfare of government. (Applause.) In my judgment, sir, this whole movement arises from a false con-

ception of the duty and of the right of men and women both. We all of us, sir, see the pettiness of our lives. We all see how poor a thing is the best that we can do. We all at times long to share the fortunes of others, to leave our tiresome round of duty and to engage in their affairs. What others may do seems to us nobler, more important, more conspicuous than the little things of our own lives. It is a great mistake, sir, it is a fatal mistake that these excellent women make when they conceive that the functions of men are superior to theirs and seek to usurp them. The true government is in the family. The true throne is in the household. The highest exercise of power is that which forms the conscience, influences the will, controls the impulses of men, and there to-day woman is supreme and woman rules the world. (Applause.) Mr. President, the time will never come when this line of demarcation between the functions of the two sexes will be broken down. I believe it to be false philosophy; I believe that it is an attempt to turn backward upon the line of social development, and that if the step ever be taken, we go centuries backward on the march towards a higher, a nobler and a purer civilization, which must be found not in the confusion, but in the higher differentiation of the sexes. (Applause.) But, Mr. President, why do we discuss this subject? This Convention has already acted upon it. A committee, as fairly constituted as ever was committee, has acted upon it, a committee which had among its members four who were selected by the women who lead this movement, which had a much smaller number of gentlemen who were known to be opposed to it, the great body of which was composed of men whose ideas and feelings upon the subject were utterly unknown, has acted upon it, and reported to the Convention. The Convention has, by a unanimous vote, decided that it will not strike the word "male" from the Constitution. Now we are met, sir, by a proposition that instead of performing the duty which we came here to perform, instead of exercising the warrant given to us by the people to revise and amend the Constitution, we shall have recourse in a weak and shuffling evasion, and then throw back upon the people the determination which they charged us to make in this Convention. (Applause.) We are asked to do it. Why? to do it from good nature, to do it because my friend from New York, Mr. Lauterbach, is a good fellow; to do it because it will please this lady and that lady, who have been importuning members about this hall for months; to do it, heaven knows for how many reasons, but all reasons of good nature, of kindliness, of complaisance, opposed to the simple performance of the duty which we came here to discharge under the sanction of our oaths. Mr. President,

I hope that this Convention will discharge the duty of determining who shall vote; discharge it with manliness and decision of character, which, after all, the women of America, God bless them, admire and respect more than anything else on this earth. (Applause.)

Mr. Goodelle — Mr. President, several proposed amendments, in various forms, were submitted to strike the word " male " from article 2, section 1, of the Constitution, proposing thereby that universal female suffrage should be established; such propositions have been supported by memorials numerously signed by both sexes from the different parts of the State, and those have been met by a larger number of memorials from women only, protesting against any change which would cast upon womankind the burden of elective franchise, and what it almost necessarily involves. Other proposed amendments have been submitted to so amend the Constitution as to permit of qualified or restricted woman suffrage; also, to empower the Legislature to make laws looking to universal female suffrage; also, propositions to submit the question to the women of the State, to be determined by their votes alone; also, proposed amendments to submit to the electors of the State, in a separate proposition, to be in that manner determined, whether or not universal female suffrage should be granted. While various other amendments have been proposed and considered by your committee, looking towards securing the same objects, the foregoing may be regarded as embracing the scope of the propositions referred to, and considered by the committee on that subject.

The suffrage memorials and petitions have been confined entirely and exclusively to the main proposition, to strike the word " male " from the Constitution, and to grant universal suffrage to women, and the protests have been, likewise, exclusively directed against that proposition; no middle ground is sought or suggested by the voluminous petitions or protests.

Your committee, fully appreciating the gravity of the questions involved and the great and widespread public interest taken therein, approached and considered these various propositions with unusual deliberation and care, every member being actuated only, as I believe, by a profound determination and purpose of conscientiously reaching a conclusion, which, in his judgment, should be for the best interests of the commonwealth and all of its citizens. A large amount of time has been devoted to the thorough consideration of the question; many public and private hearings have been cheerfully accorded to the advocates of either side, and no one has been refused or turned away unheard, requesting it. And we are happy to be

able to state that upon the main proposition, to strike the word "male" from the Constitution, which was the line along which the contest was waged, your committee was unanimous in concluding that the proposed amendments, in that regard, should be, and the same were, unanimously rejected.

And upon all the other propositions a like result followed, with the exception of the bill, the adverse report of which is now under consideration, wherein it was determined, by a vote of thirteen to four, that it should be rejected, and one other to be considered, which was rejected with but one dissenting vote. I desire to say, at this time, that I was astonished to hear the gentleman from Chautauqua suggest to this Convention, when the adverse report on the amendment proposed by him was presented, that he had no opportunity to appear before the committee. I trust that reflection will convince him of his error.

And we hope that it may not be inappropriate, at least, to make brief mention of some of the many reasons which actuated the majority of the committee in its determination of the questions involved. It has been repeatedly claimed and strongly urged that suffrage is a natural and inherent right of all the citizens. We are compelled to dissent from that proposition as one which, in our judgment, is wholly at variance with the theory and history of all political governments.

We think there can be no question but that the privilege or duty of suffrage (however it may be termed) is not a natural right of the citizen, but it is conferred by the State, and not for the benefit, or to gratify the wish, of the recipient, but solely for the benefit of the State in all that the term implies; we prefer to call it, at least, a moral, if not a legal, duty, imposed upon the individual citizen for the reason that its exercise by him will make for the best interests of the whole community, a duty to be exercised kindred to that which compels men, unwillingly, to give up their property, their liberty, their lives on the battlefield, if the welfare of the State, the community, demands the sacrifice.

To that effect are the numerous decisions of the highest courts of this and sister States, as well as the federal courts, and we know of none to the contrary. Neither on principle nor legal authority, then, do we think the question one open to discussion. Whether or not a large number of men and women ask for female suffrage — whether women are taxed as to their property, or pay taxes, or not — are considerations of very minor importance, if not irrelevant. The great paramount and controlling question to be ever kept in mind, in this discussion by the Convention is, is it so clear that the State

will be benefited, and so benefited that we are called upon by the pressing demands of the State to undertake an experiment so revolutionary in its character, and as to which the utmost that can be urged is that the effects upon the State and nation would be a matter of conjecture?

Shorn, then, of all irrelevant matter, the precise question is, not whether or not large numbers of male and female citizens ask for it, or protest against it, or are taxed or not, but is it for the benefit of the State, its institutions, and all its citizens, that the proposed amendment should be adopted?

Would it make more secure the stability and perpetuity of our government and the free institutions thereunder, and would it increase the prosperity and happiness of the citizens of the State, and consquently elevate them in all those things pertaining to the good order and obedience to law which the State expects and has the right to demand?

One of the most eminent, and we think, the ablest, advocate of female suffrage at the present day, with great fairness, lays down the proposition that: "The advocates of female suffrage seek to change the relation of the sexes which has existed since the foundation of the earth."

Coming from such a source, the suffragists must, and doubtless do, accept the declaration with its full import. We must concur in the well-expressed opinion of that eminent American and good friend of mankind, Horace Greeley, in his report to the Convention of 1867, as chairman of the Committee on Suffrage, wherein he held that the proposition to extend the elective franchise to women would be an "innovation so revolutionary and sweeping — so openly at war with the distribution of duties and functions between the sexes, as venerable and pervading as government itself, and involving transformation so radical in society and domestic life," that it should be rejected.

If, then, we are right in concluding that suffrage is granted by the State, for the benefit of the State, as aforesaid, and it is sought "to change a relation between the sexes which has existed from the foundation of the earth," as the woman suffrage advocates declare, it follows that the experiment suggested is one decidedly revolutionary in its character — a change fundamental in the whole social function of woman to be engrafted into the organic law with all that such change involves.

This is not a question for frantic appeals or empty declaration, or where resort should be had to passion, prejudice or sympathy, but its consideration should be addressed, alone, to the judgment and

intellect of this Convention, and disposed of, after calm inquiry, for the best interests of the State and its people, like others before us.

We believe that if all the sentimentality is laid aside, as it should be, and this question is considered with the seriousness which it deserves, we shall all agree upon the proposition which ought to be, if it is not, axiomatical, to wit: That this Convention should not enter this radical and revolutionary field, and change the organic law as suggested, unless well-defined benefits to the State can be pointed out to result therefrom, and that such be reasonably well established; we might well go further and insist that, before we consent to the proposition, so contrary to the concensus of opinion and of the political governments of nearly the whole civilized world, the absolute necessities of the State, for the endurance of our government — for the maintenance of society, of law and order — are not only pressing, but demand a change; but, be that as it may, it will not do for us, as prudent men, to undertake so revolutionary and what, at least, might be a dangerous experiment, in thus changing the fundamental law, if the apparent result would be indifferent, or simply imagined, speculative, or vaguely defined benefits to the State may appear to come therefrom — but benefits to the State, and all its people, tangible, substantial, well-defined, and, at least, reasonably certain from the logic of events, should, as results, be foreseen.

Neither of the advocates of woman suffrage, in their interesting and elaborate addresses before your committee, or in their writings (upon whom the burden clearly rests), or by the arguments on this floor, or in any other manner, has it been shown that any certain, well-defined or tangible benefits would result, either to the State or to the women themselves, by the adoption of female suffrage.

There appear no wrongs to women that man has refused to redress, no provisions for her benefit that he has refused to make, no profession or business closed to her, no barrier interposed to her development and advance in any direction in which her sex permits her to direct her footsteps; and, furthermore, from the State of Wyoming, where woman suffrage has existed for twenty-five years, a distinguished United States Senator, at the request of the advocates of the cause, appeared before your committee to inform them from his own observation as to the practical results of universal suffrage in that State; although an advocate of the doctrine on principle, and having been elected to Congress in part by the female vote of the State, yet, with eminent candor and fairness, he confessed his inability to point to a single instance wherein the State or its womankind had been benefited by female suffrage. The most favor-

able inference for the suffragists that could be drawn from the statements was that the result is indifferent in Wyoming; while others of equally high authority speak quite disparagingly of its practical effects in the State. And even Governor Waite, of Kansas, a Populist and an avowed advocate of female suffrage, in a recent announcement declared: "It must be admitted that the effect which female suffrage will produce upon the State and nation is a matter of conjecture. In Wyoming, to my knowledge, no extraordinary progress has been made in the line of political reform that can be traced to female suffrage."

But however much of benefit might be claimed or shown from woman suffrage in that State, we would still regard it as of little if any consequence in determining the expediency of engrafting in the organic law of this State the enactment under conisderation.

It could not be fairly claimed that Wyoming, with a population of scarcely 100,000, scattered over a territory in area twice the size of this State, with no cities of any considerable size, could furnish a precedent for the action of this Convention in revising or amending the fundamental law of our State, with its over six millions of population and its vast and densely populated cities — its seething caldrons of political heat and excitement, hotbeds of vice and corruption — developing swarms of criminals, with no regard for law or morality in the frenzied contest for party or personal supremacy so often recurring.

While, therefore, it has not been demonstrated, and does not appear, that any well-defined benefit would arise from the enactment asked for, and the experiment of twenty-five years (spoken of), where it has been tested under the most favorable circumstances, having produced but indifferent results, it follows, if our premises be correct, without further suggestion, that it would be unwise for this Convention to recommend by its action, female suffrage or the proposition under consideration.

But, to go further, it seems to us quite clearly, that instead of benefits, positive evil would result, not only to the State, but to womankind, by conferring suffrage upon females. We cannot elaborate, but only suggest some of the more serious and fundamental objections. What is one of the dangers to the State? In our country the unit of society, of the State, is the home, or the family — the whole aggregation is called society — the State. And from those units the State derives its power, and government its stability, and in whatever way, or by whatever means those units are weakened, so does the power of the State become weakened, and hence the stability of our government becomes impaired.

In other words, in proportion as this State, called the home within a State, is maintained in its strength and integrity, the whole State is strong, healthy and prosperous. It is the fountain of private and public morality — the source of life-giving blood of the State — and whatever threatens the destruction or impairing of the home is a direct menace to the State. If the mother and wife vote with, and under the direction of the husband, whether for good or evil, the vote of the husband is simply duplicated; if against him, and contrary to his wishes, what may follow?

It is a mere sophism to say that the elector begins and ends the exercise of suffrage by casting a ballot — that no harm to the well-being of the home could come from the wife simply dropping a piece of paper into a ballot-box. But what of the effects of the wife insisting upon voting and electioneering against the most intimate, personal and business friend of her husband, urging and working for the passage of laws obnoxious to him. And where there are children, striving against the other to capture recruits for their respective sides at the family altar, the table and fireside of the home, and at the close of the contest the defeated party to be met with taunts and sneers instead of sympathy?

Such possibilities should not be considered simply with respect to families bound together with the strongest ties of reciprocal affection, which are found in our ideal homes, but should especially be considered in those cases where the family tie is weakest, whether from incompatibility, inexperience, suspected infidelity or estrangement from whatever cause; in these cases the strain upon the marital and family relation would be most keenly felt. Other illustrations without number force themselves upon every thoughtful mind.

With women enfranchised and in politics, assuming political leadership, striving for public office, aiding in primaries, electioneering at the polls, becoming ambitious orators on the stump, in short, doing what men now do in heated political contests of the State, suggest too strongly, not only the possibility, but the probability, if not the certainty, of the introduction of political dispute and party work in family life, which would develop and increase estrangement, separations, infidelity and divorce, and the consequent destruction of home.

It would seem that this great danger to the home resulting in conferring the franchise upon married women was recognized in England two years ago. When the women in that country were demanding parliamentary suffrage, the bill then proposed in Parliament confined the suffrage to spinsters and widows, thereby practi-

cally making thereafter marriage a cause for disfranchisement, a penal offense.

In that contest, there being no proposition to extend suffrage to married women, but only to the unmarried, Gladstone was appealed to, to give his views upon the proposed measure, by the women demanding suffrage, offering their support if he would declare himself in its favor, and, although he had spoken as if he thought the change desirable, upon mature reflection, wrote, viz.: "I speak of the change as being a fundamental change in the whole social function of women, because I am bound, in considering this bill, to take into view not only what it enacts, but what it involves. * * * It proposes to place the individual woman on the same footing in regards to parliamentary elections as the individual man; she — not the individual woman, marked by special tastes possessed of special gifts, but the woman as such — is by these changes to be plenarily launched into the whirlpool of public life, such as it is in the nineteenth century, and such as it is to be in the twentieth century. * * * A permanent and vast difference of type has been impressed upon woman and man, respectively, by the Maker of both. These differences of special offices rest mainly upon causes not flexible and elastic like most mental qualities, but physical, and, in their nature, unchanging. I, for one, am not prepared to say which of the two classes has the higher, and which the other province, but I recognize the subtle and profound character of the difference between them. I am not without fear, lest, beginning with the state, we should eventually have been found to have intruded into what is yet more fundamental than statehood, the precinct of the family, and should dislocate or injuriously modify the relations of domestic life. * * * My disposition is to do for her everything which is free from danger or reproach, but to take no step in advance until I am convinced of its safety. The stake is enormous. The affirmation pleas are to my mind not clear, and, if I thought them clearer, I should deny that they are pressing. I earnestly hope that the House of Commons will decline to give a second reading to the woman's suffrage bill."

If Gladstone's fears for the well-being of the State, the family and domestic relations were well founded in regard to suffrage being conferred upon unmarried women the evil results to the State and family of throwing the wife and mother into the maelstrom of politics of this country, can scarcely be doubted.

It will not do to assume that women will generally vote as their husbands do, and thus evil to their families be avoided, because that would be to renounce most of the considerations advanced in favor

of the suffrage movement. It is said by an eminent writer that the "coherence and permanence of the family depend upon the difference in the mental and emotional constitution of men and women." The family is a union of two manifestations of a common human nature, masculine and feminine, of the soul as well as body; moulding, governing and guiding the children, each after its own manner, and diffusing through society the blended influences of wife, mother, daughter, sister, and husband, father, son and brother. The bearing of these principles upon the relation of wives and mothers to the suffrage is, that to govern the State would unfit the woman for her position in the family.

The writer forcibly argues the correctness of this proposition, claiming that feminine instincts will not preserve the woman, if she be plunged into politics, but that she will gradually be changed in her intellectual, moral and emotional sensibilities, according to the laws of evolution, environment and culture, approaching the character and developing the mental and moral constitution of man, to the disruption of the family and the detriment of the State.

And we think, furthermore, it would be harmful and pernicious to the interests of the State, as well as contrary to the fundamental principles of our political system, to invest with controlling powers of legislation that majority of our citizens, which concededly would be unable to enforce their laws by physical force, if necessity required.

Nor would benefit accrue to the State by taking women from that special maternal sphere of duty and responsibility ordained by nature, the bearing and rearing of children, to perpetuate and replenish the population; the tendency, at least, would be detrimental to the welfare of the commonwealth, and to menace the peculiar conditions upon which the very existence of the State depends.

To confer upon women the right to vote, with all that it involves, in our judgment, would not be productive of good, but rather of evil to womankind, also. For woman to plunge into the "filthy pool of politics" of this day and age, and contend with the vicious elements in political campaigns, and in an atmosphere from which she has hitherto stood aloof — to subject her to the duties of police and of the jury — to compel her to bear arms for the protection of the State, and to perform the thousand and one other duties of offices now cast upon the electors of the State for its government and protection, seems to us so unnatural as to be abhorrent, and would tend not only to the degradation of female nature and instinct, but to divest her of that power which she now exercises and privileges she now enjoys by reason of her feminine charms and the chivalric

spirit of the opposite sex toward her. The greatest refining influence of society at the present day arises from the respect shown to women, as such, by men.

The lessening or destruction of that sentiment would be unfortunate for women as well as men. It is too much to expect that in the bitter struggle of politics, such sentiment would not be impaired or greatly weakened, if not wiped out, and we greatly fear that the special courtesy to women now existing, arising from that influence peculiar to them, and a dependence on their part, would be swept away when they contend on the same plane with men in the political arena.

That she is not oppressed, but enjoys special privileges and advantages over the opposite sex, arising from legislation and common law, as well as from the courtesy universally conceded by the male population, will readily be conceded by every lawyer in this Convention and cannot be denied. As, in times of common peril, whether in shipwreck, conflagration or from any of the countless disasters to which all are liable to be subjected, her safety is first to be considered.

That the government, courts and juries give to her rights, both of property and person, special protection, is also within the knowledge and experience of every lawyer. And many of us must concede the force of what an eminent writer uttered when he said, " In jury cases, at least, the difficulty is not for women to get justice against men, but for men to get justice against women."

To take away or to endanger the special privileges enjoyed by the 1,500,000 adult women of this State (although requested by a meagre minority of about fifteen per cent), by changing the relation of the sexes and placing them upon a common political plane with men, would not be just to the other large percentage of women who do not ask, but protest against it, and would be not only against the interests of the State, but against the interests of all the women of the State.

And in concluding our consideration of the evil effect on womankind, we cannot refrain from emphasizing, as well as supporting, our views, by reference to the words of Bishop Vincent, the founder of Chautauqua, a former ardent advocate of woman suffrage, which have just come to us. He says: " Years of wide and careful observation have convinced me that the demand for woman suffrage in America is without foundation in equity, and, if successful, must prove harmful to American society. * * * The instinct of motherhood is against it. The basal conviction of our best manhood is against it. The movement is at root a protest against the relation and func-

tions by virtue of which each sex depends upon and is exalted by the other. This is a theory of politics tending to the subversion of the natural and divine order, which would make man less a man, and woman less a woman. Woman now makes man what he is. She controls him as babe, boy, manly son, brother, lover, husband, father — her influence is enormous. If she uses it wisely, she needs no additional power. If she abuses her opportunity, she deserves no additional responsibility. Her womanly weight, now without measure, would be limited to the value of a single ballot, and her control over from two to five additional votes, forfeited. Free from the direct complications and passions of the political arena, the best women may exert a conservative and moral influence over men as voters. Force her down into the same bad atmosphere, and both men and women must inevitably suffer incalculable loss. We know what women can be in the 'commune,' in 'riots,' and on the 'rostrum.' Woman can, through the votes of man, have every right to which she is entitled. All she has man has gladly given her. It is his glory to represent her. To rob him of his right is to weaken both. He and she are just now in danger through his mistaken courtesy."

Many other considerations against female suffrage occur to us, which time will not allow us even to suggest. But the question of taxation without representation has been so strongly urged, and on this floor, as a gross injustice to women, that we feel called upon to barely allude to it. We cannot accept the conclusion of those urging the proposition. We cannot concede that there exists any relation whatever in fact or theory, between taxation and the voting power, but the contrary is true.

The property of aliens and minors is taxed with no voting power behind it. Taxes are not levied as an equivalent for the suffrage. The voting power of the elector in nowise depends upon his amount of property, or whether he is taxed, or has taxable property or not. The wealthiest elector in the State has no greater voting power than the poorest man who has not a place to lay his head. Each has one, and only one vote. All electors, as to the power to vote, stand upon a common level, with no property qualification controlling, modifying, or in the least affecting the right.

Taxes are levied and collected alike, and in the same proportion, upon the property of the voter and non-voter, of the sane and insane, of aliens and citizens, of adults and infants, of men and women, as involuntary contributions to the State, for the protection of the property, and for the benefit and advancement of the whole community. Believing, therefore, that the exercise of suffrage is not a natural or inherent right, but a power or duty to be conferred

by the State, solely for its benefit, that there is no wrong done to the individual, as such, asking it, by a refusal, that the proposed measure is of a nature revolutionary in its character, and before adopted by the State, through this Convention, well-defined benefits to result, and pressing necessities of the State, should be seen to exist, pointed out, and, at least, reasonably well established, demanding the same; none of which in this case seem to exist or to have been established; but believing, on the other hand, that by its adoption great evil would result to the State and all its people, and especially to womankind, we are compelled to resort against all the propositions lookng towards conferring suffrage upon females. And because, from profound conviction, a few of the reasons for which we have given, we are opposed to female suffrage, so are we unalterably opposed to submitting to the people the proposition now under consideration, the Committee on Suffrage have unanimously reported against granting it, by refusing to strike out the word "male" from the Constitution, which report has been agreed to by this Convention. And by what logic are we now asked to recommend to the people to pass upon that which we have rejected, and by our action declared should find no place in the organic law? We are for female suffrage or we are against it. If we believe it right, wise, and for the weal of this commonwealth, and that it ought to be adopted, our duty lies clearly, in the one direction, to give it an abiding place in the fundamental law.

If, on the other hand, we believe it is wrong — against the interests of the State — and a proposition so revolutionary in its character, that we dare not take the responsibility of giving it such a place, let us have the courage of our conviction, and by our acts declare that we will discharge the duties imposed upon us, which we have sworn faithfully to do, fearlessly, and to the best of the ability God has given us, and that we will not relegate to the people, to dispose of those questions, to us submitted, by us considered, investigated and rejected, thereby endangering the entire work of this Convention. Was it for such purpose that we were elected? Shall we thus endeavor to avoid the responsibility thrown upon us, which we have assumed?

But this question I leave for others more fully and ably to discuss. To briefly consider the main proposition, and to set forth some of the reasons for our position thereon, was our only purpose. And we venture to add that reflection and study of this question have produced conviction so strong that we must frankly say we do not believe that universal female suffrage will ever find a place

in this State, circumstanced as it is, under our present form of government.

We think that the strength of the cause is at its zenith now; and, as the subject has become one of great magnitude, and has but recently claimed the attention and serious thought of the people, that as intelligent and reflective minds follow the investigation, it will be more clearly demonstrated and understood that there exists, and will continue to exist, under our form of government, underlying objections to its adoption which are insurmountable. It is certainly, as pointing in that direction, significant that the liberal and progressive Horace Bushnell, after protracted thought and serious consideration, was forced to the conclusion, contrary to his former conviction, that female suffrage would be a "reform against nature."

That John Bright, the steadfast friend of every measure designed to benefit woman, who, in 1867, voted in Parliament for woman suffrage, but many years afterwards, after a most deliberate reconsideration of the whole question, spoke against their enfranchisement, and in explanation of his conduct wrote the words so pertinent here that we quote them: "I cannot give all the reasons for the views I take, but I act upon the belief that to introduce women into the strife of political life would be a great evil to them, and that to our sex no possible good could be derived — when women are not safe under the charge and care of fathers, husbands, brothers and sons, it is the fault of our non-civilization, and not our laws. As civilization, founded on Christian principles, advances, women will gain all that it is right for them to have, though they are not seen contending in the strife of political parties. "In my experience" (he adds), "I have observed evil results to many women who enter heartily into political conflict and discussion — I would save them from it."

That the eminent scholar and thinker, Goldwin Smith, also, after voting with Mr. Bright for female suffrage, was led to change his opinion in 1892 in the consideration of the bill then pending in Parliament to give the spinsters and widows the right of suffrage in England, and in an exhaustive and elaborate essay, viewing the question in all its phases, took ground strongly against conferring suffrage upon the two classes of women specified in the bill, after considerations similar to those given by Mr. Bright.

That Herbert Spencer, also, after seriously reviewing the matter renounces his former convictions favoring female suffrage, and concludes that his former position cannot be maintained, saying that he "discovers mental and emotional differences between the sexes,

which disqualify woman for the burden of government and the exercise of its functions."

We have already alluded to a similar change of the views of Gladstone. It is especially significant that Bishop John H. Vincent, the founder of Chautauqua (whose present views we have already quoted), who, perhaps, has given this question more careful thought than any other American, whose energy and life have been devoted to the advancement of the interests of womankind, and after years of earnest advocacy of woman suffrage, and being its public defender, should, as a result of after years of wider and more careful observation and thought, have become persuaded against his former conviction that the demand for woman suffrage in America is not only without foundation in equity, but would be most harmful to American society — harmful to the State, and that "both men and women would inevitably suffer incalculable loss therefrom."

When such intellects, devoted to the best interests of womankind, awake to every true reform, to progress, the welfare of the State and society are, from their more extended observation and closer inductions, compelled to turn back upon their course and conclude that woman suffrage would not be in the direction of true reform, but a reform against nature, and contrary to the interests of the State and all its people, it leaves but small encouragement to the advocates of the measure.

And, in closing, we beg leave, in behalf of the committee, to express and tender our sincere and profound sympathies to that noble band of zealous, sincere and intelligent ladies who have so ably represented the woman suffrage cause, in their disappointment (if such exists) in its report, but the stern sense of duty to the State, and its conscientious discharge pointed the way, unmistakably, in the one direction which the committee followed, fearlessly, if regretfully. We do not wish our position to be misunderstood. We are opposed, strenuously, to any oppression of woman, but we must as strenuously insist that she is not oppressed, but enjoys special privileges and rights, as before suggested, forbidden to man, which we would have preserved to her.

We do not believe in the inferiority of woman, but, rather, that she is vastly superior in all those fields and pursuits for which nature and God designed her. We do not believe in restricting her in progress, or in the acquirement of attainments, but, rather, in the fullest expanse, development, unfolding exercise of every capability of her nature that can, with the aid of man, be given her, not only for her own welfare, but for the benefit of mankind. But let such progress, expanse and development be along that line

remembering that no true reform exists contrary to its laws, but so distinctly pointed out to her by the laws of nature — always must be found in pursuing in their pathway.

We would point her to that great domain of philanthropy, of charity and education, of the arts and sciences, and of society at large, wherein she has achieved, and may continue to achieve, such signal success for the benefit of the world, and for the glory of her sex, as should satisfy her highest ambition. (Applause.)

The President — The time has arrived for taking the vote.

Mr. Dean called for the ayes and noes which were ordered.

Mr. Tekulsky — Mr. President, I move a call of the House so that every member of this Convention here shall be recorded.

The President — It will be a very long and elaborate affair, Mr. Tekulsky.

Mr. Dean — I rise to a point of order. The fact of no quorum must be determined by a roll call before a call of the house is in order.

The President — The question is whether the Convention will order a call of the house as moved by Mr. Tekulsky, if he insists upon it.

Mr. Tekulsky — Mr. President, I have been requested by a large number of delegates to withdraw the motion, and, I therefore, withdraw it.

The President — The question is on agreeing with the adverse report of the Suffrage Committee on Mr. Tucker's constitutional amendment (introductory No. 194, printed No. 195). The Secretary will call the roll.

The Secretary proceeded to call the roll.

Mr. Abbott — Mr. President, I have listened not only patiently and courteously, as has been stated by the eloquent gentleman from New York, to the discussion of this question in committee and elsewhere, but with deep interest and with inexpressible admiration, to the elegant addresses of the noble women who have so earnestly advocated their cause.

I gladly bear witness to the force of their arguments, and to the fairness and honesty with which they have been presented, and in so far as their conclusions have been drawn from correct premises, I cheerfully coincide in those conclusions. I concede for their sex all that has been claimed for it on the lines of intelligence, of patriotism, of devotion to duty, of love for the race, and of desire to promote the best interests of humanity.

I go further. From an experience derived from the common school, from the academy, from a co-educational college, and from various affairs of life, I am willing to concede that so far as mental capacity is concerned as a sex they are our equals, and as to many of those qualities which go to make a more perfect humanity, they our superiors. I concede that, in its broadest sense, they, with our fathers, were the founders of the State; that in all the emergencies of life, in times of great public peril which test the courage and patriotism of the race and demand the highest moral heroism, they have been found in the forefront of events. The typical American mother instills into the minds of her sons their first lessons in patriotism, in temperance, in unselfish devotion to duty and all that goes to make the useful citizen, the ruler of the State. No great man of the English-speaking race but has been glad to listen to the prudent counsels of his mother or his wife. Indeed, I sincerely believe that no great man, no man whose deeds are remembered in history, ever lived who did not inherit the elements which built up that character and made it great from his mother.

The one distinguishing characteristic of the Anglo-Saxon race, so marked as to be noted by Tacitus in his Germania, is that in all great matters they consult their women. That influence has always been felt in the affairs of this Republic, and will be felt so long as the nation exists.

To all this I bear willing testimony, but to my mind all this does not reach the vital point of this controversy. To the doctrine that suffrage is a natural right, or even an equitable right, as so clearly discussed by the gentleman from Chautauqua, I cannot subscribe. To the assertion so often made as applicable to this question, "that taxation without representation is tyranny," I cannot subscribe. If it be true that the ballot should depend on taxation, then the Goulds and Vanderbilts of this age might vote in every election district in the land, and we would soon degenerate into a government of wealth, that most inexcusable of all tyrannies.

Nor can I subscribe to the doctrine of Mr. Scott, that muscle is the supreme test; that government is necessarily founded on physical force. If this were so, we must take down our statues of Lincoln and Seward and erect instead those of Sullivan and Corbett. Behold their statues in our public squares and underneath them the legend, "This is the typical American!" What a lesson for American youths.

If then, the suffrage is not a natural right pertaining to all citizens, if it is not founded on the theory of physical force, what is it, and on what equitable principle is its exercise based?

I answer that the suffrage is the foundation of popular government, it is the corner-stone of public institutions, and contains the spirit and essence of democracy.

The ballot is the instrumentality of sovereignty, through its exercise the rulers of the nation indicate their will, as Whittier says, "The voter is the uncrowned king and the crowning fact, the kingliest act of freedom, is the freeman's vote." The idea that this potent instrument of government is the personal right of the citizen, and, therefore, should be granted to woman it seems to me is the fundamental error of this movement.

If it is a personal right, the property of the individual, then the idea of the corrupt voter who makes merchandise of it to the highest bidder is a logical conclusion.

I prefer the contrary doctrine, that the elective franchise is a trust conferred by the State upon the individual to be exercised for the benefit of the State, that in its exercise is evidenced the fact, that the voter is a sovereign selected to govern the State; that his is a solemn responsibility, that upon him is imposed a duty and a burden, and upon his wise, intelligent and honest exercise of that trust, depend the prosperity and even existence of the Republic.

What, then, are the best interests of the State? This is the vital question to which all else should be subservient. Do those interests demand the extension of the suffrage to women?

Upon this question history throws no light. No government has ever so broadened the suffrage as has ours. No government has ever existed based on the idea of universal manhood suffrage until our own untried experiment.

The so-called republics of Greece and Rome, of Holland and Switzerland, were never broadened to make a ruling class not based on intelligence or wealth, or birth or land ownership. Again, their united populations were but a few millions and "all of them," as Phillips says, "have gone down in the ocean of time." Our seventy millions, with their diverse interests, are just trying the experiment, and it remains to be yet determined whether our institutions can bear the terrible strain.

The doctrine of universal suffrage embraces not only the intelligent, the patriotic, the honest, the men of character and of sense, but also the ignorant, the corrupt, the indifferent and the vicious.

Which shall prevail? This is the great problem of the day. How would the addition of the female sex to the mass of electors affect this problem? Would it be for good or ill?

I have every confidence in the ability, the intelligence and the patriotism of American womanhood, and if a majority of the sex

were desirous, even willing to assume the serious burdens, duties and responsibilities of the suffrage, I for one would not hestitate to give them welcome.

The time may come in the distant future when, in order to protect republican institutions and preserve our national existence, the State may be compelled to impose these burdens on women, and when that day comes I do not doubt that it will find American womanhood imbued with that same patriotism and love of country which they have ever possessed, ready to take up these additional burdens in defense of country and liberty. That emergency has not yet arisen.

To-day the great majority of the sex of this State are protesting against the imposition of this burden of suffrage. I cannot recognize the right of the minority of women, however able, however earnest, however patriotic to insist on these burdens being placed upon their unwilling sisters. The number of indifferent voters is already dangerously large.

Until the majority desires the suffrage, I am opposed to the proposition. When that time comes I shall cheerfully support it. I believe the time will surely come when the intelligent women of this State will desire the suffrage, and when it comes, that it will be for the highest interest of the State to extend it to them. I believe a proposition should be incorporated into the Constitution providing for this action of the educated women of this State when the time and occasion arrive.

While, then, I am opposed to the proposition now pending, I hope that the adverse report will not be agreed to and that this matter may be relegated to the Committee of the Whole, where the amendment proposed by me on the lines laid down in this discussion and which now sleeps in oblivion may be resurrected and receive the favorable consideration of this Convention. I vote no. (Applause.)

Mr. Ackerly — Mr. President, I ask to be excused from voting and will briefly state my reasons therefor. Article 1, section 10 of the present Constitution, contains these words: "No law shall be passed abridging the right of the people reasonably to assemble and to petition the government or any part thereof." I suppose that we can consider ourselves at present as "a part thereof." On the petitions that have come into this House, considering that they are not more than half genuine, I do not feel like disregarding them, but I feel that this matter should go into the Committee of the Whole, and there have an opportunity for an amendment if the majority sees fit to do it. For that reason I shall vote to have it go there if

possible, and I withdraw my request to be excused from voting and vote no. (Applause.)

Mr. Alvord — I ask to be excused from voting and will briefly state my reasons. Permit me to say, Mr. President, that the Supreme Ruler of the universe will punish this attempted violation of that higher law laid down in holy writ and on nature's page, which points out clearly and plainly the duties and province of the two sexes. Those duties differ from each other, but when exercised as He intended produce a harmonious whole. I withdraw my request to be excused from voting and vote aye.

Mr. Barhite — Mr. President, I desire to be excused from voting, and will take all the time allowed by the rule to explain my reasons. (Laughter.)

The President — That will be just three minutes.

Mr. Barhite — The distinguished gentleman from New York (Mr. Root), in the remarks with which he favored us this evening, has placed his opposition to woman suffrage upon the ground that the Almighty has endowed her with a peculiar nature which was intended to fit her for a different sphere in life. I say to him and I say to the gentlemen of this Convention that to-day she stands side by side with her brother in nearly every department of human effort. Her peculiar nature does not seem to have troubled her at all. He says that politics is modified warfare. I say to him that the practice of the law is real warfare, and yet in the statute passed by the Legislature last winter it is provided that neither color nor sex shall be a disqualification for the practice at the bar. As a man I note the inconsistency; as a lawyer I feel humiliated that the people of this State shall say that woman has the nature and qualifications which will permit her to practice law, but has not the nature and qualification which will permit her to cast a paper ballot. (Applause.) When the distinguished gentleman finds himself pitted against some keen, bright, courageous and witty woman lawyer, who meets point with point and argument with argument, I hope then that he will rise high in his place and respectfully protest to the court against allowing woman to present her warlike nature to the public gaze. Mr. President, I withdraw my request to be excused from voting, and vote no. (Applause.)

Mr. Becker — Mr. President, I desire to be excused from voting, for the reason that I find upon the floor of this Convention so many men whom I love and respect so ardently embracing the cause of woman suffrage that I should, in justice to my own views, briefly state my reasons for voting against woman suffrage or against

submitting this question to the people in the manner provided by this amendment. I believe that the right to vote is merely a privilege, but when conferred, it becomes a duty. I believe that with the duty of voting comes the duty of holding office. As a lawyer I read in the decisions of the common law that a failure or declination or refusal to hold office, when elected by the people, is a crime for which men have been punished. I believe that if a woman gains the right to vote she will be required to perform the duty of holding office and being a candidate for office, and I cannot believe that, with that duty, it will be possible to preserve the unity and the harmony of the family. For that reason I am opposed to changing the law now existing on this subject. I am opposed to this amendment as a lawyer, for the reason that it is in direct conflict with the provisions of our organic law. Under the Constitution of the State, which we swore here to preserve and defend, the provision is that this Convention is elected to revise and amend the Constitution of the State. When we say that we decline to do that, and submit a theoretical, or it may be a practical, question to the voters for their determination, without pronouncing our judgment upon it, we violate that oath. For these reasons, Mr. President, I withdraw my request to be excused from voting, and vote aye.

Mr. Cassidy — Mr. President, I desire to be excused from voting, and will state my reasons. Unlike the gentleman from Oneida (Mr. Cookinham), who addressed this Convention last evening, I do not speak for the entire State. I speak for myself and the small division of this State which I represent, which is about one-sixteenth part of this State, and in what I shall say I shall differ from the gentleman who spoke for the whole State in this, that I shall strive to tell the truth. I shall not stand here, before a Convention which knows to the contrary, and assert that I was in favor of this proposition, but by reason of hearing the arguments of the ladies here I had been turned against it. I heard the gentleman assert before any arguments were ever made in this Convention that he was against this proposition from first to last, and he never would consent to allow the women of this State to vote.

I am opposed to agreeing with the report of this committee, because I am moved by the remarks which were made by Mr. Lauterbach when he spoke for the industrial classes of this State; and I find, Mr. President, that others have spoken for the industrial classes of this State. I have heard it asserted upon the floor of this chamber and outside that the President of this Convention was not in sympathy with woman suffrage, and I stand here to-night to repudiate that charge, and to assert that the statement is false

from beginning to end, for no longer ago than last February I have his remarks before an association of the Woman's Working Society of the city of New York in which the New York Sun quotes him as follows: "There is no more logical reason why a woman should receive only half a man's wages for work done as well as any man could do it than there is why she should not be allowed to vote. (Applause.) Although woman in the bright realms of art and literature has largely swept away the unfair discriminations of manual labor, the old and unjust oppression of sex still remains."

The President — Mr. Cassidy, your time has expired.

Mr. Cassidy — Mr. President, I want to say just one word.

The President — Your time has expired.

Mr. Cassidy — Mr. President, I have not occupied five minutes under the rule.

The President — The rule is three minutes.

Mr. Cassidy — Just one word, Mr. President; I want to say —

Voices — Vote, vote.

The President — The rule is three minutes, and Mr. Cassidy will take his seat.

Mr. Cassidy — I vote no. (Applause.)

Mr. H. A. Clark — Mr. President, I ask to be excused from voting and will briefly state my reasons. The question arises on agreeing or disagreeing with the adverse report of the Committee on Suffrage. I have the greatest respect and admiration for intelligent and noble women, and while I do not think it wise for them to vote and assume the obligations which go with the ballot, still, if I believed that a majority of them desired to vote, and assume all the obligations and responsibilities which accompany the right of suffrage, I would yield to their request and vote to strike the word "male" out of the Constitution.

But, Mr. President, I do not believe that a majority of the women desire to exercise this right, and I am well satisfied that in the locality from which I come a large majority of both sexes are strongly opposed to the proposition. It is proposed by an amendment, now before this Convention, to require each person entitled to a vote to exercise that right. If that amendment should be adopted and the right of suffrage should be extended as is proposed, then we have imposed upon the women of our State this burden and responsibility without consulting them upon the subject.

My wife and sister insist that this right is not desired by them. I have consulted many of the intelligent ladies in the community

where I live, and all have insisted to me that they do not desire this right and do not wish to assume the grave responsibilities which the privilege carries with it. A large majority of the male citizens of the same locality, I am convinced, are opposed to this measure.

In the face of these facts I am opposed to drafting the women into the public service. I am opposed to having the male citizens decide that the female citizens must enter upon public and political careers. If the question was left to the woman to determine, I am satisfied in my own mind that the right of suffrage would remain as it is now. The unit in this State is not and should not be the individual, but the unit is the family. The husband and wife are one. He is bound for her support and that of their children. He is responsible to a large degree for the acts of all. He should be the head of the family. The proposition of woman suffragists is to create two heads to the family, to destroy the unity, and place in its stead that present popular fad a bi-partisan board, which will result in either conferring on each family two votes where it now has one, or in case the husband and wife do not vote alike, then one will cancel the other and that family become disfranchised. I am in favor of the greatest liberty in every way for the gentler sex. I will agree to grant anything which they or a majority of them ask. But until they do ask the right of suffrage, I do not feel like thrusting it upon them. I am, therefore, compelled to agree with the report and withdraw my request to be excused from voting, and vote aye.

Mr. Cochran — Mr. President, for the first time since this Convention opened I desire to avail myself of the privilege of saying a few words in explanation of my vote on this important question. I would say, sir, that I would not now have availed myself of this privilege if it had not been for the prominence, in this movement, which was given to my name in the very unbecoming and undignified remarks of a delegate on the floor of this Convention last evening. (Applause.) To those remarks, Mr. President and gentlemen, I do not desire to make any reply, for I deem them unworthy of recognition, and should I deign to reply to them, I would, sir, sink to the same level as I believe that the maker of them now has in the estimation of his associates in this Convention. I believe, sir, that when this Convention is over, and the gentleman thinks over his speech of last evening in calm and sober thought, his cheeks will assume a much more ruddy hue than any powder could ever paint the cheeks of any of the ladies whose cause he may have endeavored to advocate, but whose cause, sir, I think he debased. To my constituents, or to those whom I represent in this Conven-

tion, I believe that my vote needs no explanation, because when I vote against the extension of suffrage to women —

Mr. Cassidy — Mr. President, how about time?

The President — Mr. Cassidy will please take his seat. The Chair will take care of the time.

Mr. Cochran — As I was about to say, when interrupted by the gentleman, in voting against the extension of suffrage to women, I believe I only vote as is desired by every resident of my district. I believe —

The President — Mr. Cochran's time is up.

Mr. Cochran — I vote aye, sir. (Applause.)

Mr. Crosby — Mr. President, I desire to be excused from voting and will briefly state my reasons. It was not my intention to take the time of this Convention by making any remarks upon this subject, but in listening to the suggestions made by the chairman of the committee as reasons why this question should not be sent to the Committee of the Whole, I am led to explain, and to give my reasons why I should cast my ballot in the negative. One principal reason that was presented by him to this Convention was that the Committee on Suffrage is largely opposed to submitting the question to the people. With due respect for the committee and the opinion of that committee or any committee in this Convention, we are here charged with individual responsibility, and no report of a committee should influence a gentleman in his action upon this floor. We are told by him that he fears if it is submitted to the people it will endanger the work of the Convention. Endanger the work of the Convention, how? We have given to the female the right to our schools and our colleges; we have opened up to her the avenues of business, and we meet with her and compete with her in all business undertakings the same as we do with those of the other sex.

We have removed all the restrictions upon her property rights, aye, Mr. President, we have removed all the protection which the common law threw about her by reason of making the husband responsible for her torts, and she stands before the people of the State of New York to-day with every right and immunity, with every responsibility, except the right to protect herself by casting the ballot, which is the most sacred right of a freeman. Mr. President, can there be any question about the manner in which she will exercise that right, after having listened to the argument, to the presentation of the subject to this Convention by the ladies who

have addressed us? Is it not proper that the question should be submitted to the people in the manner proposed, free from every political question, free from the question of judiciary, the organization of the Legislature, the canals and all other questions. They are satisfied with the proposition that it shall be voted upon separately by the people; and when we consider their overwhelming petitions, millions of property, represented by them and the extent of their rights and responsibilities under the statutes and then insist that it is not safe to send the great question to the people, we make a serious mistake. I withdraw my request to be excused from voting and vote no.

Mr. Dean — Mr. President, I ask to be excused from voting, and will briefly state my reasons. The State has a right to protect itself. It has a right to command the services, not alone of its men, but of its women, when society is in danger. The same right that allows us to draft men into the military service of the State, justifies us in imposing the duty of the ballot upon any part of the citizenship whenever such action is necessary for the preservation of the welfare of society. Our public school system is based upon the theory that the safety of the State demands the education of those who are to discharge its functions. These schools have been thrown open to women. The census reports show that only six per cent of the women of this State are illiterate. The usages of society have established and insist upon a higher standard of morality for women than for men. The State to-day is in need of the infusion of this new life current of intelligence and virtue into the body politic. Therefore, the question whether this or that woman wants to vote or not, is of no consequence. The State has reached a point where it demands the services of the women whom it has been educating, and we have no right to interpose our personal protest. It is our duty to submit this question to the people, the final arbiters of the government. I, therefore, withdraw my request to be excused from voting, and vote no.

Mr. Dickey — Mr. President, I ask to be excused from voting and will briefly state my reasons. My vote on this subject is a somewhat selfish one, as I am more fortunate than many in the fact that I have a wife and three daughters. Just think what a pull I will have when we five go together to the primaries and the polls. (Applause.) But, seriously, I want my wife and daughters to have at least as much to say about the government as the tramp that comes to my door. (Applause.) When I was a boy I was thrilled with the earnest words of Susan B. Anthony in favor of the freedom of the slaves. (Applause.) The seeds she sowed

have brought forth fruit to-night. I gladly rise in my place to vote for her freedom and the freedom of her sex. We should always remember that we are the servants of the people and they are our masters, and while we have the power of a giant here through the favor of the people, we should not arbitrarily use that power as a giant and set up our judgments as superior and deny the people their right to vote on this question. If they will vote the proposition down, then certainly no harm is done to submit it, and if they will give a majority of votes for it then clearly it is our duty to allow them to do so. So many good, true and noble women have asked us to submit this question, I cannot find it in my heart to say no to them. How any one can listen to all the pleas made by the ladies and oppose them is beyond my comprehension. The opponents, instead of the bread the ladies are asking for, have given them honeyed word, guff and taffy. As to the claim that women, if given the right to vote, should do their share of the fighting, I answer, it is a poor coot of a man who is not willing to do his own share of the fighting and the women's too. With dynamite guns and other modern machinery of war, wars are now so dangerous and destructive, we are not likely to have any more. This cause may not succeed to-night, but success is near, very near at hand; and it is as sure to come as that to-morrow's sun shall rise. Delegates, get on the car before it runs over you. (Applause.) I am proud, very proud, to be thought worthy of a place in this Convention, but the proudest vote I cast will be the one I now give in favor of woman suffrage, and against the report of the committee. I vote no. (Applause.)

Mr. O. A. Fuller — Mr. President, I am sorry to say I am paired with my friend, I. Sam Johnson, but I want to say that I am heartily in accord with the report of the committee. I believe that the amendment ——

Mr. President — Mr. Fuller is not in order unless to excuse his vote.

Mr. Galinger — Mr. President, I ask to be excused from voting and will briefly state my reasons therefor. I have been urgently requested, both orally and in writing, and from both political parties in my district, to vote against the pending question in all its phases. If the matter had been left entirely to my own discretion I should have been inclined to favor its submission, but I cannot disregard the wishes of the constituency which I have the honor in part to represent. I regret that some of my co-delegates from the Third Senatorial District, unmind-

ful of the wishes of the constituency, should have succumbed to the blandishments of the sirens who have been so persistently haunting this chamber in behalf of woman suffrage. I ask leave to withdraw my request to be excused from voting, and vote aye.

Mr. Gilbert — Mr. President, as to whether or not the elective franchise is a privilege, I simply put one question: What would you think about it if anybody should threaten to take it away from you? That is all I want to say about that. Now, another thing: One-half of the citizens of the State of New York are absolutely deprived of the right of suffrage, deprived of that privilege. They are deprived of it by the simple fact of sex. I want to say that it seems to me before you say that the people of this State shall not have an opportunity of deciding whether or not this state of things shall be changed, that those who favor a continuance of that exclusion ought to have clear, sufficient and cogent reasons. I venture to say they have not been presented in the argument here. The gentleman from New York says to us, and other gentleman have said the same thing, that the women are so good and the State so bad that the former ought not to have anything to do with the latter. That is about the logic of it. Now, if there is anything that this State needs it is good voting citizens. One gentleman tells us that politics is warfare. One would think to hear his impassioned appeal that politics was a blood and thunder affair, and that what you wanted was to get Corbett here and Jackson here and all the great pugilists here, because it is a tremendous hand-to-hand fight and women are not qualified for it. They are intelligent, they are virtuous, and they are conscientious; they are interested in everything that pertains to the welfare of the State, but they cannot engage in the great blood and thunder conflict, and, therefore, they shall not vote. That is about what there is to it. I want to say this thing to you, Mr. President and gentlemen of this Convention, that unity is one thing and uniformity is another. I believe that in the very fact that woman differs from man we shall find the complete unity in political as we do in domestic life. The very fact that she is different from us leads her to look at public virtue from a different standpoint from what we do, and to see things that we would not see, and to determine things that we otherwise should not determine. I believe that we should be complete in our civic life.

The President — The gentleman's time has expired.

Mr. Gilbert — I withdraw my request to be excused from voting, and note no.

Mr. Holls — Mr. President, I ask to be excused from voting and will briefly state my reasons. I regret exceedingly to differ most radically with some of the members of this Convention, for whose judgment I generally have the very highest possible regard. But I wish at this time for myself to repudiate most earnestly the idea which my distinguished and honorable friend from New York (Mr. Lauterbach) seems to have, that this question will be decided by this Convention mainly on grounds of expediency. After my election to this body, and believing that this question would come up, I took pains carefully to study most of the so-called arguments in favor of woman suffrage, from the time of Ralph Waldo Emerson and John Stuart Mill down to the present. I found much edifying rhetoric and most attractive eloquence, but, in my opinion, all these efforts contain not one argument worthy of the careful attention of a serious man. My conclusion is that woman suffrage is wrong in principle, and that, therefore, it is necessarily inexpedient. I think it is wrong, perilous and pernicious in every respect, a step backward to barbarism and to anarchy; and for that reason I withdraw my request to be excused from voting, and vote aye.

Mr. Hottenroth — Mr. President, I ask to be excused from voting and will endeavor to explain my vote and briefly give my reasons. Next fall, in the districts which I have the honor to represent, we will have submitted to us the question of rapid transit for New York city, the question of the greater New York, and, possibly, and I hope, a Constitution proposed by this Convention. Now, it is proposed to tack on to this an additional question, that of woman suffrage. I am opposed to universal suffrage, and I believe the people whom I have the honor to represent here are by a large majority opposed to it. I, therefore, feel that it will be impossible to get the sentiment of the people in connection with this question, truly and fairly, in the conditions that will prevail next fall. I feel, therefore, that it would be dangerous to submit it. I think, if it is advisable to submit it at some other time, as is suggested by this proposed amendment, it may be done, and possibly will be done, if the emergency exists, by the Legislature proposing an amendment under the other provisions of the Constitution. I, therefore, ask leave to withdraw my request to be excused from voting, and vote aye.

Mr. Lauterbach — Mr. President, I ask to be excused from voting, and will briefly state my reasons. Women are a part of the State. The franchise benefits those who enjoy it. It is a privilege the availing of which is always beneficial. What would avail to benefit man in its exercise would benefit woman to the same extent.

That is an answer to the suggestion as to the benefit to accrue to women. As to the benefit to accrue to the State — if woman in her present condition, the home-maker, the maker of an improved condition of the community, exercises her legitimate functions, the State must necessarily be benefited. The State can only be benefited by the addition of her keen, intuitive perceptions, of her greater honesty, of her greater carefulness in details and the greater qualifications which the opponents of woman suffrage have accorded to women so fully and thoroughly. I do not speak of the women of the classes who have been represented by those on the floor, like my colleague from New York, who are amply protected by their husbands or fathers or others upon whom they are dependent; but I speak of the great independent laboring classes of New York, and for those women who have no husbands and no fathers and no one upon whom to rely, nothing upon which to rely except on the franchise, which would give them the only weapon of offense and defense that we possess in this Empire State. Therefore, it is for them that I plead, and for them I have pleaded, and it is no answer to say that because we can protect our wives and our children that these people, who have not been fortunate enough to have such defenders, shall be left entirely without protection. And because I believe that, and because all the logic of this question is on one side, and all the justice of the question is on the same side, and because only might and power rest upon the other, and because I look with horror upon the exercise of that might and power against logic and justice and right, I withdraw my request to be excused from voting, and vote no.

Mr. Lyon — Mr. President, it is to my mind sufficient of itself to determine how I ought to vote upon the proposed amendment, that, in my opinion, the very great majority, I might say the overwhelming majority, of women do not want the right of suffrage.

Since the opening of this Convention in May, I have endeavored to ascertain the sentiment of women regarding this matter, and have talked with very many of them upon the subject, and particularly with women residing in the city and county from which I come, representing the various stations of life, and I have found the great majority opposed to the proposition and many women most bitterly opposed to it.

If I am right in my positive belief that the majority of women do not want the right of suffrage, I am right in the statement that the majority of women would not exercise that right if granted, except upon exceptional occasions.

Who will contend that women who do not want the right to vote would vote if the right were given them?

Who will say that women opposed to suffrage would take upon themselves the burdens, and perform the duties incident to party caucuses and elections, and the conduct of public affairs?

I am certain that the women who would not take part in politics would be found much more numerously in the great body of intelligent women than in any other class, and hence that while the result of this extension of suffrage would be to add to the intelligent vote, it would add in a much greater proportion to a vote which our government in its too great generosity has already extended by limits many thousands too large for the public interests.

I do not want to be understood as saying that I believe women generally have not the ability requisite for the exercise of the right of suffrage, for I believe that the average intelligence of women is fully equal to that of men, but what I do say is that with the present opposition to the measure, more of the women, intelligent and best qualified to exercise the right of suffrage, would refuse to exercise it, than women of any other class.

I cannot, within the three minutes allowed each member in which to explain his vote, enter into any of the many arguments which have been advanced upon this subject.

It is, perhaps, proper to say that I have endeavored to give this subject the careful consideration which its great importance demands, and, with that end in view, have examined with care the mass of documents which have been sent to me bearing upon this subject, as well as heard all the speeches delivered at public meetings of the Suffrage Committee held in this chamber.

It is also, perhaps, proper to say that I have been able to approach the consideration of this subject with a mind free from any prejudice, and with the purpose of determining for myself whether the proposed extension of the right of suffrage was in the interests of woman and for the public good.

However, as I have said, believing that the very great majority of women do not want the right of suffrage and that granted under such conditions it would prove to be neither in the interest of woman nor for the public interest, I believe, Mr. President, that my duty lies in voting to sustain the report of the committee, I vote aye.

Mr. Maybee — Mr. President, I desire to be excused from voting, and will very briefly state my reasons. I am glad to know that there are gentlemen in this Convention who are intellectually so far the superiors of Ralph Waldo Emerson and John Stuart Mill that they cannot find, in the deliberate utterances of those great

thinkers, anything worthy of their serious consideration. It is, perhaps, not surprising that other gentlemen, who are fresh from the scene of the squabbles between Johnny Milholland and the Committee of Thirty, should look upon politics as a disgraceful warfare. (Laughter.) But it may very well be, Mr. President, that if the elective franchise is conferred upon women, politics will lose much of the character of disgraceful warfare that it is now said to possess. I withdraw my excuse, and vote no.

Mr. Moore — Mr. President, I desire to be excused from voting and will briefly state my reasons if I can within three minutes. I believe Mr. President that this is a historical moment. I believe that we here are making history and that we are making that kind of history which will redound to our advantage or our disadvantage. In my judgment, Mr. President, the opponents of woman suffrage in this Convention have given no valid reasons for refusing to submit it to the people of this State. The Esquires in the English Parliament smiled and laughed at the monster petitions of the Chartists and yet to-day the principles of the Chartists are embodied in the British Constitution. Mr. President, as a Republican, since I have been on this floor I have longed for the old spirit of the old Republican party, that brave and gallant giant which, in 1860, sprang into the political arena with the cries of free speech, free soil and free men. (Applause.) I have seen, Mr. President, in this Convention, constantly a certain fear, fear, fear. "You must not do this, and you must not do that, and somebody shaking in his boots all the time. (Applause.) Mr. President, I desire to say that I am not afraid to vote for female suffrage in this Convention." (Applause.) Mr. President, as I have been accused of not being a Republican any longer because I dared to stand there, I say I stand by the side of the New York Press, that great Republican paper, the New York Recorder and hosts of other lesser Republican papers. (Applause.) Mr. President, I ask to withdraw my request to be excused from voting and vote no, and I should vote a thousand votes, if I had them, against the report of this committee. (Applause.)

Mr. Osborn — Mr. President, I desire to be excused from voting and wish to state briefly my reasons. On the eighth day of last last May, my eye was caught, by that shield behind your honored chair, in which two women upheld the shield of State. Looking at them through these long and somewhat weary weeks, I have been cheered when I felt sad, and enthused by the remark which they whispered in my ear "Excelsior." For these reasons I have grown to love them, Mr. President. I feel that the least

that I can do for them is to give them a complimentary vote. Mr. President, I desire to withdraw my request to be excused from voting and vote no. (Applause.)

Mr. Pashley — Mr. President, I ask to be excused from voting, and will briefly state by reasons. I am in favor of giving the franchise to women, to the same extent as is exercised by men. I had not the good fortune to be a member of this body when the proposition to strike out the word "male" from the Constitution was acted upon; but had I been, or were that the question under consideration to-night, it would have my unqualified approval and support.

Mr. President, when I first read the proposition now before us, it seemed to me to be eminently proper and unobjectionable; but, on reflection, I have reached a different conclusion, and I feel constrained to support the report of the committee. I do not favor the submission of propositions, separate and apart from the Constitution that we propose to submit. There are before this Convention, numerous proposed amendments, many of which are sure to be reported adversely. If, then, we allowed this measure, now under consideration, to be submitted separately, we shall establish a precedent and we shall be compelled in all fairness to allow the same privilege to the advocates of any measure reported adversely. We cannot grant to one portion of the community privileges that we deny to another. Upon this principle, I voted only last week against a similar measure in relation to the abolition of capital punishment, and I cannot now vote to submit this question separately. I now withdraw my request to be excused from voting, and vote aye.

Mr. Powell — Mr. President, I desire to be excused from voting, and will state my reasons, entirely uninfluenced, by my own predilections, so far as this matter is concerned. But because 600,000 citizens of this State have asked that this question may be submitted to the people, because the great laboring classes of this State, the men whose hands are hardened by honest toil, because this class, so far as we have been able to ascertain their views, are anxious that this question should be submitted to the people, because this question is simple and concrete and not at all complex in its character, because I believe my constituents are wiser than am I, even though I am a member of this august Convention, because I believe that the wisdom of the people of the State of New York is greater than the wisdom of this Convention, or even the Committee on Suffrage, great as is the wisdom of that committee, because I have, as I have already declared on this floor, an unlimited confidence in the integ-

rity and the intelligence and the honesty of the people of this State, because, sir, of these reasons, I am opposed to the report of this committee, and I withdraw my request to be excused from voting, and vote no. (Applause.)

Mr. Putnam — Mr. President, I ask to be excused from voting, and will briefly state my reasons, or some of my reasons, I had, perhaps, better say. Mr. President, I believe that the philosophy of history teaches, if it teaches anything, that man was made by his Creator to rule the State, and that woman was made by her Creator to rule the home. (Applause.) Mr. President, I know that my constituency are opposed to woman suffrage — the women as well as the men. I feel that those noble Christian women who rule our homes, who wield their influence in the charitable institutions of our State, who instill patriotism and love in the hearts of their sons and husbands and brothers, are in the main opposed to woman suffrage. Mr. President, for these reasons and for many others, I ask to withdraw my request to be excused from voting, and vote aye. (Applause.)

Mr. Smith — I believe the right to vote to be a natural right. By the laws of nature, woman is endowed with the right of self-defense, in virtue of her right to live, and the right to defend herself implies the right to make that defense as complete as possible, and hence it implies the right to unite with the other members of the human family for the same purpose, all standing together on the platform of self-defense for greater security; and such joining and standing together has been, from the beginning, nothing less than the organization of the State, the establishment of civil government. It is, therefore, upon this great platform of self-defense, that government is founded, to defend and protect the enjoyment of human rights. In these circumstances, the ballot is the only means by which the individual can be admitted to participate in government. The right to vote, therefore, is a right springing from self-defense, and a natural right that neither men nor women should be denied enjoyment of, any right conferred by the Creator.

If we refuse to recognize the rights of women to equal suffrage with men, then we should instruct the Committee on Bill of Rights to report an amendment to the preamble of the Constitution and make it conform to the truth; and as so amended, it would read as follows:

PREAMBLE.

We, one-half of the people of the State of New York, grateful to Almighty God for the subjection of the other half, and for the bless-

ings of freedom for ourselves, in order to continue our supremacy, do establish this Constitution. (Applause.)

Mr. W. H. Steele — Mr. President, I desire to be excused from voting, and I will briefly state one reason. I have heard very much in this Convention about the members of the Convention being constantly button-holed by the ladies who are in favor of woman suffrage. I have seen nothing of it. I have simply heard it stated upon this floor and elsewhere, though I dislike to believe that it has prevailed to so great an extent as some members of the Convention would have us believe; but, sir, I am in favor of this adverse report; as I was in our Legislature thirteen, fourteen and fifteen years ago, when the ladies did approach me in this chamber, and also a great many other members, upon this question. I have one particular reason, and that is I believe that my constituents are not generally in favor of it. I have been approached by but two ladies in the city of Oswego, asking me to support this question. After they found that I was elected to this Convention (they said nothing about it before), they desired me to pledge them that I would support the question allowing the women of the State of New York to vote. I believe, sir, that I was so much impressed by their pleas that I, inadvertently, said at one time that I thought I would say nothing either in favor of or against it. I have kept my promise, however much I may have desired to speak upon the subject. I have said nothing either in favor of or against it. But, sir, there is a strong opposition prevailing against it along the shores of Lake Ontario and down the St. Lawrence; although I am not in full accord with it. A current story fairly expresses the sentiment of many of the male population in that section. Near the lake lives the honest wife of an honest fisherman, with seven noble boys, but no girls. This estimable woman had devoted so much of her time to raising voters that she had found no leisure for considering her own individual right of suffrage. A lady neighbor called one day, and said to her: "Mrs. Prolific"— we will call her that because that was not her name —"what a pity it is that one of your fine boys is not a girl." Down at the lower end of the table, the small boy, the irrepressible small boy, spoke up: 'I'd like to know who'd a bin 'er, Sam wouldn't a bin 'er, Bob wouldn't a bin 'er, Bill wouldn't a bin 'er, Jack wouldn't a bin 'er, and you can bet-cher bottom dollar I wouldn't a bin 'er. She wouldn't have no show in this fambly."

The President — The gentleman's time has expired.

Mr. W. H. Steele — I withdraw my request to be excused from voting, and vote aye.

Mr. Storm — Mr. President, I desire to be excused from voting and will briefly state my reasons, and will try to say something new, if it is possible. It has been my lot through life to come into contact largely with working women, and I have had ample opportunity to ascertain and learn their needs. I had the pleasure to-day of being presented to a lady upon this floor, whom I knew by reputation for a long time, by the name of Mrs. Blake, and she paid me the compliment, also, that she had known me for a long time, owing to a circumstance which occurred in a factory with which I am connected. I will briefly relate that incident because it touches this subject very closely. We had in that factory a hundred men at work. One of those one hundred men died in the course of time and left a wife and family. We learned that the man had taught his wife the trade which he was laboring at, and, in order to give her an opportunity to earn a livelihood for herself and family, we offered her her husband's position. She accepted it and we put her in a separate place, but, nevertheless, those one hundred men protested against that woman as interfering or intruding upon their line of business. They waited upon us and put the matter in such a shape that either that woman would have to leave or that they would leave, would strike. We tried to reason with them, but it was impossible. The woman must leave or they would leave, and we finally allowed the one hundred men to leave. (Applause.)

And thus we made it possible for one woman to drive away one hundred men, and when they did leave we told them that no one of them should ever come back again, and they never did. Now, Mr. President, notwithstanding that and the fact that I have stated that I know the needs of the women and that my feelings toward the sex have not changed from that day to this, I am constrained to support the report of the committee, and, therefore, withdraw my request to be excused from voting, and vote aye. (Applause.)

Mr. Tibbetts — Mr. President, actuated by a desire to do everything which will elevate the elective franchise, I came here believing, from my own personal knowledge, that the ladies of my locality were bright enough, intelligent enough, able enough, to cast a vote. I came here thinking that perhaps it was the proper thing to allow them to do it. After I got here I heard grave and reverend delegates in this Convention say that from personal knowledge there were ladies who were not proper persons to cast a ballot, who should not cast a ballot; they were so bad, so low, that it would degrade the ballot. I have, Mr. President, the knowledge that in my own locality there were proper persons to be entrusted with the ballot. I have equal information from the other side that there

are those among these women who are not proper to be entrusted with the ballot. I am in the position of the defendant who answers that he has not sufficient information or knowledge to form a belief. Therefore, with the idea that in the Committee of the Whole we may be enlightened, and that this matter may have such a light thrown upon it that I will not only have knowledge and information, but belief, I shall cast my vote to bring it there. I vote no.

Mr. Titus — Mr. President, I ask to be excused from voting, and will take advantage of the opportunity to state my reasons. I have supported this matter for the reason that I believe in the brotherhood of men, the sisterhood of women and the fatherhood of God. The members of this Convention who have voted aye on this occasion, it is my earnest wish and prayer that those who are fortunate enough to yet have mothers, when they look into their eyes and into the eyes of their wives and children, may reconcile their consciences with what they have done to-night. And, further, that when they lay their heads on their pillows to-night that their conscience will tingle with that remorse, which, I think, their action justly entitles. Mr. President, I withdraw my request to be excused from voting, and vote no.

Mr. C. S. Truax — Mr. President, I desire to be excused from voting for the following reasons: I have paired with Mr. McClure, who was obliged to leave before his name was reached, and who, if present, would have voted aye.

Mr. Vedder — Mr. President, I ask to be excused from voting. I shall not discuss the question whether the hand that rocks the cradle should have the right to cast the ballot that defends that cradle; whether the spirit of chivalry has deserted the bosoms of the men of New York, and that they declare that the right of a woman to vote depends now, and forever will depend, upon her physical capacity or power as a warrior to hush the thunders and chain the lightnings of political wrath, except to say, that such sentiments are a slander upon the valor and manhood of the people of this State. (Applause.)

If war should be declared to-morrow, or at any future time, a million fighting men, sons of New York, would swear by the altar, and on the shields of their fathers, and keep the oath good; not only that our women should do no fighting, but that no sword would sleep in its scabbard so long as there was a woman to defend. (Applause.)

I shall not debate whether or not it is right that man should continue to chain woman to his political chariot wheels and drag her,

as a lifeless unpolitical entity around the State, as Achilles did the body of Hector around the walls of Troy, or whether or not it is ordained of God that sex and sex alone shall determine the political dust out of which voters shall be made.

I shall not at this time enter any contention as to whether the wife who has been chosen by her husband to be the mother of his children, and who may go with him into all other places where he by right may go, and share with him all other rights and joys, but shall not go with him into the American voting booth — that holy of political holies of American citizenship, the fortress of liberty and law, that sanctuary of the best hopes and highest aspiration of civilization on the western continent, because those mighty questions are not properly before us for decision at this hour. These questions are for another forum, the forum of the people — the ultimate judge.

The question now is not whether the women of the State shall have the right to exercise the elective franchise, but the supreme and only question before us is whether we, the delegates to this Convention, shall, by our votes, permit the constitutional voters of the State to vote upon the question whether they will permit others to enjoy the same suffrage rights that they, the voters, now enjoy.

Many, very many thousands of the voters of the State have exercised the sacred inalienable right of petition, and have prayed this Convention to be allowed to vote upon the question whether or not women might hereafter have the right to vote, and we, the servants of these voting people, have no more right to disfranchise them on this question than we would to vainly attempt to disfranchise them absolutely and unqualifiedly as to every other question. The State Constitution is a compact made by and between the citizens of the State to govern themselves in a certain manner. This State, therefore, is a government of voters by the voters, and the great question, as I have said, now before us, is whether or not these voters and governors shall have the right to enlarge the rights of those who are governed and to admit a certain class of them into an equal partnership in governing the State. It is a question of the highest privilege and governmental rights, and, as the people do and should rule, I withdraw my request to be excused from voting, and to vote this question to the people I vote no. (Applause.)

Mr. Woodward — Mr. President, I ask to be excused from voting, and will briefly state my reasons. I have listened to many able speeches by men abler than myself, and with more powerful

voices than I possess, who, with much of wit and pathos, have addressed you upon this question. Some of these speeches have been uttered with very much of sound and fury, but with very little of argument. And they have forcibly reminded me of the words of a Latin classic, *Vox et praeterea nihil* — voice and nothing besides — and I could but think of the poet's line:

"Hard is the heart whom charms cannot enslave."

And also of another line:

"In aught that tries the heart, how few withstand the test."

One of the gentlemen who addressed you gave us a good deal of very pretty and witty poetry, uttered with so much unction that he reminded me of some lines I had read in a book which was written by James B. Wiggins, of Boston; and as they come from a city sometimes called the "Hub," perhaps I will be pardoned if I quote them:

"Oh, a woman, bless her eyes,
Is a constant mild surprise,
To a man;
She will muddle all his wits,
She will break him into bits,
She will get him into fits,
When she can."

Judging from the wild earnestness of his delivery, and the fury of his utterance, the poetic frenzy to which he was wrought up, I should be inclined to question whether women, in the language of Wiggins, the great Boston poet, had not set him into fits. Yet I must say, as you will all say with me, that I admired his eloquence, and as I watched his eyes "in a fine frenzy rolling," I said to myself he is a greater orator than Marc Antony is represented to be in Shakespeare. His eloquence was splendid, his poetry beautiful, but his arguments seemed to me to be few and far between. Now, I would say with another poet:

"Yet, let us ponder boldly,
'Tis a base
Abandonment of reason to resign
Our right to thought, our last and only place
Of refuge; this at least shall still be mine."

I would also say with another poet:

"A thousand years scarce serve to form a State,
An hour may lay it in the dust, and when
Can man its shattered splendors renovate,
Recall its virtues back and vanquish time and fate."

Again, this is a representative republican government. It is not a democracy. In a democracy all the people are to be called together to make the laws and to decide upon the questions that concern the welfare of the State. Not so in a representative government. Under such a government a few persons are chosen for their worth, integrity and ability, to represent the people and make laws for the State. Those representatives represent the men of the State, whether they are voters or not, whether they are naturalized citizens or unnaturalized. They represent the women and children of the State. They represent not only their own mothers, wives and daughters, but all the mothers, wives and daughters of the State. If they do not do this, they are recreant to their trust, and their names and memory should be execrated.

I would like, for myself, to confer the right of suffrage upon the women of this State, if I thought it would benefit them or be any real advantage to the State. But, believing that it would be disastrous, both to the State and our wives and daughters, I am not in favor of this new ism. Were I in favor of it, I should be in favor of striking the word "male" out of the Constitution, rather than of sending it to the people to be voted upon. If it is right in this State, it is right in all of the States, and the ignorant black women of the South should be at once enfranchised. But I have never seen or heard a logical argument in its favor. The standing argument put forth and iterated and reiterated in almost every printed document showered upon the delegates to this Convention and of every speech made in favor of female suffrage upon this floor is "that the women of the State are not represented."

This is a fallacy, and the arguments based upon it are fallacious, the reasoning sophistical. The right to the ballot is derived from the right to self-defense. Grant that a man has but a single right, the right to life, and following as a sequence from that right is the right to defend that right. Men are allowed to participate in government by the use of the ballot in order that they may defend their rights and the rights of their wives and children. Men are in duty bound to defend their wives and children, their sisters and mothers. They are to do this in the Legislature, at the polls, as well as upon the battlefield. Nature has placed this duty upon the male sex. What man that has any manhood about him will prove recreant to this duty?

Whoever is chosen to office, or to make laws, or to execute them, is chosen, not to represent the male sex alone, but all the women and children in his locality. He is not chosen to represent his own wife and children merely, but all there may be in his locality

he represents. This he does. It, therefore, follows that the women are represented. This is a representative government. All classes are represented. Let the Legislature make any attack upon your wife and daughter, or mother and sister, or upon mine, and how quick you and I would fly to the rescue. A man might tread upon my toes, perhaps, with impunity, but let me catch him purposely treading upon my wife's toes or any other of my female relatives, and there would be a war at once. I should fly to the rescue, and what man would not?

But, suppose the right or wrong of suffrage should be given to the wife, as well as the husband; if they both vote alike, there would only be two votes to count instead of one — if they voted differently, the vote of one would neutralize the other. If they disagree in politics, it would only be an apple of discord thrown into the hitherto peaceful family circle.

In cities where drunkenness prevails and where votes are sold by the hundred it would only enable the drunken husband to sell his own vote and that of his wife and daughters, if he has any, and get drunk on the recompense received. And this is one reason why I do not wish to submit the question to the people. The lower down you go in our cities the more likely they will be to vote for it with the idea of selling the vote of self and wife and female relatives.

But 'tis said we must submit this question of female suffrage to the people and that the people will decide it and decide it correctly. Some even say we must, out of deference to the ladies who have so eloquently addressed us, submit it to the people and they will vote it down. If after all the eloquent speeches made here by the ladies and gentlemen *pro* and *con*, and after the bushels of printed documents *pro* and *con* that have been showered, without stint, upon us, we are incapable of deciding this question aright for the best interest of the State and the ladies, our wives, mothers and daughters and all our female acquaintances, how can we expect the people at large and the ignorant voters in our city and villages will be able and properly prepared to decide it?

Will not the miserable drunken voters in many of our cities be inclined to vote for it, for the reason that when he sells his vote he can sell the vote of his wife and daughter, if he has any? Will giving women the right to vote produce harmony in the family?

'Tis said persons differing in their religious views sometimes intermarry and we have not found it necessary to enact laws to prevent it. Shall we, therefore, pass laws to undo such intermarriages?

They are not now common, and yet many of them do produce discord in families. A Protestant marries a Catholic and then, if there are children, the contest arises whether they shall attend a Catholic school or church, or a Protestant school or church. I know the female sex are desirous of doing everything that men do. Not content with attending the colleges established for young ladies, such as Vassar, Smith, Elmira College or Wellesley, excellent colleges where a first-rate classical education can be obtained, they are seeking an entrance into colleges established for young men. They are seeking positions as lawyers, doctors and preachers. And, if the young men ride bicycles, they must also have a bicycle and ride it through the streets so as to be able to say to the young men, we are as big and smart as any of you. They are even claiming that they have a prior right to pantaloons, and that they first wore them, and, therefore, have a prior right to them. Do not let us encourage all this insanity. It does not pervade the mass of women. It is only a few of them that have caught this wild fever. The marriage to good husbands would cure many of them of this fever; it is only an epidemic that prevails in some localities. The mass of our ladies, wives and daughters, have not caught it.

One might almost be inclined to say of some of them, as the little boy did of the female teacher who had punished him, he whispered: "I wish you were dead or married." I would not go so far as that, but would say of some of the leading women suffragists: "I wish you were well married." I withdraw my request to be excused from voting, and vote aye. (Applause.)

The report of the committee was agreed to by the following vote:

Ayes — Messrs. Acker, Allaben, Alvord, Baker, Banks, Barnum, Barrow, Becker, Bowers, Brown, E. A., Brown, E. R., Burr, Cady, Clark, G. W., Clark, H. A., Cochran, Cookinham, Danforth, Davenport, Davies, Davis, Deady, Deterling, Deyo, Doty, Durfee, Emmet, Farrell, Foote, Forbes, Francis, Frank, Andrew, Fuller, C. A., Galinger, Gibney, Giegerich, Goeller, Goodelle, Green, A. H., Griswold, Hamlin, Hawley, Hecker, Hill, Hirschberg, Holls, Hotchkiss, Hottenroth, Jacobs, Johnson, J., Johnston, Kellogg, Kimmey, Kinkel, Kurth, Lester, Lewis, C. H., Lewis, M. E., Lyon, Mantanye, Marks, Marshall, McCurdy, McIntyre, McLaughlin, C. B., McMillan, Mereness, Meyenborg, Nichols, Nicoll, Nostrand, O'Brien, Ohmeis, Parkhurst, Parmenter, Pashley, Peabody, Peck, Platzek, Porter, Pratt, Putnam, Root, Spencer, Steele, A. B., Steele, W. H., Storm, Sullivan, T. A., Tekulsky, Truax, C. H., Turner, Vogt, Wellington, Whitmyer, Wiggins, Williams, Woodward, President — 98.

Noes — Messrs. Abbott, Ackerly, Arnold, Barhite, Blake, Campbell, Carter, Cassidy, Chipp, Jr., Church, Coleman, Cornwell, Countryman, Crosby, Dean, Dickey, Durnin, Fields, Floyd, Frank, Augustus, Fraser, Gilbert, Gilleran, Hedges, Holcomb, Jenks, Kerwin, Lauterbach, Lincoln, Manley, Maybee, McArthur, McDonough, McKinstry, McLaughlin, J. W., Moore, Morton, Mulqueen, Osborn, Parker, Phipps, Pool, Powell, Redman, Roche, Rowley, Sandford, Schumaker, Smith, Speer, Springweiler, Sullivan, W., Tibbetts, Titus, Towns, Tucker, Vedder, Veeder — 58.

On motion of Mr. Cookinham the Convention, at 11.24, adjourned to Thursday morning.

Thursday, A. M., August 16, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber at the Capitol, Albany, N. Y., Thursday morning, August 16, 1894.

President Choate called the Convention to order at ten o'clock.

The Rev. Dr. Schlesinger offered prayer.

On motion of Mr. O'Brien the reading of the Journal of yesterday was dispensed with.

Mr. M. E. Lewis — Mr. President, I ask to be excused from attendance on Saturday of this week on account of business engagements.

The President put the question on granting leave of absence to Mr. Lewis, as requested, and it was determined in the affirmative.

Mr. Jenks — Mr. President, I ask to be excused from attendance on Saturday of this week on account of business engagements.

The President put the question on granting leave of absence to Mr. Jenks, and it was determined in the affirmative.

Mr. Arnold — Mr. President, I ask to be excused from attendance on Saturday on account of pressing business engagements.

The President put the question on granting leave of absence to Mr. Arnold, and it was determined in the affirmative.

Mr. Deyo — Mr. President, owing to a pressing personal engagement, I ask to be excused on Saturday and Monday.

The President put the question on granting leave of absence to Mr. Deyo, as requested, and it was determined in the affirmative.

Mr. Porter — Mr. President, I ask to be excused from attendance on Saturday of this week and Monday of next week.

The President put the question on granting leave of absence to Mr. Porter, and it was determined in the affirmative.

Mr. Abbot — Mr. President, I desire to be excused on Monday and Tuesday on account of a professional engagement of long standing.

The President put the question on granting leave of absence to Mr. Abbott, and it was determined in the affirmative.

Mr. Griswold — Mr. President, I ask to be excused on Saturday of this week on account of a pressing engagement.

The President put the question on granting leave of absence to Mr. Griswold, and it was determined in the affirmative.

Mr. H. A. Clark — Mr. President, I ask to be excused on Monday of next week on account of an important business engagement.

The President put the question on granting leave of absence to Mr. Clark, and it was determined in the affirmative.

Mr. Hottenroth — Mr. President, I desire to be excused on Friday afternoon and evening and Saturday's sessions.

The President put the question on granting leave of absence to Mr. Hottenroth, and it was determined in the affirmative.

Mr. Mulqueen — Mr. President, I ask to be excused on Monday.

The President put the question on granting leave of absence to Mr. Mulqueen, and it was determined in the affirmative.

Mr. McClure — Mr. President, I ask to be excused for Monday of next week.

The President put the question on granting leave of absence to Mr. McClure, and it was determined in the affirmative.

Mr. Deady — Mr. President, I would like to be excused Saturday and Monday.

The President put the question on granting leave of absence to Mr. Deady, and it was determined in the affirmative.

Mr. Kimmey — Mr. President, owing to a previous engagement, I desire to be excused on Friday evening and Saturday.

The President put the question on excusing Mr. Kimmey, and it was determined in the affirmative.

Mr. Forbes — Mr. President, I desire to be excused on Saturday and Monday.

The President put the question on granting leave of absence to Mr. Forbes, and it was determined in the affirmative.

Mr. Veeder — Mr. President, I rise to a question of privilege.

The President — Mr. Veeder will state his question of privilege.

Mr. Veeder — Is there a quorum still left?

The President — Now in the House?

Mr. Veeder — I mean left after these excuses already made have been granted?

The President — Well, the Convention will have to look out for that. There have not been a sufficient number of excuses as yet to prevent a quorum.

Mr. Mereness — Mr. President, I received news this morning of illness in my family. I have not made any excuses heretofore, and I feel that it is necessary and proper that I, at least, be excused so as to be with my family over Sunday. I ask to be excused Saturday afternoon and Monday.

The President put the question on granting leave of absence to Mr. Mereness, and it was determined in the affirmative.

Mr. Acker — Mr. President, I would like to go to the races this afternoon, and for that purpose I would like to be excused. (Laughter.)

The President put the question on granting leave of absence to Mr. Acker, and it was determined in the affirmative.

Mr. Springweiler — Mr. President, I ask to be excused Saturday and Monday.

The President put the question on granting leave of absence to Mr. Springweiler, and it was determined in the affirmative.

Mr. Moore — Mr. President, in order that I may act understandingly in voting to grant any more excuses, I ask that the Secretary will state the number now excused.

The President — That number will be ascertained by the Secretary, and no motion will be put until the information is forthcoming.

The Secretary informs me that sixteen have been excused for Saturday and Monday.

Mr. A. B. Steele — Mr. President, before the Convention had decided to hold sessions on Monday I made a legal engagement that I am unable to obviate for next Monday, and I, therefore, ask to be excused for that day.

The President put the question on granting leave of absence to Mr. Steele, and it was determined in the affirmative.

The President — The Secretary will now call the list of com-

mittees for the reports ordered to be presented to-day as to the condition of the business before us.

The Secretary — The Committee on Preamble and Bill of Rights.

The President — Has Mr. Francis any further report to make as to the condition of business before the Committee on Preamble and Bill of Rights?

Mr. Francis — I have some reports that are in course of preparation and will be here within a very short time.

The President — The only object of this call is for chairmen of committees to state the condition of business before their respective committees.

Mr. Francis — I will say, in reference to the condition of our business, that it is practically finished, and so we shall make our report to the Convention.

The Secretary — Legislative Organization.

The President — Is Mr. Becker present?

Mr. Lincoln — On the question of the report from the Committee on Legislative Organization, in the absence of the chairman, I would say that that committee is now actively engaged in its work and hopes to be able to make a final report by the twenty-first.

The Secretary — Legislative Powers and Duties.

Mr. Vedder — I am directed by the Committee on Legislative Powers and Duties to state that that committee has had fifty-seven proposed amendments submitted to it, and a number of petitions and resolutions, and the committee have disposed of all of them, and has nothing more to do, so far as that committee is concerned, and, so far as that committee is concerned, it is prepared to adjourn *sine die.*

The Secretary — Governor and State Officers.

Mr. McMillan — The Committee on Governor and State Officers, under the resolution of August 10, 1894, would respectfully report that the whole number of proposed amendments referred to the committee is thirty-two. Your committee has taken action on twenty-nine of those proposed amendments, as follows: Adversely, twenty-eight; favorably, one. Two of the proposed amendments are held to await the action of the Convention upon the article relative to the government of cities, and one is still under consideration. The committee can clear its docket as soon as action is taken on the cities article.

The Secretary — Judiciary.

Mr. Root — Mr. President, the Judiciary Committee has had under consideration seventy-four amendments. It has reported, either specifically or by reporting the sections to which the proposed amendments refer, upon fifty-five. It has acted upon five more and the reports are now ready to be submitted. It has acted upon six more, the introducers of which do not desire any reports. It holds five, because some further hearing is desired by the introducers, or because some additional information is desired by them before the committee acts upon them, and of the remaining three, one has been considered and a report has been drafted, which is now in the hands of each member of the committee for the purpose of revision.

The Secretary — State Finances and Taxation.

Mr. Acker — The Committee on State Finances and Taxation, pursuant to the resolution of the Convention adopted August tenth, requiring information as to the condition of business before it, respectfully reports that it has voted to report to the Convention adversely, if at all, nearly all the propositions referred to it. The propositions not yet acted upon are in the hands of an efficient subcommittee, and will be presented to the Convention on or before August twenty-first, unless further time is granted.

Mr. Parmenter — Mr. President, I desire to present a minority report upon the judiciary article, O. No. 383, reported by the majority of the Judiciary Committee.

DOCUMENT No. 36.

Minority Report of the Committee on Preamble and Bill of Rights on the Proposed Constitutional Amendment to Amend Article 1 of the Constitution, as to Damages for the Loss of Human Life — No. 192; Int. 191.

The undersigned, a minority of the Committee on Preamble and Bill of Rights, present the following report:

We recommend to the Convention the following:

Proposed constitutional amendment, to amend article 1 of the Constitution, as to damages for the loss of human life.

The Delegates of the People of the State of New York, in Convention assembled, do propose as follows:

Article 1 of the Constitution is hereby amended by inserting the following as a new section:

Sec. —. The right of action is hereby given for loss of life and for injury to the person, and no statutory limitation shall be placed

upon the amount of damages recoverable, or upon the right to recover by civil action for the loss of human life or for injury to the person.

GIDEON J. TUCKER.
W. D. VEEDER.
ANDREW H. GREEN.

The President — This minority report, under the rules, will be received and printed.

The Secretary — The Cities Committee.

Mr. Jesse Johnson — Mr. President, without consulting with the committee, having been away, I think I can report this (if a verbal report is acceptable): The Cities Committee now have before them article No. 13 for revision. They purpose to take up the subject of franchises and submit it at an early day; also, the question of debt limitation. In both cases an amendment is nearly prepared. I have no further report.

The Secretary — Committee on Canals.

Mr. Cady — Mr. President, the Canal Committee has taken final action on all the amendments submitted to it, and will be able to make its final report within the time prescribed by the resolution.

The Secretary — Committee on Railroads.

Mr. Davies — The Committee on Railroads hopes to close up all business referred to it and make a final report thereon on or before the twenty-first of August.

The Secretary — Committee on Corporations.

Mr. Hawley — The Committee on Corporations have considered all of the amendments which have been referred to it. It has completed the business before it, and expects to have no more and to make no more reports to the Convention.

The Secretary — The Committee on County, Town and Village Government.

Mr. C. B. McLaughlin — Mr. President, the Committee on County, Town and Village Government has completed all the work that has been sent to it and has so reported to the Convention. There is nothing in the hands of that committee at this time.

The Secretary — The Committee on County, Town and Village Officers.

Mr. Parkhurst presented a written report, which the Secretary read as follows:

The Committee on County, Town and Village Officers respectfully report that it has finally disposed of all matters referred to said committee.

(Signed.) J. F. PARKHURST,
Chairman.

Mr. Parkhurst, from the Committtee on County, Town and Village Officers, also presented the following report, which the Secretary read as follows:

The Committee on County, Town and Village Officers, to whom was referred the resolutions offered by Mr. McKinstry, in reference to the defalcations of county treasurers, etc., respectfully recommend the passage of said resolution, No. 164.

The President put the question on the adoption of said resolution, and it was determined in the affirmative.

The Secretary — Committee on State Prisons.

Mr. McDonough, from said committee, presented a written report, which the Secretary read as follows:

The Committee on State Prisons, etc., reports to the Convention that the said committee has disposed of all business referred to it, and that all amendments referred to said committee have been reported either favorably or adversely.

(Signed) JOHN T. McDONOUGH,
Chairman.

The Secretary — Committee on Militia.

Mr. Hedges — The Committee on Militia have considered all matters before them, and expect to finally report on the twenty-first instant.

The Secretary — The Committee on Education.

Mr. Holls — Mr. President, the Committee on Education has had referred to it twelve proposed amendments, and has also received numerous suggestions and propositions, not in the form of amendments, both from members of this Convention and from educators of the State. It has considered them all, and, with the exception of one subject which has only very lately been presented to them, it has, substantially, completed its labors. There is no reason to doubt that the committee will be able to report finally the articles as agreed upon for the consideration of this Convention on or before the date set by the resolution.

The Secretary — The Committee on Charities.

Mr. Lauterbach — Mr. President, the Committee on Charities

has considered all propositions submitted to it, as well as all petitions referred to the committee, and has disposed of them by formulating a proposed amendment, which will emanate from the committee and which will be submitted to the Convention on Monday, together with a statement accompanying it and explaining it. The amendment when submitted will be referred (if the Convention will be willing) to the Committee on Governor and State Officers, as it contemplates the creation of three constitutional boards which are not now in existence, and also to the Committee on State Prisons, as one of the boards contemplated will have jurisdiction of such institutions. The proposed amendment and statement or report will be submitted on Monday.

The Secretary — The Committee on Industrial Interests.

Mr. Gilbert — Mr. President, I think this committee will have a final report of all matters submitted to it by the twenty-first.

I think there is one matter which stands in a peculiar way, to which I wish to call the attention of the Convention, and I am directed by the committee to report to the Convention the situation as to proposed amendment No. 95, introduced by Mr. Burr, relating to monopolies and trusts. That proposed amendment was referred to our committee and has been considered by it and was referred to a sub-committee, which had also considered it. To our surprise about a week ago the Committee on Corporations reported a proposed amendment, which is now on general orders No. 26, covering precisely the same subject, the subject which was before our committee. I am directed by the Committee on Industrial Interests to ask to be excused from the further consideration of No. 95, for the reason that we have already been anticipated by a committee to which I understand the matter had not been referred, but on which they acted upon their own motion. We ask simply to be excused.

Mr. Burr — Mr. President, I trust that the Committee on Industrial Interests will not be discharged from the further consideration of this proposed amendment. I had the honor to submit to the Convention on the twenty-ninth day of May last a proposed amendment prohibiting the formation of trusts or combinations to regulate the price or control the production of any commodity, and that was referred to the Committee on Industrial Interests. In obedience to the call of that committee, I appeared and explained the views I had upon that subject, and I hope to the satisfaction of the committee. Now, later on, the Committee on Corporations took up the subject and my amendment, as I am informed, and they reported to the Convention, substantially, the amendment I pro-

posed. I believe, sir, that is a good, a valuable and a wise amendment, and I want to have the support of the committee to which it was particularly referred, and for that reason I am anxious to secure that report. I ask that that committee, favorably disposed as it is to this amendment, be not discharged from its consideration.

Mr. Lester — Mr. President, I hope the Convention will excuse the Committee on Industrial Interests of the State from the further consideration of this proposition. All the work that it is possible for the committee to do, with respect to such a matter, I understand, has been accomplished by the Committee on Corporations. It has given attention to the matter. It has reported a proposed amendment in the form which it deems best suited to accomplish the purposes sought to be accomplished by this proposed amendment, and I see nothing further for any committee as such to do with the proposition under consideration. It has reached the point where it should be considered by the Convention, and I see no reason why it should be delayed longer in any committee. It is now on general orders and that is the place, it seems to me, where it belongs. I hope the request of the committee to be relieved from the further consideration will be granted by the Convention.

The President put the question on the motion to discharge the Committee on Industrial Interests from the further consideration of No. 95, on the ground that it has already been considered by the Committee on Corporations, and it was determined in the affirmative.

The Secretary — Banking and Insurance.

Mr. Augustus Frank — Mr. President, the committee are not ready yet to report finally. Another meeting will be held to-day. Several matters are before the committee of interest, which will then, I think, be decided, and we will be able to report in a very short time, perhaps by the twenty-first.

The Secretary — Salt Springs.

Mr. Alvord — Mr. President, the committee, of which I have the honor to be chairman, has had one proposition before it. It has reported that favorably, and it is now in Committee of the Whole of the Convention. We have had no further meetings, and no further meeting has been required.

The Secretary — The Committee on Indians.

Mr. C. H. Lewis — Mr. President, this committee has considered the proposition, which was referred to it, with respect to the sale of Indian lands and Indian titles, and have also considered the peti-

tions that have been referred to it, and the committee is able to make its final report this morning.

The Secretary — The Committee on Constitutional Amendments.

Mr. Marshall — Mr. President, the committee has considered all matters referred to it, and is prepared to make a final report in reference to them.

The Secretary — The Committee on Revision and Engrossment.

Mr. Foote — Mr. President, I do not know that any report is required from our committee, but I may say that we have reported to this Convention all measures referred to us, except one, which was referred to us yesterday, general order No. 16.

The Secretary — Privileges and elections.

Mr. Hirschberg — Mr. President, the Committee on Privileges and Elections have the contest in the Second Senatorial District before them and undisposed of. I hope to have a meeting of the committee during the day, and think that case will be taken up at that time and a report agreed upon. One other matter before the committee is the bill presented from the parties to the contest in the Erie county district, which was referred to this committee jointly with the Committee on Contingent Expenses. There has been no joint meeting of these two committees. There may be one before long, providing the time can be obtained to hold meetings.

The Secretary — The Printing Committee.

Mr. Hamlin — Mr. President, I do not know that any special report is required from this committee. I can only say that your committee is in a state of most delightful quietness.

The Secretary — The Committee on Contingent Expenses.

Mr. Lyon — Mr. President, I can only say that the report of our committee is in the condition that Mr. Hirschberg has stated. The only matter before the committee is the matter in regard to the expenses of the Erie county contest.

The Secretary — The Committee on Rules.

The President — We have nothing to report.

The Secretary — The Committee on Suffrage.

Mr. Goodelle — The committee has its work substantially before this Convention. At our next meeting we shall, doubtless, prepare propositions and submit them to the Convention within the time stated.

The Secretary — Forest Preservation.

Mr. McClure — Mr. President, the only matter submitted to that

committee has been considered and a hearing was had yesterday. Another hearing has been set down for next week, at the close of which the committee expects to make its report.

The Secretary — The Select Committee under rule 73, Mr. E. R. Brown, chairman.

The Select Committee on Civil Service.

Mr. Gilbert — All amendments referred to the Committee on Civil Service have been acted upon, and are before the House.

The Secretary — Select Committee on Land Titles.

Mr. A. H. Green — Mr. President, we have presented all the reports we have to make.

Mr. Becker — Mr. President, may I beg the indulgence of the Convention to return to the report of the Committee on Legislative Organization. I have a written report which was prepared yesterday.

The President — The Secretary will read the written report.

The Secretary read the report as follows:

To the Honorable Constitutional Convention:

In the opinion of the chairman of the Committee on Legislative Organization the status of the business before that committee is such that it will be able to report on or before the twenty-first inst. upon all matters pending before said committee, except, possibly, as to the term of the members of the Legislature, which should be delayed possibly until the Convention has passed upon the question of separating State from municipal elections.

(Signed) TRACY C. BECKER,
Chairman.

Mr. Francis — Mr. Chairman, I beg leave to present the following report:

The President — The Secretary will read the report.

The Secretary read the report as follows:

The chairman of the Committee on Preamble and Bill of Rights reports that the committee has taken action upon the proposed constitutional amendments referred to it and has submitted to the Convention reports thereon. Having completed its work, it now requests to be discharged from further committee service.

Mr. Francis, from the Committee on Preamble and Bill of Rights, also reported proposed constitutional amendment (introductory No. 384, printed No. 425), to amend section 10, article 1 of the Con-

stitution in relation to the suppression of gambling, the same being reported for the purpose of having it considered in Committee of the Whole, and without further action by the committee.

Referred to the Committee of the Whole.

The President — Before the general orders are taken up, will the Convention allow the Chair to make a single observation, and to call the attention of the Convention to the fact that there are now on generals orders not less than forty-five separate and independent matters. It is quite evident from the reports made this morning that that list, within a very few days, will be very largely increased by the report of further amendments; that, assuming that the last week prior to the fifteenth of September will be necessary for the work of final revision, there remain but fifty-nine sessions of the Convention, assuming that we hold three sessions a day, except Saturday, and two on that day. Very prompt and vigorous action will be required, inasmuch as there would not be a session for each of these amendments, for the consideration of each of these amendments, and for many of them it is obvious that many sessions are required. The Chair does not understand that it is necessary to wait for the convenience or preparation of the mover of an amendment in order to have it moved in the Committee of the Whole and disposed of, and that it will be in the power of any gentleman to move the consideration by the Committee of the Whole immediately of any amendment.

The Secretary will call the general orders.

Mr. McKinstry — Mr. President, I ask unanimous consent to present a resolution and have it referred to the Committee on Printing.

The President — The Secretary will read the resolution.

The Secretary read the resolution as follows:

R. 174.— Resolved, That 3,500 extra copies of the debates of Wednesday evening, August eighth; Thursday evening, August ninth; Tuesday evening, August fourteenth, and Wednesday evening, August fifteenth, be printed for the use of the members of the Convention.

The President — What subject do they relate to, Mr. McKinstry?

Mr. McKinstry — It relates to the suffrage debates. I desire to have the resolution referred to the Committee on Printing.

The President — It is referred to the Committee on Printing.

The Secretary called general orders.

General order No. 2, by Mr. Roche, prohibiting the granting of pensions to any civil officer or employe.

Not moved.

General order No. 6, introduced by Mr. Alvord, to amend section 7 of article 7, relating to salt springs.

Mr. Alvord — I move that, Mr. President. I move that the Convention go into Committee of the Whole on O. No. 9, general order No. 6.

The President put the question on the motion of Mr. Alvord, and it was determined in the affirmative.

The Convention resolved itself into Committee of the Whole. Mr. Bush in the chair.

The Chairman — The Convention is now in Committee of the Whole on general order No. 6, introduced by Mr. Alvord.

The Secretary read the proposed amendment.

Mr. Marshall — I think that the various amendments which were offered to general order No. 6, as printed (introductory No. 9), were withdrawn at the time of our last session, and I now desire to offer as a substitute for the amendment ——

The Chairman — The Secretary informs the Chair that one amendment was accepted and another one was pending.

The Secretary — Mr. Abbott moved to amend by striking out all of line 1, Mr. Marshall offered a substitute, and Mr. E. R. Brown moved to strike out all after the word "abrogated" in line 1. That is the record here.

Mr. Abbott — I think I withdrew my amendment at the time. If not, I will do so now.

The Chairman — Well, if there is no objection, it will be withdrawn now.

Mr. Marshall — I desire to discuss the substitute which was offered by me at the time of our last discussion of this amendment.

The Chairman — The Chair is informed that there is one amendment pending, offered by Mr. E. R. Brown.

Mr. Marshall — Well, I will discuss that.

The Secretary again read the amendment offered by Mr. Brown, to "strike out all after the word 'abrogated,' in line 1."

Mr. Marshall — Mr. Chairman, since the last hearing on this matter in Committee of the Whole, certain information which was sought has been given to the Convention in several reports, one by the Secretary of State and one by the Superintendent of the

Onondaga Salt Springs Reservation. The Secretary of State reported that there were no data in his office which would give to the Convention such information as it desired as to the number of acres constituting the Onondaga Salt Springs Reservation, and gave some historical information which is quite interesting, but which is not very material upon the question to be determined by this Convention. That report gave the history of the title and gave the form of some of the leases which were executed by the State to various persons who are operating salt blocks and are using lands which are devoted to the manufacture of coarse salt in Onondaga county. The next report which was submitted was that of the Superintendent of the Salt Springs, which is Document No. 39. In brief, the information which is given in that document, is that the lands composing the reservation consists of about 900 acres. These lands are devoted partly to the manufacture of coarse salt, and partly to the manufacture of fine salt. The coarse salt lands, it is stated, are leased by the State to various individuals, for no definite period of time, and the fine salt lands are leased by leases which expired by limitation on the 20th of June, 1889, but which lands are still occupied by the several lessees, under various claims of the right to a renewal of the leases by virtue of the provisions of the various statutes regulating the Onondaga Salt Springs Reservation, particularly the act of 1859. It is now very apparent to those who are at all familiar with the Onondaga Salt Springs Reservation that the time has come when the State should part with its ownership in these lands; at any rate, when the State should go out of the business of manufacturing salt. At the time when the constitutional provision was adopted, which was to the effect that the lands should be held forever for the use of the State for the manufacture of salt, and that such title should never be parted with, the salt springs of Onondaga were substantially the only springs in the United States at which salt could be economically manufactured. There were practically no salt mines known in this State at that time, and, therefore, a monopoly existed, with respect to the manufacture of salt; but, as the time went on, as has been explained by my friend, Governor Alvord, other parts of the country began to develop this industry, so that what at one time was a monopoly has now ceased to be such. The report of the Superintendent of the Salt Springs, which was submitted to the Legislature for the year 1893, during its last session, indicates how the salt business in the Onondaga Salt Springs Reservation has fallen off. In 1862 there were manufactured 9,053,000 bushels of salt upon the reservation. That was the time when the manufacture had reached its

highest point and when the monopoly was a valuable one to the State; but shortly after that the salt fields of Saginaw began to be exploited and other salt reservations were laid out in various parts of the Union; and since that time there has been a steady decrease in the quantity of salt manufactured, so that now we find that the business has reached almost the lowest ebb that it has attained in the history of the reservation. During the year 1893 the aggregate number of bushels of salt manufactured was 3,065,906, nearly 6,000,000 bushels less of salt than were manufactured in the year 1862, thirty years ago. And there has been a steady decrease from 1879 down to the year 1893. The revenue which the State of New York received from this reservation when there were 9,000,000 bushels of salt manufactured was quite large, and it, therefore, was a paying operation to the State to continue in the business of the manufacture of salt; but now the revenue is scarcely large enough to pay the salaries of the officers who are maintained by the State to take charge of the reservation. The revenue during the last year was $30,659.07. The amount expended for officers during the same period by the State was $21,347.80, or within $9,000 of the total amount realized by the State from this business. The additional expenditures made by the State during the same period for labor, repairs, materials and new structures were $52,817.63, or a total of disbursements of $74,165.43, netting to the State a loss of $44,000 in this business. Now, this is the history, not only of one year, but it has been the history of the reservation for some years past, and there is no prospect of any improvement. On the contrary, now that it is quite probable that the Wilson bill, as finally passed by the Senate, is to become a law, salt will be upon the free list, and the consequence will be that there will be even less salt manufactured on the Onondaga Reservation during the coming years than there has been during the year 1893, when, as I have said, the business has practically been wiped out. Now, the question is, whether the State of New York shall continue this expensive machinery, this business which is constantly netting a loss, whether the State will not rather dispose of this manufacture of salt, go out of the manufacturing business and allow this land, which is valuable and from which a large amount of revenue can be derived by the State, a large price obtained, whether the State should not sell this land. There are 900 acres of land. A large portion of it is within the corporate limits of the city of Syracuse. The remainder is in the immediate vicinity of Syracuse. The land is valuable for manu-

facturing purposes and for being cut up into building lots, and the State can realize large prices therefor.

In times past portions of the reservation have, under the operation of the act of 1874, been sold, and those lands have been, at auction, disposed of to the highest bidder and a large revenue obtained by the State from the sale of those lands. But under the Constitution it was necessary to devote the money realized from such sales to the acquisition of additional lands so that the total quantity of land in the reservation should never be decreased. Now, if this land is sold and the money is put into the treasury it can be devoted to other purposes. It may be devoted to the purpose of acquiring lands in the Adirondack reservation and thus be used for some purpose which will be of material welfare to the State for all time to come; instead of having the State engaged in a losing operation, it can make use of this plant which it has built up, make use of the money realized from these lands, which, when they are sold, can be put to uses which will be perpetually beneficial to the State. Now, the substitute which I have offered is in precisely the language in which the question of the sale of the salt springs was presented to the State, with the exception that I have substituted the word "shall" for the word "may," as contained in the constitutional amendment voted upon by the people of the State in 1892. As has already been stated to this Convention, by an accident, the canvassers of that vote made a mistake in the statement of the result, so that this amendment, which really was carried, was declared to be lost. Time has elapsed, so that a mandamus would not be a remedy, if such remedy should exist under the circumstances of this case. And, therefore, it is believed to be necessary to once more go to the people with this proposition, so that they may carry out the wishes which they declared at the polls. Now, the only criticism which is made to this proposition is that it contains words which are to the effect that the State Legislature is required to make provision for the sale and disposal of the lands. When we consider the fact that the State is engaged in this losing business, it is for this Constitutional Convention to say to the Legislature that it shall make provision to dispose of this property. The Legislature, in its discretion, may act upon political consideration. It has been pointed out here that the Onondaga Salt Springs Reservation has been a political machine, used by both parties during the last fifty years and certainly during the last twenty-five years. Scandals have existed with respect to it; abuses have grown up; there have been at least two proceedings for the removal of the superintendent of the Salt Springs Reservation upon charges of

malfeasance and misfeasance in office. In one case the officer was a Republican; in the other case the officer was a Democrat. In one case findings were made which would have justified the removal of the officer, but the Governor never passed upon the charges made, although seven years have expired since the argument was made before the Governor, and the decision is still awaited with breathless expectation, and the officer proceeded against is still in office. It is, therefore, time that this political machine shall be stricken down, and it is for the Constitutional Convention to say that it shall be done. It should not be left to the discretion of any Legislature.

The next suggestion that is made, is that this provision, as submitted to the people before, and the provision as now proposed, suggests that the State shall make just compensation to all persons having any right thereto. That is practically the language which was adopted by the Legislature in the concurrent resolutions which resulted in submission to the people of this proposed constitutional amendment in 1892. These words do not require the State to pay a dollar if there is no legal right. But legal rights should be preserved; they should be saved; there should be provision made that if these lands are sold, if they are disposed of, if anybody has any legal rights therein, such rights should be compensated for. I am not here to say that such rights exist, but they may exist. Claims may be introduced. It is not auditing a claim when we say that just compensation shall be made to all persons having any right in the land. The right must be established first, and then compensation should, of course, be given, and that compensation is only just compensation. The proper thing, therefore, for this Convention to do, it seems to me, is to, in the first place, lay down the rule that these lands should be disposed of, and in the second place, when disposed of, provision should be made regulating the giving of compensation.

Now, this is not a new law for this State. The act of 1874 makes adequate provision for just such cases as this. The principle has always obtained in this State in respect to the sale of salt lands, and the same provisions which are contained in the act of 1874 may be re-enacted with any statute which may be passed by the Legislature under this proposed constitutional provision, enabling the Legislature to regulate the manner in which the land shall be sold and in which compensation may be adjusted.

Mr. C. B. McLaughlin — Mr. Chairman, in my opinion, the amendment proposed by Mr. Brown to this proposed constitutional amendment should prevail. The substitute offered by Mr. Marshall, together with this proposed constitutional amendment, should be

defeated. The only complaint that is made by the gentlemen interested in this proposition, in reference to the present Constitution, is that they are not permitted to sell these lands. Now, it is indeed a novel proposition that we must go beyond the point of permitting the State to sell and legislate that the damages, if there be any, shall at once be settled by the State, when we have once reached the conclusion that this section of the Constitution should be amended by abrogating it, then the gentlemen have in the Constitution, as it shall be adopted, if adopted at all, all the remedy we need. I would like to have some gentleman that is in favor of this proposed amendment or of this substitute offered by Mr. Marshall, tell this Convention why it is necessary that we should instruct the people of this State to immediately sell, when we know not whether there is anybody that wants to buy. I would like to have them tell this Convention why it is necessary to proceed to adjust damages before we know whether there are any damages to adjust. Now, Mr. Chairman, it seems to me that when we go beyond the point of what Mr. Brown has asked in his proposed amendment, namely, that this section be abrogated, we are trenching upon the ground of legislation, we are drifting right into that which we every day upon this floor condemn — class legislation. Now, if it is proper to sell these lands, abrogate your section; then they can sell it. If there are any damages to adjust, if the State sells the land, their remedy is there without legislating as is proposed in this substitute or in the proposed constitutional amendment. It is a very dangerous position for the State to take, and one which we, sitting here as the delegates of the people, should hesitate before we take it. I sincerely hope that this amendment proposed by Mr. Brown will prevail, and that the proposed amendment offered here, together with the substitute, will be defeated.

Mr. Foote — Mr. Chairman, will the gentleman allow me to ask a question? The last speaker referred to the substitute offered by Mr. Brown. I do not find that substitute printed in my file, and I would like to have it read from the desk of the Secretary.

The Secretary read: Mr. E. R. Brown proposed an amendment, "to strike out all after the word 'abrogated' in line one."

The Chairman — The Record seems to be a little bit mixed here, and the Chair will state for the information of the committee his understanding of the question as it is now presented. As the Chair understands, Mr. Durfee first moved an amendment, which was accepted by Mr. Alvord. Then, as I understand it, Mr. E. R. Brown moved an amendment to strike out all after the word "abrogated,"

which, if it prevails, would do away with the amendment as accepted by Mr. Alvord. Then Mr. Marshall offered a substitute for the whole matter.

Mr. Barbite — Mr. Chairman, I am not in favor of the proposed amendment or of the substitute offered, but am in favor of the amendment offered by Mr. Brown. I believe that if the Convention goes so far at this time as to place the matter in such shape that the salt springs of this State and the lands adjacent thereto can be sold, that we have done all that we are justified in doing under the facts of the case. There is no question that since 1795 it has been the policy of this State to preserve the salt springs situate in Onondaga county. The records of the superintendent of those springs show us that for a number of years past the State has been conducting its business at a loss, and I do not know why the State should be further compelled to continue that business and furnish water to the lessees and pay the additional expense out of the State treasury. But it seems to me somewhat peculiar that the gentlemen who are in favor of this matter should insist upon having this amendment in its peculiar shape. I do not impugn the motives of any delegate upon this floor. I believe the gentlemen from Onondaga who are pressing this matter are honest in their efforts and are doing what they believe to be for the best interests of the people of the whole State; but at the same time, coming, as I do, from a section adjacent to Onondaga county, I happen to know that these lessees, these gentlemen who are now interested in the manufacture of salt, are as a body urging upon this Convention the sale of those lands. They claim that it will be for the best interests of the State if the lands are sold; they claim that they themselves are conducting their business at a loss; and if that is true, and if that is the only reason why they desire this Convention to take the action which they have desired us to take, I do not see why they cannot quit their business and let the State do the best that it can. There is nothing in these coarse salt leases which compels their lessees to conduct their business or manufacture another bushel of salt. Now, they have here in this substitute a clause which provides that the State shall make just compensation to all persons having any rights therein. It is unnecessary for me to state to the distinguished delegate from Onondaga that neither this Convention, nor the people of the State, can take away from those lessees any rights which they have, without making compensation therefor. I do not believe in placing the Legislature in a position where it is forced and compelled, by this section of the Constitution, to make a sale of the salt lands without any corresponding obligation on the part of the lessees.

I do not believe in saying to the Legislature: "You shall sell the property of the State," when there is no person to buy, and when we cannot compel the lessees to surrender the rights which they have. We all know how people are apt to look at their property under different circumstances. The lessees come to us to-day and say that our leases are not valuable; that they are worth scarcely anything at all; but if we have an amendment to the Constitution which compels the State to buy those leases, we know very well how enormously they will increase in value. We place the Legislature of the State in a position where it cannot make a just and a fair bargain on behalf of the people. We should not compel them to take any such position as that.

Another fact. The report of the superintendent of the reservation shows that there is now something like 900 acres of land which are covered by these salt leases. That land lies in immediate proximity to the city of Syracuse. I am not certain but that it is actually within that municipal corporation. That land, if the salt springs were done away with, would become enormously valuable. Now, should not the State of New York, if it has been losing money during the past few years upon the salt springs, be placed in such a position that it can obtain the best price possible for those lands and recoup some of its losses.

One of the secretaries of one of the largest companies engaged in the business informed me that what they proposed to do was to surrender to the State of New York all rights under the leases which they hold, and, in consideration of that surrender, they were going to ask the State to give them the title of all of the lands which they are now occupying. Now, that may be a fair and just bargain, and it may not be. But I say that at the present time this Convention is not sufficiently in possession of the facts to compel the Legislature to make any such agreement as that. I am in favor of the amendment offered by Mr. Brown, because that does all that ought to be done at the present time. If section 7 is simply wiped out, then there is nothing to prevent the Legislature from keeping the salt springs, if that is advisable, and to prevent them from selling the salt springs, if that is advisable. The State of New York should stand precisely in the position of any other vendor. It should have the right to sell its property for the best price that can be obtained in the market, and it should not be compelled to do anything more than that. I hope the amendment offered by Mr. Brown will prevail.

Mr. Crosby — Mr. Chairman, the question, as I understand it, is upon the amendment offered by Mr. Brown, striking out all after

the word "abrogated," so that the provision of section 7 of article 7 of the Constitution, which prohibits the sale of the salt springs, will be abrogated and revoked. I am, sir, heartily in favor of the proposed amendment. When the proposition to compel the sale of the salt springs, containing a mandatory direction requiring the Legislature to provide for such sale, came before this Convention, it was conceded by all, including the gentleman who proposed the amendment, that it was necessary, in order to act intelligently upon the matter, that information should be required, and furnished by those presumed to be in possession of knowledge, relating to the property of the State, known as the Onondaga salt springs. A resolution was promptly adopted by the Convention, calling upon the Secretary of State, who, by virtue of his position as secretary of the land office, was presumed to have in the records in his possession information which would give us the proper advice. A report came from that office disclosing the fact that around the body of water known as Onondaga Lake, for three miles in extent, the State of New York owns and is in possession of, or is presumed to be in possession of, the property known as the Onondaga salt springs, which property was granted by an independent nation, to wit, the Onondaga Indians, to the people of the State of New York, under the express restriction in the grant, "that the same should forever remain for the common benefit of the people of the State of New York and of the Onondagas and their posterity, for the purpose of making salt, and should not be granted or in any way disposed of for other purposes."

I suppose, Mr. Chairman, that the solemn agreement made with those Indians who, partly civilized, are living near the lands granted, is of minor importance to the people of the State of New York, if they adopt the rule that is generally applied to contracts and agreements made with the aborigines of America; but there stands the prohibition that the salt springs shall not be granted or disposed of, but shall be reserved for the use of the people and the Onondagas.

I know not, sir, what scheme may be underlying this matter, but the facts exist that the great State of New York has now control of the salt springs of Onondaga; that the product of those salt springs is a necessity for every family in this land; that the property lying there, although claimed to be unprofitable and unproductive now, is a barrier against, and a preventive of any combination, trust or organization, which may easily be made, to increase the price of this necessary commodity, and hence it becomes a serious question whether or not we should adopt and send to the people a proposition to release or sell all the rights of the State and to remove

the restriction upon any combination which may be formed to increase the price of that product.

We are informed that there are certain claims to be made by the occupants of the lands that must be adjusted; certain rights which have been acquired under the leases heretofore granted to them by the land office which must be ascertained, and vast demands, as appears upon the face of the report showing the extent of the territory, would undoubtedly be made against the people of the State. The proposed substitute offered by Mr. Marshall will not only compel the sale of the salt springs, but will commit the people of the State of New York to the admission that rights of property are vested in the occupants, and that the State must pay for the improvements or buildings that have been erected and the machinery that has been used in carrying on the business of the tenants of the State.

By analyzing the report, which does not throw light upon the question as it should give it, it appears that there are 900 acres of what is known as coarse salt land. By the statute of the State, regulating the salt springs management, the salt lands for the manufacturing of coarse salt were to be divided into ten-acre lots. Although the report gives the number of corporations and individuals — I think, somewhere about thirty — interested in the manufacture of salt, one can discover, when considering the subdivisions of the 900 acres of coarse salt lands into ten-acre lots, in connection with the claims to be made by the occupants under their leases, the great magnitude of the obligations we are asked to urge the people to adopt, adjust and pay.

Regarding the fine salt lands, no information as to the number of acres or as to the number of claimants, has been given, and there are other important subjects that are not mentioned either by the Secretary of State or the superintendent of the salt springs. When we asked the secretary of the land office in regard to the acreage under lease and the unoccupied lands, he reported that the superintendent of the salt springs could give that information; and when we asked the superintendent of the salt springs for information which was stated to be in his possession, he replied that such information was in the land office. We do not know the number of acres there are with the buildings, erections and improvements thereon that have been put up by the tenants or occupants; we are unable to ascertain the extent of, or the number of, claims that would be presented from the fine salt lands. Outside investigation discloses that a large number of the acres of the so-called "Onondaga Salt Spring Lands" are lying vacant and unoccupied, and

that other portions are leased under leases for agricultural purposes. We are now asked, without any knowledge of the condition or extent of the numerous claimants, to require the Legislature of the State of New York to provide for the sale of those lands and the payment of every dollar which may be claimed or established by any occupant.

Further investigation of the matter — and I trust the gentlemen composing this Convention have investigated it — discloses that, although the provisions of the Constitution now are that there may be an exchange of lands for other lands for the convenience of the business, but that the acreage of the salt lands must not be diminished, hundreds of acres have been sold under the pretense of making it more convenient for the carrying on of the salt manufacturing business, and that a large portion of the city of Syracuse is now located upon lands that have been sold under that pretended claim. Public buildings of the city, its business places, its residences, are located on the property. And it is impossible to ascertain from any reports or information given, any instruction as to whether there have been an equal number of acres secured for the purposes of the State to carry on the salt business, or as to what has been done with the proceeds of the sale of the same. Still further, Mr. Chairman, an entirely independent salt business, in which the people of the State have been and now are interested, known as "The Montezuma Salt Springs," was carried on until the year 1892, by a separate organization, and under an independent supervision. Not a word of information has been given us in regard to the condition of the Montezuma Salt Springs property, although, by virtue of the act of the Legislature, passed in 1892, the general supervision of that property was placed in the hands of the superintendent of the Onondaga salt springs.

Mr. Marshall — I would like to ask the gentleman a question.

The Chairman — Will the gentleman give way?

Mr. Crosby — Certainly.

Mr. Marshall — Is there any mention in the Constitution of this State with respect to the Salt Springs Reservation?

Mr. Crosby — Under the statutes of the State of New York, the Montezuma Salt Springs are consolidated with the Onondaga Salt Springs, and they are named and designated now as "The Onondaga Salt Springs."

Mr. Marshall — And is it not a part of the Onondaga Salt Springs which is referred to in the Constitution of this State?

Mr. Crosby — I am unable to state from any information we can

procure from anyone that should produce such information for us. If the gentleman has knowledge as to whether or not the Montezuma Salt Springs would be covered by the proposed amendment as a citizen of Onondaga county, familiar with these matters, and interested in the proposed amendment, I trust he will give it to this Convention. More than this, Mr. Chairman, great thoroughfares, the New York Central Railroad, the West Shore Railroad, and other corporations have found their way across this State property. Under some machinery that has not been disclosed, hundreds of acres of said land, that were supposed to be protected by the provisions of this Constitution, are occupied and claimed by corporations and individuals, by virtue of grants from the land office, in spite of such prohibitory provision.

In view of these facts, if it be deemed advisable to sell the interest of the State in the property in question; if it is advisable to disregard the treaty made for the protection of the people, it appears that the proper body to make provision for such sale and to regulate the same, to the end that the interests of the State may be ascertained and protected, is the Legislature of the State of New York.

Without information as to the extent of the property and the present rights of the State thereto; with the statement made by the secretary of the land office that it will require surveys and maps and a large expenditure of money and time not at their disposal, to obtain such information; without means provided by the Legislature of the State at the disposal of this Convention to defray the expense of making such investigation to procure the proper information, we are asked to require the people to release all rights to the property in question, to assume obligations of great and unknown amount and to subject other proposed amendments to the danger of defeat by submitting a proposition of such a questionable character.

Mr. Chairman, the Legislature of this State will have ample power in the premises if we remove the constitutional restriction upon the sale by adopting the amendment proposed by Mr. Brown. It has the power to create a committee of investigation to ascertain the existing rights of the people and the occupants, and, if it shall finally determine that a sale of the property will be for the best interests of the people of the State, to prescribe the proper restrictions, conditions and requirements for the protection of the people's interests. If any parcel of the property shall be found to be of no value, as claimed by the gentlemen who favor the proposed sale, it has the power to arrange with the claimants of such property or

interests so that a release may be made to them upon their releasing any claim or demand which they may make against the State.

I am heartily in favor of abrogating the prohibitory provision of the Constitution and thereby giving to the Legislature of the State of New York, which has the time to make the inquiry, the power to incur the expense, and the wisdom and honesty to act, the power to clothe it with the duty to determine whether or not the rights of the people are so important that they shall be retained forever, according to the terms of the treaty made when the people acquired such land, or whether the property shall be sold under the directions of the land office pursuant to legislative enactment.

Mr. Griswold — Mr. Chairman, just but a few words I propose to say on the subject under consideration. The proposed amendment of the Constitution embraces two classes of matters that are to be disposed of by this provision. Now, if there is a simple repealing of the constitutional provision, which will allow the sale of these salt springs and the settlement of all matters pertaining thereto, that, it would seem to me, would be reasonable and safe for this Convention to do; but when you add to it special legislation, and make it mandatory that the Legislature or any officer of the State shall not only dispose of the rights and properties of the State in these salt springs, and, further, that they shall settle all the claims against the State, and thus make it mandatory, then we are dealing with dangerous legislation, and without sufficient information by which we can deal safely with the subject. Now, sir, here are large properties which cost the State immense sums of money, and, I believe, are very valuable to the State at the present time. Of course, the rights of the State and the property of the State can easily be sold, but when you come to the question of claims against the State (and it is said here there are a great many contracts that are perpetual as against the State), you make it mandatory upon the Legislature or any officer that they shall be settled and disposed of. Now, then there are claims against the State. How are you going to settle them? You don't know the amount, the number; and I would propose a resolution for a special committee, with power to send for persons and papers, to ascertain the value of this property, its nature and character, and the nature and amount of these claims; or, if it is thought best by the Convention, to simply abrogate that section, and leave it to the Legislature to inquire about all these matters and to act judiciously about it, it can be sent to a special committee, and they can ascertain what these contracts are. It seems to me that the only safe course for this Convention to pursue is simply to repeal the prohibitory provision of the Constitution so that the

Legislature may sell these lands and give the Legislature power to settle these claims, and they may settle them or not settle them. How are you going to settle them? There stand the claimants, and all there is about it, they will stand out. By this additional amendment you have got a mandatory provision that they shall be settled, and suppose they stand out about them; it leaves the State to be robbed by these claimants. I am, therefore, in favor of the amendment of Mr. Brown's, which strikes out all of those provisions and leaves the Legislature entirely free after the prohibition is abrogated.

Mr. Dean — Mr. Chairman, I am not entirely satisfied that the State of New York is prepared to-day to sell these salt springs. We have been told here that salt springs are to be found in all parts of the United States, and that, therefore, a monopoly is absolutely impossible. The same is true of kerosene oil, of petroleum and of coal, and yet we have monopolies in this country yhich absolutely control those two great products. The State of New York, so long as it owns those salt springs, stands in the way of any combination to force up the price of salt in this country. More than that, the State of New York has, as we are told, nine hundred acres of valuable land near Syracuse. The State pays no taxes upon this valuable property. It is a good investment, and, I believe, we are in just as good shape to own real estate as some of the gentlemen who are running salt springs in and around Syracuse. In 1882, there was consummated in this State one of the most gigantic steals that was ever perpetrated in the name of legislation. Some of the gentlemen who are actively pushing the passage of this proposed amendment engineered that same scheme. I refer to the sale of the Genesee Valley canal. In 1882 the Constitution of the State was amended so as to take the Genesee Valley canal out of the protection of the Constitution, and in that year that property, a graded canal from the city of Rochester to Olean, in Cattaraugus county, embracing something like eighty miles, was sold for $500. The cut stone alone in the locks along that canal was worth many times the purchase-price of that property. Mr. Chairman, I am opposed to any scheme which forces the State, or even allows the State, to sell this valuable property under the sanction of this Convention.

Mr. Moore — Mr. President, I am opposed to this amendment *in toto*. I believe that the State of New York is as able to hold lands as any other real estate owner, and were it not for the honorable gentleman (for whom I have the greatest respect, and whose name is at the head of this amendment), I should be very much disposed to characterize the attempt to carry this proposed amendment as a job.

I do not dispute that the State of New York does not make anything in manufacturing salt, but I have not heard any argument why the State of New York should sell its valuable real estate, or at least why an amendment should be passed by this Convention to be put into the Constitution that will literally force the sale of these lands and put them into the hands of speculators, who propose to make a good big job out of it. There is a clause in the inside of it. Read, Mr. Chairman, and see the acuteness, the business acuteness, which produced these two lines. It presumed that there were claims against the State on account of the land which is proposed to be sold. I am not familiar with the salt business of the State enough to say how much the State loses every year in operating these works, but I am familiar enough, from these two reports that have been submitted here in reference to the salt springs, to know that the State has valuable property there, and I am disposed to continue it under the protection of the provisions of article 7 of the Constitution. Therefore, I hope that neither the amendment or the proposed amendment will be adopted, but that this Convention will stand and keep article 7 in the Constitution and let the State of New York be a real estate owner of valuable lands, selling them at such other times as proper information can be obtained by the Legislature in reference to these different leases and grants and conveyances, which are now located in the city of Syracuse, and upon which there are buildings of great value. It appears from the reports that neither the superintendent of the salt springs nor the Secretary of State has been able to ascertain what has been done with some valuable pieces of land. Mr. Chairman, I am, therefore, opposed to the amendment and all the amendments offered to it.

Mr. C. A. Fuller — Mr. Chairman, in the year 1888 I first became somewhat acquainted with this question. That year Senator Van Gorder was the member of Assembly from Wyoming county. In that Legislature he initiated the measure for the constitutional provision. I forget just what the terms of it were, but the purport of it, at least, was that the State might discontinue the business of making salt. I have forgotten whether that provision provided for the sale of the land or not; but, being personally acquainted and familiar with Mr. Van Gorder, he explained to me fully his side of this proposition. At that time, I think, the solid delegation from Onondaga county was against the proposition, and I suppose very likely the opposition arose from considerations that were intimated by Mr. Alvord, when he said that this had become a political matter by which the employes were hired and discharged by one political party or another as they came in or went out of office. But

time has gone on, and it has been seen by the Onondaga people that it was not expedient and proper to continue this kind of business. Being able to produce in other localities so much cheaper than at Syracuse, making the State do the work of the salt makers at a great loss, and to the evident detriment of those engaged in a like production in other places, it seems to me, as I think it does to most of the members of this Convention, that it is a very wise thing to do away in some way with this prihibition against the Legislature selling or disposing of the salt springs belonging to the State.

Now, if it should be that there is underlying these proposed amendments, introduced by the Onondaga gentleman, any scheme to be worked for the individual advancement of any person, then, of course, this Convention ought to eliminate that possibility and put this matter upon a strictly business basis. I have carefully as I could read the proposition of Mr. Alvord, and I cannot spell out of it any concealed plan or job. It seems to me that to take that position you would have to assume that the Legislature would be in connivance with this scheme and would make laws sufficient to carry out any piece of jobbery, because this amendment provides that the Legislature shall as soon as may be provided by law, and under the direction of the commissioners of the land office, proceed with the equitable adjustment and settlement of all lands set apart for the use of salt springs, or erections thereon, whether such lands have been held by lease or otherwise, and for the absolute sale and acquisition in such way as shall be proper in respect to the rights and interests of the State. Now, it seems to me, that that reads all right. I do not see that it assumes that the Stae is obligated to anyone; that it assumes that anyone has claims to be settled and paid. If there existed claims, of course, the Convention cannot abrogate those claims. They are good for what they are worth. I am not particular as to what particular scheme, what particular proposition or amendment shall be carried out, but it does seem to me that the time has come when the State of New York may sell its lands located there when it sees fit to do so. So I hope that some of these plans to accomplish this object will prevail.

Mr. Powell — Mr. Chairman, will the gentleman from the Twenty-second, Mr. Marshall, allow me to ask him a few questions relative to this matter? Can the gentleman give us any idea of the amount of damages that would be claimed by these lessees from the State in the event of the immediate sale of these lands?

Mr. Marshall — I have not the remotest idea, but for fear that anybody might think that this language which has been proposed in the substitute is to cover any scheme, or any covert idea of

getting out of the State money which should not be taken out of its treasury, I am perfectly willing to strike those words from the substitute, and allow these people, if they have any claims or any rights, to get their compensation under the provisions of the Constitution, which are to the effect that private property shall not be taken for public use without just compensation. The language is merely the language of the Constitution that is put into the proposed amendment that was voted upon by the people in 1892; and, therefore, the people having acted upon this language, it was thought prudent, for the purpose of saving time in this Convention, to adopt the phraseology upon which the people themselves had passed. That is the only object.

Mr. Powell — I suppose the gentleman will admit that the majority of the people, who voted on that amendment, knew just as little about the salt springs as I do; practically nothing at all. Therefore, their judgment is worth nothing.

Mr. Marshall — Two Legislatures had passed upon the question and had given the matter careful study; but, as I say, I am willing to strike out the language which has been referred to.

Mr. Powell — Will the gentleman allow me to ask him another question, also? The production, as I understand, from the address of Mr. Marshall, of salt on this State land, has been largely diminished, and there has been a very rapid diminution in the yield for several years

Mr. Marshall — There has.

Mr. Powell — Has there been a corresponding diminution of the production of salt on adjacent lands owned by private individuals or corporations?

Mr. Marshall — There are no such lands in the Onondaga reservation.

Mr. Powell — Has there been, then, a similar diminution with regard to other salt lands in the State?

Mr. Marshall — There has not. There has been a corresponding increase, at Warsaw and elsewhere, on private lands, owned by private manufacturers.

Mr. Powell — Will the gentleman also allow me to ask him this question ——

The Chairman — The debate must proceed in order. This is entirely out of order, this catechising a member.

Mr. Powell — I was simply asking for information.

The Chairman — It is entirely out of order. If Mr. Powell will

ask a list of questions to Mr. Marshall, he will be permitted to reply.

Mr. Powell — Mr. Chairman, through you, then, I would like to ask one more question. Has the gentleman any conception of an idea of how much can be realized from these lands if they are immediately sold under and pursuant to the action of this proposed amendment?

Mr. Marshall — I have no accurate notion on the subject. I can only give you my own opinion, and that is that the State can realize from these lands a sum of not less than half a million of dollars, and perhaps more. That is my personal opinion on the subject, over and above all damages which may have to be paid to anybody under the existing provisions of the Constitution.

Mr. Powell — Mr. Chairman, I only desire, after gaining this information, to say one or two words. What is proposed by this contemplated amendment is to sell lands without having had any offer or any appraisement made of them by persons who are familiar with the value of lands in that vicinity, and undertaking to sell these lands without knowing how much they will bring in the market, and we propose, at the same time, to place a large number of claims for damages in position to be collected without having any idea of how much the claims for damages will be. As the gentleman has already characterized it, it seems to me that we are walking in the darkness, and we are in the condition of those described as "the blind leading the blind," and that kind of leading in the darkness can only lead to disaster. There are only two reasons given why we should sell these lands. One is that we are now working them at a loss of $44,000 a year. With the tendency which exists in modern times towards trusts and monopolies, who knows that inside of ten years these very lands may save to the people of the State of New York countless millions of dollars. Certainly there is a possibility of their being of that value to the people of the State.

The only other suggestion as to why we should sell them is because there has been scandal arising in connection with these lands. I am very much afraid, as has already been suggested by other gentlemen in this Convention, that we shall simply be laying aside trivial scandal to bring ourselves face to face with enormous scandal. Are we in this Convention to adopt the theory that wherever a scandal arises in connection with State property, we shall sell it at once? Then, sir, what shall we do with this very building in which this Convention is assembled? Have there been no scandals in connection with this building? Let us here in this Convention, because there has been scandal in connection with the

State capitol, pass an amendment that the Legislature must sell this building and the ground whereon it stands, as soon as the people can give them power. History demonstrates over and over again that there is on the part of States a tendency, altogether too prevalent, to dispose of lands which belong to the States. Our national government has scandalized itself by the ease with which it has parted with public lands. Our own State has suffered in the same manner, and, for one, I protest, not only against an amendment which compels the sale of these lands, but I protest against giving the Legislature power to dispose of them. They belong to the people of the State. The people of the State can afford to own them. So I say, let us allow our present Constitution to stand exactly as it is in respect to these salt springs.

Mr. Mulqueen — Mr. Chairman, I regret exceedingly to state that, although a member of the Committee on Salt Springs, I know absolutely nothing about the subject under consideration. It was a great surprise to me that I was placed upon this committee, and I had intended, as a member, to gather as much information as possible. But one proposition was sent to this committee, and I was notified of but one meeting. This proposition was proposed as an amendment by the chairman of that committee, and after that first meeting, it seems there were five members present who voted in favor. I presume that the five members of the committee know all about it. I do not know anything about it. I am sorry that the chairman of the committee did notify the members of the committee that upon a day certain a vote would be taken in favor or rejection of his own proposition. Now, Mr. Chairman, in view of the fact that some gentlemen here have openly charged that there is something in this proposed amendment which I know nothing of, I would like to ask the Convention to grant me permission to be recorded on the date of this report as dissenting from that report. On July eleventh the chairman of the committee, according to the Record, reported in favor of the passage of the same, with some amendments, which report was agreed to, and said proposition committed to the Committee of the Whole. I simply ask in justice to myself, as a member of that committee, having no knowledge of the subject, to be recorded as dissenting from the report of the committee.

The Chairman — That motion is not in order in the Committee of the Whole. You must make the motion in the Convention.

Mr. Alvord — Mr. Chairman, in answer to the gentleman who has just taken his seat, I will say that on four several occasions instruc-

tions were given to the clerk of the committee to notify each one of the members of the committee that there would be upon a subsequent day named a meeting of the committee. The clerk reported to the chairman that he had performed that duty. It was after a great deal of hard work that I was enabled out of the committee of seven to finally get five members together of that committee. That is my answer to the assertion of the gentleman from New York that he was not notified.

I wish to say, sir, that I have no further argument to make upon this substitute. I leave it to the discretion of the Convention, but I deem it due to myself and to my associates upon this floor to say that we have no ulterior motives in pressing this amendment. I, for one, sir, am upon the down-hills of life, shortly probably to give up my earthly accounts. I have no interest in regard to the matter beyond doing my service to the State and to my people. I deem, sir, that I am entitled, I believe, to the belief on the part of this Convention that each and every assertion which I make is founded exactly in truth. I say, sir, in this connection, that the Onondaga Salt Springs Reservation, so-called, is ten thousand acres in extent. There rests upon its bosom and within its borders a population to-day of 130,000 people, having obtained from the State of New York, under laws that have been passed in the days that have gone by, each and every one of them, a title to the land in fee, only reserving upon that reservation the right of the State to all salt water that might be underneath the surface. There is in the reservation, as reported, nine hundred acres of land. A large portion of that land is outside of and cannot by any means ever be connected with the city of Syracuse, unless it grows to the broad proportions of Chicago, by an extension of its territory, or, like New York, becomes a great metropolitan city. Sir, there are within the limits of Syracuse about 100 acres of that nine hundred. It is upon the lowlands adjacent to the city. It cannot be utilized for any purpose under heaven except by great expenditure. That land may possibly be worth $1,500 or $2,000 an acre. The remaining lands that are within this salt springs reservation are lands outlying and are lands only worth so much as the farm lands adjacent to them.

Now, sir, the proposition in the first instance, for the purpose of releasing the State from its interests in this property was made by the gentleman from Wyoming, Mr. Van Gorder, upon this floor, in the interests of his constituents, believing that they should not be handicapped by an apparent help on the part of the State to the Onondaga salt springs in the making of salt on their private lands in the western part of the State. It has been followed up by Onon-

daga, in the same spirit, anxious to be put upon the same platform with the Warsaw men and the men in the western part of the State, and entirely willing that we should be divorced from the State in the manufacture of salt. Sir, this is almost the entire that I have to say at present upon the subject. My only idea, my only anxiety was, that so far as the manufacture of coarse salt was concerned, on leases held in perpetuity, where there is no authority upon the part of this Convention or the Legislature to take it away from us, that there should be some resolution by which we could be afforded the opportunity to go before the commission who should be appointed by the Legislature and put a fair and square construction upon the proposition that they should pay us for any damages that might be done us, and in that way get us to consent that we should be divorced from the State in the further administration in the operations in the manufacture of salt. If the Convention sees fit not to do it, I am still in favor of the proposition, because I believe that when we show clearly and distinctly that we will not give away, and do as the people of this State have agreed to do in all times past, keep us in abundance of water for the purpose of the protection of our property and make all the salt we choose to, and say that so far as that matter is concerned, if we give up that right of the damages they shall pay to us, there never will be an divorcement between the people and the parties occupying the premises that have been spoken of. This is all I have to say upon the subject. I have told the truth, and the entire truth, in all I have had to say before this Convention. I propose to stick to the truth, if God permits me, though the heavens fall, and I say now and again that the State of New York are paying, and will still pay, the interest, if capitalized, each and every year, at three per cent, on over fifteen hundred thousand dollars. It will soon crawl up of necessity, for we can hold the State to their bargain to a vastly greater sum, and if you desire that the people of my locality shall agree to the proposition of the State, you will pass a proposition such as has been offered by my friend upon my left.

Mr. Crosby — Mr. Chairman, I do not wish to take the time of the Convention, except to call attention to the fact that the people of the State of New York, through the Legislature, has recently spoken upon this question very forcibly and emphatically. I desire to call the attention of the Convention to section 3 of chapter 684 of the Laws of 1892, which provide that "the salt springs belonging to the State, with the salt water existing on the Onondaga reservation and the lands contiguous thereto, which are necessary and convenient to the use of the salt springs and the public works thereon,

shall forever remain the property of the State. Lands reserved or used for the manufacture of salt may be sold as in this chapter provided, under the direction of the commissioners of the land office, with a view to the exchange of the same with other lands more conveniently located or in large quantity, in which the proceeds of the lands so sold shall be invested; but the aggregate quantity of lands appropriated to the manufacture of salt shall not be diminished by such sale or purchase."

That is the expression of the people only two years ago upon this question.

Mr. Marshall — Mr. Chairman, the people who spoke in 1892, as my friend from Delaware county has suggested, were the people represented in the Legislature by the members of the Senate and Assembly. The statute which the gentleman read is nothing more or less than the revision of the laws relating to the salt springs of the State, and is nothing more or less than a code which in one statute incorporates all the laws pertaining to salt springs legislation. The language read is nothing different than the language of the existing Constitution. The gentleman forgets that the very Legislature which provided for the revision of the laws relating to the salt springs reservation, made provision for the submission to the people for a vote on the very substitute which I have to-day offered, with the exception that I have inserted the word "shall" for the word "may." In that very year the people, in November, speaking at the polls, declared by an actual majority of votes that this provision which I have offered should become a part of the organic law of the State. The gentleman in his speech last night upon the suffrage question indicated a great concern for the voice of the people. He desired to have the referendum run mad and have the question submitted to the people as to whether or not at some future day the suffrage should be granted to women. To-day he seems not to have so much confidence in the voice of the people. He does not regard what the people said in 1892, when the question was, through legitimate constitutional channels, submitted to them. And I say the same of my friend from Kings county, who to-day has no such great confidence in the voice of the people as he seemed to have last night and a few evenings ago.

Mr. Crosby — Mr. Chairman, I desire to inquire, through you, of the gentleman who has just spoken, whether the people, the majority of the people, voted upon that question or not, and whether or not the actual vote cast on that proposition was not less than 200,000?

Mr. Marshall — The proposition received a vote of about 345,000.

Mr. Crosby — What was the total vote at that election?

Mr. Marshall — About one million.

Mr. C. B. McLaughlin — I move the previous question.

The Chairman put the question on the adoption of the previous question, and it was determined in the affirmative.

The Chairman then put the question on the amendment of Mr. E. R. Brown, and it was determined in the affirmative.

The Chairman then put the question on the adoption of the substitute offered by Mr. Marshall.

Mr. Marks — What is the substitute? Can we have the substitute read?

The Chairman — The Secretary will read the substitute.

Mr. Hawley — Does not the passage of Mr. Brown's amendment dispose of the substitute, Mr. Chairman?

The Chairman — It does not.

Mr. Marshall — I desire, in view of the fact that Mr. Brown's amendment has been adopted, to which I have no objection, to withdraw the substitute.

Mr. Choate — May the Secretary now read the proposition as it now stands amended?

The Secretary read the proposition as amended, as follows: "The present section 7 of article 7 is hereby abrogated."

Mr. Alvord — Mr. Chairman, I move you, sir, that the committee do now rise, report this proposed amendment to the Constitution to the Convention and recommend its passage.

Mr. Hotchkiss — Mr. Chairman, I rise to a question of inquiry. How will that leave the amendment which has been adopted? Will it drop it and carry the original proposition, or will it carry the amendment?

The Chairman — I do not understand the gentleman's question.

Mr. Hotchkiss — Will this motion, if it prevail, carry the proposed amendment to the Constitution into the Convention, as amended by Mr. Brown, or as originally proposed?

The Chairman — As amended by Mr. Brown.

The Chairman then put the question on the motion of Mr. Alvord, and it was determined in the affirmative.

President Choate resumed the Chair.

Chairman Bush — Mr. President, the Committee of the Whole have had under consideration proposed constitutional amendment

(printed No. 364), entitled "Proposed constitutional amendment to amend section 7 of article 7, relating to the salt springs," have gone through with the same, and have made some amendment thereto, and have instructed the chairman to report the same to the Convention, and recommend its passage, as amended in the committee.

The President put the question on agreeing with the report of the Committee of the Whole.

Mr. Dean — Mr. President, I call for the ayes and noes on agreeing with the report of the committee.

The call for the ayes and noes was not sustained.

A vote was then taken on agreeing with the report of the committee; it was determined in the affirmative, and the amendment referred to the Committee on Revision, and ordered printed.

Mr. Dean — I ask to be recorded as voting "no" specifically on this proposition.

The President — The Clerk will enter Mr. Dean's request upon the Journal.

Mr. Moore — I also request to be recorded in the negative.

The President— The gentleman will be so recorded.

Mr. Bush — I rise to a point of order, Mr. President. There is no taking of the ayes and noes on a proposition of this kind. How can the gentlemen be recorded as voting no?

The President — A request of this kind respectfully made by a member of the Convention, I suppose, can be entered upon the Journal, without reference to the other members.

The President — The Secretary will proceed to call the general orders.

The Secretary called general order No. 4, introduced by Mr. Hill, to amend section 5, article 2, relating to the manner of elections.

Not moved.

The Secretary called general order No. 3, introduced by Mr. McMillan, to amend section 16, article 3, relating to legislation.

Mr. McMillan — I move that, Mr. President.

The President put the question on going into Committee of the Whole on general order No. 3, and it was determined in the affirmative.

The President — Will Mr. Blake please take the chair?

Mr. Blake — Mr. President, I desire to be excused to-day. I

may avail myself of the privilege at some later time. I would prefer to be excused to-day.

The President — Will Mr. Dean please take the chair?

Mr. Dean — Mr. President, I desire to be on the floor of this Convention. I, therefore, beg leave to decline to act.

The President — Mr. Moore will please to take the chair.

Mr. Moore — I do not desire to be excused.

Mr. Moore in the chair.

Mr. Moore — The House is in Committee of the Whole on general order No. 3, printed number 418, by Mr. McMillan.

The Secretary read the proposed amendment.

Mr. McMillan — Mr. Chairman, I move to strike out the first section. The object of this proposed amendment to the Constitution is to prevent many abuses which have obtained in the Legislature, of tacking on to the annual appropriation and supply bill various provisions which otherwise could not be enacted. I have in my hand the last appropriation bill, which has tacked on to it not less than eleven special provisions, which are not in any manner indexed, which you cannot refer to in any manner in any of the statutes except by an examination of the supply bill or the appropriation bill, some of them going so far as to provide for misdemeanors. We can recall that in the last appropriation bill a provision was made in regard to the administration of the affairs of the Attorney-General's office, and that a conflict arose between the Senate and the executive of the State as to whether or not the entire supply bill should be vetoed unless that provision were withdrawn, and it resulted in the Senate recalling the bill and amending it by taking from it the provision which was obnoxious to the executive. I call attention in the last appropriation bill to a provision which reads as follows —

Mr. Alvord — Mr. Chairman, I rise to a point of order.

The Chairman — Mr. Alvord will state his point of order.

Mr. Alvord — My point of order is that the gentleman is talking to the wind. He has made no motion; there is nothing before the House.

Mr. McMillan — I regret that my friend did not hear me move to strike out the first section.

The Chairman — The Chair will allow Mr. McMillan to decide that the point of order is not well taken.

Mr. McMillan — One of the provisions in the appropriation bill reads as follows: "All institutions receiving money from the State

treasury for maintenance, in whole or in part, shall deposit all funds in some responsible banking-house, bank or banks, in pursuance of the provisions of chapter 326 of the Laws of 1880." I simply refer to this to show the carelessness in the method of legislation where these matters are tacked on to some bill, and the attention of the Legislatures are not necessarily called to them. Now, by reference to chapter 326 of the Laws of 1880, you will find that the only bank there referred to is the Bank of the Genesee Valley Canal. If there is anything that is ridiculous, it is legislation of this kind, and the Convention should put a stop to any opportunity of tacking on to a supply bill in which members of the Legislature are interested special appropriations, and that the whole thing goes through and the tail goes with the hide. It is an abuse which obtains in Congress, and it is an abuse which has obtained in the Legislature for the last fifteen years. No harm can come from the amendment, and the principal objection to legislation of this kind is that it cannot be found by anyone. It is never indexed, and we never seek for it in the supply bill. I withdraw my motion to strike out the first section.

Mr. A. H. Green — Mr. Chairman, I move that the committee rise and recommend the passage of this amendment.

Mr. Hawley — Will the gentleman wait a moment?

Mr. Green — I will withdraw for the gentleman.

Mr. Hawley — I move to amend the proposed amendment by striking out in line four the words "except such as" and inserting in lieu thereof the words "unless it." I also move to amend, at the suggestion of the proposer of this amendment, in line five after the word "and," by inserting the word "any." The occasion of my suggestion of the first amendment is, that I have discovered in the Constitution of 1846 a very prevalent custom of using the word "unless" instead of the word "except;" that the Legislature may do something "unless," shall not do something "unless," instead of making it an exception; and my suggestion is to make the present amendment conform in phraseology without any change of substance, to the Constitution which we are endeavoring to amend; and I understand that the amendment it not unacceptable to the proposer of the amendment.

The Chairman put the question on the amendment offered by Mr. Hawley, to strike out from line four the words "except such as," and insert in lieu thereof the words "unless it," and in line five, after the word "and" to insert the word "any;" and it was determined in the affirmative.

Mr. Kellogg — Mr. Chairman, I find no provision in the Constitution for printing anything in italics. I move to strike out all after the words "follows" in line two.

Mr. Vedder — Upon what ground is that asked?

The Chairman — Mr. Kellogg stated that it was on the ground that there is no provision in the Constitution for the printing of amendments in italics. It is equivalent to a motion to strike out all after the enactment clause.

Mr. Vedder — That would kill the bill, would it not?

The Chairman — I suppose so.

The Chairman put the question on the motion of Mr. Kellogg, and it was determined in the negative.

Mr. A. H. Green then renewed his motion that the committee rise and report the article as amended for passage by the Convention.

The Chairman put the question on Mr. Green's motion, and it was determined in the affirmative.

President Choate resumed the chair.

Chairman Moore — Mr. President, the Committee of the Whole have had under consideration the proposed constitutional amendment (printed No. 418), entitled "To amend article 3 of the Constitution of the State of New York relating to legislation," have gone through with the same and have made some amendments thereto, and have instructed the chairman to report the same to the Convention and to recommend its passage.

The President put the question on agreeing with the report of the committee, and it was determined in the affirmative.

The President — The amendment goes to the Committee on Revision and will be printed.

Mr. Jenks — I have received a telegram stating that there is illness in my house, and I would ask to be excused from this afternoon's session up to next Tuesday morning, if it be necessary.

The President put the question on excusing Mr. Jenks, as requested, and he was so excused.

On motion Mr. Kerwin was excused for the day on account of illness.

Mr. C. S. Truax — Mr. President, I am obliged to go to New York and be there to-morrow and next day, and would like to be excused.

The President put the question on excusing Mr. Truax as requested, and he was so excused.

The President — The Secretary will proceed to call the general orders.

The Secretary called general order No. 5, relative to the transfer of land titles.

Not moved.

The Secretary called general order No. 14, introduced by Mr. Mereness, to amend article 3, relating to public officers.

Not moved.

Mr. Vedder — Mr. President, by reason of the fact that we may adjourn and not take the matter up, I would like to suggest this. I understand that the minority of the Judiciary Committee have made a report.

The President — They have. It has been ordered printed.

Mr. Vedder — Oh, it has; the same number as the other?

The President — Under the rule it is required to be printed. No extra number.

Mr. Vedder — Ought not the same number to be printed of the minority as of the majority report, so that those who investigate the matter may have both before them?

The President — That is for the Convention to say. I judge from the report it is very brief.

Mr. Foote — Mr. President, I have read the report referred to, and will state for the information of the gentlemen that it relates only to the number of judges in the Court of Appeals.

Mr. Vedder — Well, I had understood from Mr. Parmenter, that it was thought of enough importance to have the same number printed substantially as of the other report; but if it only relates to one branch of the subject, perhaps it is not.

The President — If the gentleman makes that motion it will be referred to the Committee on Printing.

Mr. Vedder — I will, for the purpose of having it go to the committee, and not be acted upon except through the committee, make that motion.

The President — Mr. Vedder's motion is referred to the Committee on Printing. Mr. Vedder will please hand that in in writing.

R. 174 1-2 — (By Mr. Vedder) Resolved, That 5,000 copies of the minority report of the Judiciary Committee on the judiciary article, be printed for the use of the Convention.

The Secretary called general order No. 8, introduced by Mr. Lauterbach, to amend article 2, relative to suffrage.

Not moved.

The Secretary called general order No. 15, introduced by Mr. Tucker, to amend article 1, relating to damage for loss of human life.

Mr. Tucker — Mr. President, I move that amendment.

The President — Before the question is put on that, the Chair will make the statement that the matter as to the printing of the minority report has been under consideration already; but that makes no difference, because Mr. Vedder's motion will have to be considered by the Printing Committee.

The President then put the question on going into Committee of the Whole on general order No. 15, and it was determined in the affirmative.

The President — Mr. McKinstry will please take the chair.

Mr. McKinstry — I would ask to be excused, Mr. President. I want to offer an amendment.

The President — Will Mr. C. B. McLaughlin take the chair?

Mr. C. B. McLaughlin took the chair.

The Chairman — The Convention is now in Committee of the Whole on general order No. 15, introduced by Mr. Tucker.

The Secretary read the proposed amendment.

Mr. Veeder — I would like to inquire where the minority report as printed can be found.

The Chairman — Printed Document No. 36.

Mr. McKinstry offered the following amendment which was read by the Secretary.

"Article one of the Constitution is hereby amended by inserting the following as a new section:

"Sec. —. The right of action is hereby given for loss of life and for injury to the person, and whatever statutory limitation may be placed upon the amount of damages recoverable by civil action for the loss of human life, such amount shall be the minimum as well as the maximum amount, to the end that all human lives shall be held as of equal value before the law."

Mr. Veeder — There was a substitute offered to this minority report which was offered in a great hurry, and to take the place of this Document 36.

Mr. Mereness — I think Mr. Veeder will remember that the substitute offered was ruled out because it could not be offered until the Convention got into Committee of the Whole.

Mr. Veeder — That is a mistake. There was a substitute offered by Judge Truax. We substituted by leave of the Convention, and the President made the inquiry if that met the approval of the gentlemen who were making the minority report, and reply was made in the affirmative, which was the fact. I do not see that substitute printed here.

Mr. Hill — I think that Mr. Veeder will find the matter referred to on page 595 of the debates.

Mr. Veeder — I will call your attention then to page 595 of the debates. At the top of the page, the right-hand line, I made this request. I asked leave of the Convention to amend the minority report before it was printed, " so that it shall read as follows," and submitted it. The President replied, " Is that form assented to by your associates on the minority of the committee? " I replied that it was, which was the fact. The President replied, " Then it will take that form and will be so printed." On page 595 is the substitute, and that is the subject-matter before this Committee of the Whole, as I understand it. To that proposition Judge Truax offered a substitute, which was received and ordered printed, to which, of course, we would like to have reference made now, so that the committee may understand exactly the proposition before it.

Mr. C. H. Truax — It was not ordered printed; it was ruled out of order, but it was read by me, and should be printed, perhaps, as part of my remarks.

Mr. McKinstry — As I remember it, the substitute was ruled out of order at that time. The action of the Convention simply referred to the minority report of the Committee of the Whole. This substitute it was notified would be offered later.

Mr. Veeder — Yes, I am mistaken about what I said in regard to that. It is a fact that it was ruled out, but it was suggested that it might be offered in Committee of the Whole.

Mr. McKinstry — It seems to me that my amendment is first in order, and then the substitute can be offered.

Mr. Veeder — I do not object, Mr. Chairman, to the substitute at all, but I submit the proposition before the Committee of the Whole should be read. That has not been done as yet.

The Chairman — The main proposition before the committee is the proposed amendment, general order No. 15, which was disagreed to. Now, Mr. Veeder's proposition will come in as an amendment to this minority report.

Mr. Mereness — I wish simply to call attention to the fact that the

substitute minority report on page 595 is in the same language as Document No. 36.

Mr. Cochran— If I may be allowed I think I can straighten out the difficulty which undoubtedly prevails here. On page 651 of the debates it will appear that an effort was made to amend Document No. 36 by inserting the proposed amendment as offered by Judge Truax. I think, probably, that was the amendment to which Mr. Veeder refers. And the President then ruled that the proposed amendment, Document No. 36, would have to be brought up in Committee of the Whole.

The Chairman — The Chair rules that the proposition before the committee is general order No. 15, and if Mr. Veeder desires to move a minority report, he can do so.

Mr. Maybee — I desire to cite page 595 of the debates, where Mr. Veeder asked permission to amend the minority report, and he presented his amendment. The President of the Convention then addressed to Mr. Veeder the following inquiry: "Is that form assented to by your associates on the minority of the committee?" Then Mr. Veeder replied: "Yes, sir; I have just consulted them." The President then made the following direction: "Then it will take that form and will be so printed." I suppose under the direction of the President of the Convention that that is now the form it is in before the Committee of the Whole.

Mr. Durfee — It seems to me that the confusion or misconception in respect to this matter arises from a lack of consideration of the effect of the Convention disagreeing with an adverse report. As I understand it, a proposition is introduced; it is referred to a standing committee; that committee comes in with an adverse report; the Convention disagrees with the adverse report. Now, it seems to me to logically and necessarily follow that the proposition originally introduced, the adverse report upon which has been agreed to, is the proposition that goes to the Committee of the Whole, and that any other proposition relating to the same subject-matter must necessarily come in as a substitute or amendment in the Committee of the Whole.

The Chairman — The Chair has already ruled that the proposition before the House is general order No. 15, and Mr. Veeder, if he desires to bring up a minority report, can move it as an amendment.

Mr. Tekulsky — In order to avoid future mistakes or misunderstandings, I would like to have a thorough explanation of what becomes of a minority report where a majority report is disagreed with. In my opinion that minority report, after the majority report

is disagreed with, becomes the subject-matter in the Committee of the Whole, and not the article which has been disagreed with by the majority; because the report of the majority of the committee has been disagreed with. That falls when the minority report is sustained by the Convention. The consequence is the matter before the Committee of the Whole must be the minority report. I would like to have a ruling on that, Mr. Chairman.

The Chairman — The effect of disagreeing with an adverse report is the same as though the report had been favorable and gone to the Committee of the Whole.

Mr. Tekulsky — Yes, but there has been a minority report at the same time.

The Chairman — The minority report has no place.

Mr. Acker — I move you, sir, that the minority report, which is Document No. 36, be substituted for the proposition before the Convention.

Mr. Tekulsky — I second the motion.

Mr. Choate — I move as an amendment to that, that the amendment proposed by the minority report be so substituted.

Mr. Acker — I accept the amendment.

The Chairman put the question on the motion of Mr. Acker, as amended by Mr. Choate, and it was determined in the affirmative.

Mr. McKinstry renewed the offer of his amendment, which was again read by the Secretary.

Mr. Acker — I rise to a point of order, that the substitute presented by the minority report of the committee is not before the House.

The Chairman — The Chair rules the point of order not well taken. The committee has just adopted it.

Mr. Foote — I rise to a point of order. I understand the effect of the motion just adopted is to substitute the minority report for general order No. 15, as it appears upon our files. As I understand the amendment proposed by the gentleman from Chautauqua, Mr. McKinstry, it is an amendment of the proposition contained in general order No. 15, which has already been disposed of.

The Chairman — The Chair did not understand that it was offered as an amendment to general order No. 15.

Mr. McKinstry — Mr. Chairman, being only a layman, I may be pardoned by the numerous lawyers of this body for having heretofore supposed that the amount of $5,000 fixed by the statute as the

limit of amount to be collected as damages for the destruction of a human life was an absolute amount which was paid in all cases. I now learn from my friend, Col. Dickey, that railroad companies are in the habit of pleading abatement from this sum and introducing evidence to prove that the life which was destroyed by their exclusive negligence was not a valuable life, as far as earnings go, and, therefore, they should be adjudged to pay a much smaller amount. Certainly, if destroyers of human life have no minimum amount which they shall pay, and might under that ruling even bring a community or a family in debt to them for removing burdens of expense, then there should be no maximum limit. And I also agree with Mr. Nichols, who spoke a few evenings ago, in saying that a limit fixed in 1849 is no guide for damages now, when money has less comparative value and the earnings of common carriers are so greatly increased. But I fail to discover, Mr. Chairman, any equity or practicability in adjudicating upon the value of human lives in dollars and cents. It is not attempted in other circumstances. A man gets his life insured for a fixed amount against death; when he dies the amount is paid, and no plea of abatement is allowed on the ground of over-insurance, as might be in the case of a house or barn destroyed. A proposition to replace a wife or husband with a great deal better article, which is allowed in the case of buildings, would be resented. The same rule applies in the Criminal Code. If you commit a murder, you cannot plead for acquittal or mitigation of punishment on the ground that your victim was a worthless fellow anyway, and his family and the community are relieved of a nuisance. The theory is that a human life is sacred, and, therefore, the penalty restricts and is unalterable for willful murder. Yet many lives are lost in factories and on railroads which are in a degree murders, for the victim has been brought to his death by the culpable negligence, or heartless indifference, of a man or a corporation beyond his control. A soldier enlists in the army and loses his life. Does the government inquire of the widow applying for a pension how much of a husband he was anyway?

In all these instances human life is considered something essentially different from mere concrete property. Who can say what a human life is really worth in dollars and cents with even the remotest degree of accuracy? It is replied that the value is in proportion to the annual earnings of the individual. I respectfully ask: For how long a period? I am told that there are members of this body whose personal, professional earnings are $10,000 a year, others $20,000, others $30,000 and so on upward. Suppose a man earns $50,000 a year. The capital necessary to produce that income at

the rate of five per cent interest would amount to a million dollars. How long would we have any common carriers if they were liable to pay such damages as that? What would the stock in any transportation line be worth? And yet, the man who earns $50,000 this year may not be able to earn a solitary cent next year. He may already be afflicted with hidden ailments that are sure to kill him, or anyone of the countless ills, mental and physical, to which human flesh is the unhappy heir, may render him to-morrow utterly worthless as an earning machine. On the other hand the obscure man who is to-day earning a meagre pittance may acquire a position within a year which will require a dollar mark before the figures that state his income for each following minute of his life. Again, who can estimate the real value of a man's life to himself or to his family. Many a man keeps his family in a brown-stone front, while his habits and disposition are such that it is but the abode of misery, while his neighbor on the back street, who occupies a humble cottage, may be the all in all to a dependent family and entwined in their very heart strings. If he is killed, not only is cruel and wasting poverty their lot, but the lives of the children whom his earnings would have educated are blighted, and no more for them are joyous days. I have myself known of a wealthy man, of great earning capacity, whose course of life was such that his estimable family breathed a sigh of relief when he passed away. Yet his family, left in affluence and needing not a dollar, on this basis of earning capacity, could collect not less than $50,000 on account of his death by railroad accident, while in the case of some other man, so much poorer in this world's goods, but so much richer in all the attributes that go to make up a noble manhood, in all the attributes that make a man pricelessly dear to his family, and of real value to the community, his absolutely destitute family would collect only a beggarly amount. Mr. President, human life cannot be replaced, and, therefore, there can be no adequate recompense made for its destruction. "All that a man hath, will he give for his life." Whatever the theory of the present law may be, in allowing the recovery of damages for death caused by the fault of an employer or a common carrier, in my humble opinion the damages should be considered punitive and not actual. Upon that theory of punitive damages, all lives may stand alike before the law, as they should and as they do in the criminal code.

The vital spark of human life is a sacred gift, which should never be taken away without due process of law, nor estimated to be paid for with dollars and cents. Its value should never be haggled over before a petit jury, to be settled by the testimony of brow-beaten

witnesses or avaricious clients. Whatever damages the Legislature decides should be allowed as punitive, that amount should be invariable, whether the stricken person was a millionaire or a peasant; whether he spent his summers abroad, hob-nobbing with princes, or was simply a plain American citizen, whose shadow each summer day's evening the sun cast through an humble doorway, where he was greeted, not by liveried servants, but by a family to whom his existence was their very life and light. It was with this view of the case, Mr. Chairman, that I prepared the amendment which I have offered.

Mr. Cassidy — Inasmuch as the right of action is a statutory action and not an action at common law, and is perpetuated in the Code of Civil Procedure, which I desire to read, and is limited not only in the money consideration, but the right of action is also limited as to whom the moneys shall go to, I move you, therefore, that the Code of Civil Procedure be substituted as an amendment to this constitutional provision. I read: "The executor or administrator of a decedent, who has left him or her surviving a husband, wife or next of kin, may maintain an action to recover damages for a wrongful act, neglect or default, by which the decedent's death was caused, against a natural person who, or a corporation which, would have been liable to an action in favor of the decedent by reason thereof, if death had not ensued. Such an action must be commenced within two years after the decedent's death.

"The damages recovered in an action, brought as prescribed in the last section, are exclusively for the benefit of the decedent's husband or wife and next of kin; and when they are collected they must be distributed by the plaintiff as if they were unbequeathed assets left in his hands, after payment of all debts and expenses of administration. But the plaintiff may deduct therefrom the expenses of the action, and his commissions upon the residue; which must be allowed by the surrogate, upon notice, given in such a manner and to such persons as the surrogate deems proper.

"The damages awarded to the plaintiff may be such a sum, not exceeding $5,000, as the jury, upon a writ of inquiry, or upon a trial, or, where issues of fact are tried without a jury, the court or the referee deems to be a fair and just compensation for the pecuniary injuries resulting from the decedent's death to the person or persons, for whose benefit the action is brought."

The Chairman — Now, Mr. Cassidy, will you put your motion in writing.

Mr. Cassidy — I will. I move to amend the amendment offered by Mr. McKinstry by substituting the Code of Civil Procedure, which preserves the right of action, in its place.

Mr. McDonough — Do you mean the whole Code?

Mr. Cassidy — The whole Code.

President Choate resumed the chair and announced that under the rule adopted by the Convention, the hour of one o'clock having arrived, the Convention stands in recess until three o'clock.

AFTERNOON SESSION.

Thursday Afternoon, August 16, 1894.

The Constitutional Convention of the State of New York met pursuant to recess, in the Assembly Chamber, in the Capitol at Albany, N. Y., Thursday, August 16, 1894, at 3 P. M.

Vice-President Alvord called the Convention to order.

The President *pro tem.*— The House will be in Committee of the Whole on the proposed constitutional amendment No. 380, and the gentleman from Essex, Mr. C. B. McLaughlin may take the chair.

Mr. Lester — Mr. President, before the House goes into Committee of the Whole, I desire to ask to be excused.

The President *pro tem.*— The Chair is opposed to it. The gentleman from Essex, Mr. McLaughlin, will take the chair.

Mr. C. B. McLaughlin took the chair in Committee of the Whole.

The Chairman — The Secretary will state the question before the House.

The Secretary — The question before the House is the amendment offered by Mr. Cassidy, to general order No. 15, "Substitute sections 1902, 1903 and part of section 1904 of the Code of Civil Procedure, which reads as follows:

Mr. Bush — Mr. Chairman, I raise the question that there is no quorum present. I think it is a very doubtful matter whether there is any quorum here, and I do not think we can do business with any less number.

The Chairman — What action will the committee take?

Mr. Holls — I rise to a point of order. The point of no quorum cannot be raised in Committee of the Whole. The first proceeding is that the committee rise and report progress, and I simply hope that that will not be pressed.

Mr. M. E. Lewis — That cannot be right under the ruling of last Friday. At that time the rule was stated that if it appeared that there was a lack of a quorum in the Committee of the Whole, the President shall resume the chair. If the chairman of the Committee of the Whole can determine that there is no quorum present, then it is his duty to inform the President to that effect, and the President will then take his place, for the purpose of ascertaining whether there is a quorum or not.

The Chairman — The Chair rules that the point of order made by Mr. Holls is not well taken, and will ask the President to resume the Chair.

Mr. Alvord — Mr. Chairman, in order to determine whether there is a quorum present in the Committee of the Whole, I ask, sir, that you ask those present to rise, and remain until counted, so that you can determine whether there is or is not a quorum.

The Chairman — The Chair has already ruled to ask the President to take the chair for the purpose of ascertaining whether there is a quorum or not.

The Committee of the Whole thereupon rose and Vice-President Alvord resumed the chair.

Mr. McLaughlin — Mr. President, the Committee of the Whole have had under consideration the proposed constitutional amendment (printed No. 380), entitled, "Proposed constitutional amendment, to amend article 1 of the Constitution, as to damage for the loss of human life," and, finding no quorum present, have made some progress in the same, but not having gone through therewith, request the chairman to report the fact to the Convention.

The President *pro tem.*— The gentleman from Essex, Mr. C. B. McLaughlin, chairman of the Committee of the Whole, reports to the Chair that no quorum is present. In order to determine that question, the Secretary will proceed to call the roll of the Convention.

The Secretary proceeded to call the roll, and the following were found to be present:

Messrs. Abbott, Ackerly, Alvord, Arnold, Banks, Barrow, Becker, Bowers, Burr, Bush, Campbell, Carter, Cassidy, G. W. Clark, H. A. Clark, Cochran, Coleman, Deady, Dean, Deterling, Deyo, Dickey, Doty, Durfee, Durnin, Floyd, Foote, Andrew Frank, Augustus Frank, C. A. Fuller, Galinger, Giegerich, Gilbert, Gilleran, Goodelle, Hamlin, Hawley, Hecker, Hedges, Hill, Hirschberg, Holls, J. Johnson, Kellogg, Kimmey, Kinkle, Kurth, Lauterbach, Lester, M. E.

Lewis, Lincoln, Mantanye, Marks, Marshall, Maybee, McArthur, McClure, McCurdy, McDonough, McIntyre, McKinstry, C. B. McLaughlin, McMillan, Mereness, Meyenborg, Moore, Morton, Nichols, Nicoll, Nostrand, O'Brien, Osborn, Parker, Parmenter, Peabody, Phipps, Pool, Porter, Pratt, Putnam, Redman, Roche, Rogers, Root, Sanford, Schumaker, A. B. Steele, W. H. Steele, Storm, Tekulsky, Tibbetts, Titus, Towns, C. H. Truax, C. S. Truax, Tucker, Turner, Veeder, Vogt, Wellington, Wiggins, Williams, Woodward, President.

The President *pro tem.*— The Secretary reports ninety-two present, and the gentleman from Essex, Mr. C. B. McLaughlin, will please resume the chair.

Mr. C. B. McLaughlin took the chair in Committee of the Whole.

The Chairman — The question is on Mr. Cassidy's amendment.

Mr. McDonough — Mr. Chairman, I would like to inquire whether Mr. Cassidy has sent up his amendment in writing.

The Chairman — The Secretary announces that he has sent it partly in writing and partly in print.

Mr. Cassidy — Mr. Chairman, this action is a peculiar action. It is virtually an insurance. The fee which is given in case of death is a fee which cannot be reached even by the creditors of the decedent, and, if the $5,000 limitation is to be removed, it seems to me that in order to preserve the right of action, we must take all the sections of the Code of Civil Procedure which provide for maintaining the action, and incorporate them into the Constitution. I do not believe it would be good sense for us to limit a statutory action over which we will practically have no control, and one which the Legislature might repeal at any time it sees fit. If there is to be any meaning at all to the work of this Convention in removing the $5,000 limitation, we ought also to preserve the right of action. The amendment which I propose is practically the right of action as it is preserved in the Code of Civil Procedure with the $5,000 limitation struck out. It seems to me that this amendment should prevail.

Mr. Dickey — Mr. Chairman, the purpose of this amendment is very evident. It is offered by a gentleman who is opposed, and who voted against the original proposition, overruling the committee. It is intended to embarrass and defeat and hinder and delay this proposed amendment. I hope the Convention will waste little or no time, but will speedily vote down the amendment.

Mr. Cassidy — Mr. Chairman, I wish to correct the gentleman. I voted with him when this question was up before, and I wish to vote with him now on adopting this amendment.

Mr. Veeder — Mr. Chairman, do I understand correctly the position of the Committee of the Whole, that the proposition now before the committee offered by the gentlemen are substitutes?

The Chairman — They are amendments.

Mr. Veeder — There are two amendments pending now?

The Chairman — There are two amendments pending now.

Mr. Veeder — That is the limit, is it not?

The Chairman — Yes.

Mr. Veeder — I understood they were substitutes?

The Chairman — They are amendments.

Mr. Tekulsky — Mr. Chairman, I move we take a vote on this amendment.

Mr. Doty — Mr. Chairman, I rise to a point of order. The proposition of the gentleman (Mr. Cassidy) is not an amendment, not germane to the proposition under discussion.

The Chairman — The Chair rules the point of order not well taken.

Mr. Barrow — Mr. Chairman, when this proposed amendment was reported to this Convention adversely by the committee to which it had been referred, I voted against the report, because I was in favor of submitting the question to the Committee of the Whole, not because I favored the proposition, but because it was evidently a proposition regarding which there was a great diversity of opinion. I voted in that way, also, for the reason that the question was one upon which I was not then prepared to vote intelligently.

I have since considered the subject more fully and I have come to the very decided conclusion that the report of the committee is correct and that none of the proposed amendments should be submitted by this Convention to the people.

I have not come to this conclusion wholly upon the ground that it is a matter properly of legislation, and fully within the power of the Legislature, and, therefore, not a subject with which this convention should deal, but because I believe it to be an unwise proposition upon its merits.

Nevertheless, I do oppose it, as I think we should oppose every amendment here, of a purely business character, when the relief sought for can be obtained through the Legislature. If we were making a new Constitution here, that is a rule which should be

observed in making it, and in simply revising the existing Constitution or proposing amendments to it, that rule should be still more closely adhered to. Why, I ask, should this Convention so degrade itself as to resolve itself into a mere legislative body. It is true that this proposed amendment is a limitation on the power of the Legislature, but it nevertheless partakes of the character of legislation. The Legislature has power, at any time, to repeal the statute, and having done that, the purpose of this proposed amendment will have been served; and I believe the responsibility for such legislation should rest not upon this Convention but upon the Legislature.

We have been told upon this floor that the reason why this matter should not be entrusted to the Legislature is because the Legislatures of this State cannot be trusted. That is a suggestion to which I propose to shut my ears. I don't want to believe it and I won't believe it. We have no right, in my judgment, to believe it. Let us act here, at all events as if we believed in the honesty of our Legislature. It has always been my opinion, sir, that the dishonesty of our Legislatures, if it exists, exists largely because they are branded in advance. But, however that may be, I am not engaged here, and I should not be so engaged, in making a Constitution upon the assumption that Legislatures are dishonest. I believe the Legislatures are as honest as the people behind them, as the people who elect them, so that when we shall have made a Constitution for the people we have done our full duty.

I therefore say that this is a subject which should be left entirely to the Legislature. It has been suggested that repeated efforts have been made to repeal the statute in the Legislature. I know nothing about such efforts and I doubt if they ever occurred. If they did, however, it is no proof that the efforts failed by reason of corruption, because I believe, sir, that if an effort should be made next winter in the Legislature to repeal the statute, it ought to fail upon its merits.

I don't know from whence or from whom this proposed constitutional amendment comes. I assume that it emanates in part, if not wholly, from that element, of comparatively recent growth, which has come to hate the name and the existence of a corporation. For that class of people, whoever they may be, wherever they may exist, I have no sympathy. I believe that the corporations which have grown up in this State are beneficial institutions which should rather be fostered than destroyed. I have no sympathy with the spirit that is constantly striking at them, and endeavoring to cripple them.

For the poor man, for the laboring classes, they should be everywhere and at all times encouraged. The more there are of them the more labor they furnish; the more there are of them the higher wages are secured; the more there are of them the greater is the competition and the lower are the prices of commodities. Competing manufactories and corporations bring up the price of labor; competing manufactories and corporations bring down the prices of commodities. In this way, in my judgment, and in this way only, can we prevent, and we have, prevented monopolies, which are able to dictate to laborers and consumers alike.

And yet, sir, it has grown to be the fashion for both laborers and consumers to attack corporations as if they were the enemies of the State. It is the result, sir, as I believe, of the teachings of socialism, that exotic, recently implanted into our soil and which only by reason of its novelty has unfortunately taken root. It is the seed of that other social evil, anarchy and chaos.

To this new element in our political life I am inclined to trace this proposed constitutional amendment. But I think, sir, that it has another source. It comes here and is supported very largely in the interest of the most conservative of all the governing classes, the lawyers. I do not think we have far to go for the reason why this amendment found so much strength on the floor of this Convention. This is a body of lawyers, of lawyers whose business and employment has frequently been to bring actions for negligence, and who for personal reasons do not wish their recoveries limited, because such limitations limit their fees. At least fifty per cent of the cases of this character, I think, are taken up by lawyers on a division of the recovery, so that when they plead for the prohibition of this limitation at least fifty per cent of their pleading is for themselves.

What they plead for they say is just, and what they want is, that there shall be no limitation. They argue that the limitation is a wrong upon the poor man. I have always observed, sir, that when an unwise thing of this character is urged the poor man and the laboring man, who is the holder of a vote, is held up as a menace. I challenge any man upon the floor of this Convention, to go deeper into his pocket or to go further in his acts to show his interest in the improvement and welfare of the poor and laboring classes than myself. I have been one of them myself and I have realized their deprivations, but this proposed amendment is in the interest of the rich rather than in the interest of the poor.

The limitation of $5,000 on a life is the assertion practically that that is the value of a life, whether it is the life of a poor man or a

rich man. The poor man's relatives almost, without exception, get so much, and the rich man's next of kin get no more. Then, sir, you have equality.

Our friends would have this change. Let me state their case, if I understand it. Take two men riding in the same railway carriage. One is a merchant who has laid by half a million dollars, and earns in his business $100,000 per annum. The other is a laborer who earns by his labor $300 or $400 a year. Both are killed in the same accident, and there is no limit on the recovery. The merchant's case goes before the intelligent jury, and, if the two cases are decided upon the evidence which would be offered in such cases, the jury would be bound to consider in each case the value of each life upon its respective earnings. The jury would, however, consider $50,000 an enormous sum to be given to the rich man's next of kin, but, if they applied the same measure of damage to the poor man's case, $300 (not $5,000) would be an enormous sum to give.

The result, therefore, with honest juries, under the guidance of the court, with this limitation stricken from the statute, might prove of benefit to the next of kin of the rich man, but fatal to the next of kin of the poor man.

Neither railroads nor corporations of any kind would suffer from the adoption of the amendment proposed, so far as the claims of laboring men or poor men are concerned, but from the claims of rich men earning in their vocations large annual incomes. And the railroads, forced to pay such sums, would be compelled to recover the losses in some way. The only way that could be done would be to reduce labor. Thus the laborers would be compelled to pay, in one way or another, the damages which the railroads had been compelled to pay for the deaths of the money-making rich men by the verdicts of honest juries.

It has been said that the limitation in case of death, and the absence of limitation in the case of injury, presents an absurdity. I deny it. Right here comes in again the justice of the law to the poor man. Damages are awarded in such cases for pain and suffering, and the law says that a poor man's suffering from an injury is as great as the rich man's and should be paid with precisely the same liberality; and that is true; nay, it should be paid for with even greater liberality. The rich man, with his means, may alleviate some of the pain which the poor man must suffer. Therefore, it is that in a case of injury there is no limitation by the statute of the damages which may be recovered. I assert that the limitation of $5,000 in the case of death, and the non-limitation in the case of

injury go hand in hand, and that both are in the interest of the poor man and the laborer.

The law, as it stands, puts the money-maker and the rich on an equality with the wage-earner and poor, and there I would have it remain. Put this provision into the Constitution, and the result must inevitably be, if courts and juries are honest, to lessen the recoveries of $5,000 verdicts in the case of poor men at least fifty per cent, while it would increase the recoveries in the case of rich men in the same proportion, to the injury and loss of the poor men not injured and living upon their wages. But it must be remembered that this provision does not strike at railroads and the great corporations only, but at every person and corporation which furnishes labor — I say every person and corporation which furnishes labor.

And I assert that there is something due to the corporations which furnish labor. They say that corporations are without souls, but the individuals which make up the corporations, and the individuals which employ labor have souls. Many a corporation, sir, has been organized for the sole purpose of furnishing labor, for the benefit of the idle. I know of such corporations, manufacturing corporations, and I have no hesitation in saying that all corporations are extremely careful of the lives and limbs of their employes, but accidents will occur, and while they may be denominated accidents, the courts have denominated them the result of negligence. A new boiler may explode, but, if it does, the courts have said that the fact of the explosion is, *per se*, evidence of negligence; and how are you to disprove such a presumption?

So, I say that there are many cases of unavoidable accidents, very many cases against which it has been impossible to have expected the result, in which the courts under existing circumstances have left it to the jury to determine the fact of negligence, in which, if you change the existing law, the courts will adopt more stringent rules.

But for these corporations, these individuals who venture their money for the public good, there should be some consideration. They should not be treated as outlaws, and public enemies, but as the builders up of the State and nation, without which enterprise would cease and labor would find no employment.

But, sir, without further wearying the committee, for there is much more that might be said in opposition to this proposed amendment, I leave the subject to the good sense of the delegates, entreating them not to degrade this Convention into a mere legislative body, and not to fly to evils which they know not of.

Mr. Veeder — Mr. Chairman, it is the desire of the minority of the committee who have submitted this report that the question shall come directly before the Convention, whether or not from past experience, and the conduct of Legislatures, the time has arrived when the organic law shall be so amended as to take possession of this subject. It seems to me that that proposition is the first to be considered. I do not rise to discuss the merits entirely of the proposition, but rather having that object in view, to so frame the provision to be inserted in the Constitution as to properly meet the object. With that in my mind, I submit that the amendment offered by Mr. Cassidy is objectionable. It deals more with the subject of legislation than the precise subject that we desire to consider here; to wit, shall there be a limit to the amount of recovery in actions for the loss of life, or shall that limit be removed, and shall the right of action at all remain in the province of the Legislature, or shall this Convention put into the organic law, there to remain and not to be subjected to the caprice of a Legislature, the fact that a right of action shall be given? Now, it seems to me that we should be permitted to perfect such a proposition as this before we reach the question: Shall such a proposition be incorporated into our organic law? And, therefore, I submit that the proposition or amendment offered by Mr. Cassidy, is in fact, as he so states himself, the incorporation into the Constitution of subjects of legislation. I am not here to say that I doubt the Legislature. None of us know what the next Legislature will be. These Legislatures have passed out of existence, but to relieve coming Legislatures or future Legislatures from the agitation of this subject, and I submit that the question has been agitated time and again, relief has been sought from this restriction or limitation from the Legislature, and since 1848 no relief has been afforded. Therefore, I submit that the amendment offered by Mr. Cassidy should not prevail, but that those who are in sympathy with the proposition that the committee have reported may be allowed to perfect it as best they can.

Mr. Bush — Mr. Chairman, I had not proposed to say anything on this subject, but the remarks of the gentleman who first discussed this question (Mr. Barrow), seem to me somewhat misleading. The question as to whether or not the subject of having a limitation upon the amount of recovery for damages in cases of negligence is one which has a great bearing upon the welfare of the public in this and every other State, in a manner entirely different from the way in which it was discussed by that gentleman. Now, Mr. Chairman, it seems to me that there should

be no limitation of the amount of recovery in an action for recovery in cases of negligence; and, although it would seem that it was in the nature of legislation to put that clause into the Constitution, yet the fact that for forty years it has remained the statute of this State, and the anomalous condition has existed of a recovery of $5,000 for a death, and an unlimited recovery for an injury, would seem to lead to the conclusion that it should no longer be tolerated. Mr. Barrow, in his remarks, discussed it entirely in the nature of compensatory damages, and he illustrated the question by supposing a rich man and a poor man both being injured. I submit, Mr. Chairman, that that has little or nothing to do with this question. It is a bigger and a broader question than that, in every sense of the word. In any action of that character, punitive or vindictive damages are and should be recovered. They are in the nature of a fine upon the individual or corporation inflicting the injury through negligence, and the amount of fine is paid over to the person injured or his representative. Now, the fact that a fine is inflicted upon a corporation for negligence is of the greatest importance to the people of this State who travel upon railroads, steamboats, and in the hundred and one other ways in which an accident to the individual may occur from corporations or others interested in a public capacity. Were it not for the fact that an action may be maintained for damages, I insist, Mr. Chairman, that there would be nowhere near the care taken in public conveyances that is taken to-day, and the stronger the action for damages is, the greater the care will be on the part of the corporations carrying the public or coming in connection with the public; and I maintain in that connection that there is where the people of this State are interested to a greater extent than in any other. The question as to who will receive the amount of the recovery is of secondary importance. The fact that a railway corporation or a steamboat corporation is open to large recoveries for wilful negligence will have a tendency to make them use the utmost care and caution, and thus avoid accidents; and that is the first requisite and the way in which the public are interested in this question. I insist that punitive or vindictive damages should always be recoverable, and in that case it does not matter whether a man is worth $100,000 a year to his family or two dollars a day, so long as the amount of damages to be recovered is left to the jury, and so long as not merely compensatory damages are recoverable. That may always be left with safety to the court which is to apply the remedy. Juries and courts are not always ignorant. The presumption is that they do justice, and we can rely upon them that they will do justice; but I insist that the question should be looked

at in a larger light, that the effect of incorporating into this Constitution the amendment that no limitation shall be placed upon the amount of recovery will have a tendency to compel corporations and others to use the utmost care and caution to avoid accidents, and in that way the people of the State will be interested to a much greater extent, than as to whether the individual recovers $5,000 or $10,000. The fear of large recoveries will make railway companies use more caution. They will not work men eighteen hours a day until they become so sleepy and tired out from exhaustion that they cannot use due care. The employers will be more cautious, and the public will in that way be benefited, and anything of that character is of sufficient importance to be placed in the Constitution of this State. This act permitting a recovery for injuries is a purely statutory enactment, and since it has been incorporated into the laws of this State, corporations have been much more careful than they formerly were; and if you remove the restriction and place an article in the Constitution prohibiting the limitation for the amount of recovery, they will use still greater caution, and attempt in every possible way to avoid accidents, and thus not be compelled to pay so large damages. It is assumed, apparently, by Mr. Barrow, that in all cases of an accident, a recovery is had. That is not true and never has been true. It is only in cases of negligence, where the party injured has in no way contributed to the injury himself, and if any corporation through its negligence, and without corresponding negligence or contributory negligence on the part of the person injured, injures any individual, it should be compelled to respond in damages, and there should be no limitation of the kind that exists at present, rendering cheaper to kill a man than it is to hurt him. I think, Mr. Chairman, that notwithstanding this has a tendency to and in its nature looks somewhat as though we were legislating in the Constitution, yet the subject is of great and sufficient importance for us to depart from the rule in that case, and I hope it will be incorporated and placed in the Constitution.

Mr. Schumaker — Mr. Chairman, there is no statutory limitation in relation to the injury of a person unless you kill him. In 1847 a law was passed that if a person was killed, the person, corporation, man or woman, that killed him, could be prosecuted. Now, as to the law of damages; if the boy killed was an idiot, you could not get a cent, although it might tear your heart strings. If the man was a lunatic or a drunkard, who did not bring a six-pence a week into his house, you could not get a cent; that is, before an impartial jury and an honest judge. Now, it rests entirely with the

cold, solid law of this question. If a man is killed, it is not necessary to prove that his life would be estimated at so much and so much and so much. The law stopped that. You cannot have prospective, uncertain damages. A man in Wall street in one year may make a hundred thousand dollars. Would you estimate that man's value at a hundred thousand dollars a year for twenty years, when in three weeks he might be a bankrupt? A poor farmer may make, by selling apples and cherries and peaches one year, two or three hundred dollars. An employe may, by some accident on his farm, be killed by a kicking horse, a runaway team or something of that sort. Would you take that man's farm away from him just because that man had been killed in his employ? It is not these terrible corporations alone which have to stand the brunt of this matter, these terrible corporations that every State and every nation has helped to foster. I remember, and I am not so very old, as some may think, when there was not a railroad in this State, and when people in towns and villages begged and prayed of rich men to build them railroads; when the State of New York gave them money, and, in a great many instances, never got it back. I know of several instances where the State of New York loaned money to railroads, and they were sold for two or three cents on a dollar. These corporations have been begged by people in the villages and of people in the cities and counties of this State to come and do business among them, to employ the poor; but the growling that you hear in Legislatures and in this body about those terrible corporations can hardly be conceived of. What would this State be without its corporations? See how liberal it has been in all its great works. It has given us the great canal from Erie to Hudson. Dozens and dozens of other corporations have had money almost given to them by the State. The great railroad running up to the iron region of this State was sold to a gentleman, I believe, for a dollar, built by the State, to help increase the wealth of the country into which it ran. But, those terrible corporations! And yet, you will find these men running to them and begging for passes. All of the railroads of this State are besieged by members of Legislatures and different public bodies and by most everyone to get passes to ride on their roads for nothing. My good friend, Mr. Moore, here in this Convention has a constitutional amendment on that subject, so that the county judges and district attorneys, and all these people who get a salary from the State, shall ride free on the roads of corporations that cost stockholders many thousands and thousands of dollars to build. There is a letter in this Convention from a gentleman in Philadelphia, saying that

if he did not give passes to the gentlemen who asked for them, they would turn him a cold shoulder, and fight and stab, and attempt to kill the corporation. Sometimes, I am told, they not only want a pass on the ordinary cars, but they want a palace car permit, also, to ride from one end of the country to the other. Now, gentlemen of this Convention, we have had this threshed and threshed in the Committee on Bill of Rights. Men would say: You are a lawyer, why are you opposing this? Well, I stand up a little for my profession. I have a little pride in my profession, although I have left it in my old age, to have the rest of my life to myself; but I cannot bear to hear innocent corporations abused and insulted without any cause. Gentlemen may laugh, but laughing is no argument. I do not intend to be at all humorous in what I say, but this is a broad and sweeping section to put into the Constitution of this State. There never was an occasion for it. If the Legislature is not able to settle this matter, let there be some amendment, by some wise man, put into this Constitution, abolishing the Senate and Assembly. I do not intend to detain the Convention much longer, although a gentleman in my place in the last Convention said he was not going to say much, and he talked three weeks. There is some limit to my talk. In all the cases that I have been acquainted with in our courts in New York or Brooklyn, it is very seldom that five thousand dollars is recovered. Sometimes the courts set aside cases where there is a little too much, or where there is too little evidence. That they do, and that they will continue to do, as long as we have courts and good ones. You have proved your defense if you prove contributory negligence where the man was killed, just the same as you prove contributory negligence where the man was not killed. Any contributory negligence defeats the action, and in case of death, you have got to show that the man was really of some benefit to his family and his friends. My good friend, Mr. McKinstry, thinks that the feelings of the family where a man is killed should be sufficient to make it five or ten or fifteen thousand dollars; just the feelings. The law is different from the idea my friend has. It is solid, cold reason. It makes you prove your facts, makes you show damages, when you ask for money, and you have got to show by the evidence that you are entitled to the money or you will not get it. They speak of wilful injury. Did any person ever hear of a railroad train committing a wilful injury upon a passenger, or of a corporation committing a wilful injury upon a person? The only exemplary damages I ever heard of was where a big man knocked a little man down in an assault and battery case, and for an example to the

community for that wilful, deliberate act, the big man was made to pay for it. But, Mr. Chairman, where a railroad accident takes place through carelessness, gross carelessness, as you may say, of its employes, there is very little more given for an injury resulting from such gross carelessness than would usually be given in the most ordinary cases in the courts. I have known but very few cases of that kind, and that was where a man lost his arm or his leg, or was injured in such a way that he was afterward unable to support himself, or earn any money. But when the man is dead, unable to support his family, or be of any benefit to those around him, the law requires very particular proofs in those matters. Until 1847 we had no law in reference to the killing of individuals. It was altered in 1848, and now the limit is five thousand dollars, and very seldom given. The records of the courts show it, although there has been no resolution in this body calling upon the courts to state how many cases had a recovery of five thousand dollars, and in how many cases the recovery was less than that amount, but I have the assurance of a great many judges in this body, and lawyers, that it very seldom reaches the sum of five thousand dollars.

Mr. Nichols — Mr. Chairman, I do not wish to detain the Convention with a discussion of this question at any length whatever. The subject has been gone over with great care, and some of the arguments, that to me were impressive and should be controlling, were under consideration when the question was before the Convention on a former day. I do not agree with Mr. Dickey, in his suggestion that the amendment proposed by Mr. Cassidy is introduced for the purpose of defeating the bill. I think, however, that the amendment should not prevail, because it is more a matter of detail than substance, and does not bear upon the principle that is under discussion.

There are two reasons, Mr. Chairman, other than those proposed, that have been suggested, which lead me to believe that this proposition should find its way into the organic law of the State. I believe that it will work justice to the injured, and at the same time be a protection to the corporation or the party causing the injuries. There can be very little doubt, I apprehend, that the fact of a limitation upon the recovery, in case of death, has worked, and will hereafter work, a very serious injury to certain individuals who may come within its provisions. Why? Because it is equally apparent that the life of some men ought not to be and cannot be measured by a five thousand dollar recovery. The last speaker affirms that it very rarely reaches five thousand dollars. Assume that to be true, still the proposition is not met, if the value of the life taken does not

reach five thousand dollars, the failure to recover that sum certainly does not establish an injury to the party suffering the injury. I do not believe that this proposition was originally intended as an attack upon corporations. I do not believe, as Mr. Barrow does, and as he argued here, that the sole effect of this proposition is to give to a certain class of our community, who are disposed to introduce discord and disturbance in our midst, greater powers, rights, advantages as against corporations. I can see no reason and no justification for the position which he takes. We try cases involving the question of negligence, so far as damages are concerned, with a great degree of indifference, I believe. It is incidental to the cause of action. We present our proofs upon the merits of a case, then we give a very little evidence as to the history of the man injured or killed, and there we rest, and leave it to the jury to say within the limits of nothing and five thousand dollars what the recovery shall be. I believe if you introduce this proposition, make it the law of the State, every lawyer will feel called upon to try with more care, with more accuracy, to prepare with more care and more zeal, the single question of the value of the life. If there is a cause of action or a right of recovery, tell me why there should be a limit upon it, when there is no limit to its value. We establish the limit by the evidence given. The jury considers it carefully, and finds that the value of the life, unrestricted by legislative enactment, is so many dollars. Does that work an injustice to the individual or the corporation? If so, why? It does justice to the individual sustaining the loss. If it is just to the individual, I say it is likewise just to the corporation. There is no difference between the two. Working a justice to one is not establishing an injustice as against the other. I am willing to trust to the courts the question of whether recovery shall be sustained or set aside as excessive. It is your experience and mine, and the experience of all lawyers, that the courts of review do not hesitate to say this recovery exceeds the bounds, that recovery is not supported by the facts, and I put the judges, the courts, between injustice to the man injured and injustice to the corporation, or the individual causing the injury. If you will take occasion to look over the cases that are upon the records in other States, where there is no limitation, you will find that recoveries run no higher than they do in the State of New York. In the State of Michigan, for instance, the recoveries differ but very little in amount on similar facts, from those found upon the records in the courts of the State of New York. Now, that establishes this proposition that the juries and the courts, irrespective of the limitation that we impose, will deal justly between the parties interested. This

consideration should be controlling upon the merits of the question, and it does not matter, it seems to me, whether this amendment to the proposition or that proposition prevails, so long as we get from the person who has this bill in charge, a proposition that will establish the fact conclusively, as a matter of law in the State of New York, that there shall be no limitation upon the amount of recovery in cases of negligent killing.

Mr. Marshall — Mr. Chairman, I think it is pretty well settled that the opinion of this body is that limitations upon the amount of recovery, in cases which flow from injuries resulting in death, should cease. It is also, it seems to me, the idea of everybody present who has expressed himself upon this subject in favor of such limitation, that the right of action now existing, shall be continued. The fear is felt that perhaps the right of action might at some time be abrogated by the Legislature. To cover both of these ideas I have framed a provision which I will read: "The right of action to recover damages for injuries resulting in death, now existing, shall never be abrogated; and the amount recoverable shall not be subject to any statutory limitation." The right of action which now exists is well defined in the statute. We all know what that is. It has been the subject of adjudication in this State for the last forty years. There is no doubt as to the meaning of this language, and, therefore, by reference to the cause of action now existing, and declaring that the right of action shall further continue, it avoids any circumlocution which has been suggested by some of the amendments here. The concluding phrase is, that the amount recoverable can never be subject to any statutory limitation. That covers the idea that is suggested in the report of the minority of the committee, which had this matter under consideration.

Mr. Cassidy — Mr. Chairman, I am willing to withdraw my amendment and accept Mr. Marshall's amendment in its stead.

The Chairman — Mr. Cassidy withdraws the amendment offered by him and accepts the amendment offered by Mr. Marshall.

Mr. Root — Mr. Chairman, I had prepared an amendment or a substitute which seemed to be adequate to meet the evident wishes of the Convention in regard to this matter, but after a conference with Mr. Marshall, and a comparison of our several papers, I am satisfied that his paper is better framed to accomplish the object of the Convention, and still preserve all the benefits which the people of the State have derived from the settled construction which the courts have placed upon the statutes that have been on our stat-

ute books for so many years. I, therefore, refrain from offering the amendment as I have drawn it, and shall support that of Mr. Marshall.

The Chairman — Does the Chair understand Mr. Marshall to offer that as a substitute?

Mr. Marshall — I do.

The Chairman — Then that will be received and not acted upon until after the amendment offered by Mr. McKinstry.

Mr. Marshall — I understood that the substitute was accepted.

The Chairman — Mr. McKinstry has not accepted it. The question is on Mr. McKinstry's amendment.

Mr. A. B. Steele — Mr. Chaiman, do I understand, if this amendment is voted down, that then we are to act on Mr. Marshall's substitute?

The Chairman — The question will then recur on the substitute offered by Mr. Marshall.

Mr. Veeder — Mr. Chairman, I want to say on behalf of the minority of the Committee on Preamble, that if this amendment is voted down, we are prepared to accept Mr. Marshall's substitute.

The Chairman put the question on the adoption of Mr. McKinstry's amendment, and it was determined in the negative.

The Chairman put the question on the adoption of the substitute offered by Mr. Marshall, and it was determined in the affirmative.

Mr. Dickey — Mr. Chairman, I move that the committee now rise, report this amendment favorably to the Convention, and recommend its passage.

The Chairman put the question on Mr. Dickey's motion, and it was determined in the affirmative.

Whereupon the committee rose, and Vice-President Alvord resumed the chair.

Mr. C. B. McLaughlin — Mr. President, the Committee of the Whole have had under consideration the proposed constitutional amendment (printed No. 380), entitled, "Proposed constitutional amendment to amend article 1 of the Constitution, as to damages for loss of human life;" have gone through with the same, have made an amendment thereto, and instructed the chairman to report the same to the Convention and recommend its passage.

The President *pro tem.* put the question on agreeing with the report of the committee, and it was determined in the affirmative.

The President *pro tem.*— The report is agreed to, and the amendment will be sent to the Committee on Revision.

General orders of the day.

The Secretary called general order No. 17.

No. 17 was not moved.

The Secretary called general order No. 18, introduced by Mr. Marks.

Mr. Marks — Mr. President, I move general order No. 18.

The Convention resolved itself into a Committee of the Whole, and Mr. Durfee took the chair.

The Chairman — The Convention is now in Committee of the Whole on general order No. 18 (introductory No. 364), introduced by Mr. Marks, to amend section 7 of article 1 of the Constitution, relating to the taking of private property for public use.

Mr. Marks — Mr. Chairman, the fifty-eight delegates who voted to disagree with the adverse report of the Committee on Preamble when this question was before the Convention in another form, was evidence to me that many delegates were of the opinion that no opportunity should be afforded to private corporations by our fundamental law to obtain legislation exclusively in their interests, or legislation which deprives the people of their substantial right to a jury tral. I now present the question to you in another form for the purpose of accomplishing the same object I had in view when I presented the former amendment, and moved to disagree with the report of the committee, namely, to secure to the people of the State of New York the right to a trial by jury in proceedings where private corporations take property. My endeavor was and is to present an amendment to this Convention which, in any form, will secure the approval of the majority of the delegates and secure to the people of the State of New York that right to a jury trial. The majority of this Convention declared, when they confirmed the adverse report of the Committee on Preamble, by a vote of 93 to 58, that the right to a jury trial in these proceedings should not be so regulated as to require a waiver by both parties. Many delegates who voted to sustain the former report, stated to me after the vote had been taken, that railroad companies, more particularly the elevated railroad companies of New York and Brooklyn, in actions to recover damages for loss of rent and damages to the fee, had been endeavoring to obtain jury trials for the purposes of delaying and retarding litigation, and that these corporations and others might make use of, and could insist upon, the provision requiring a waiver

by both parties, and unnecessarily burden the courts and calendars of the courts with their thousands of cases, and deprive litigants in other actions of an opportunity to reach their cases. They suggested that if the corporations in those cities saw that anything was to be gained and the owner of the property injured by delay, they might possibly bring these condemnation proceedings (which they have always brought before three commissioners) to a jury trial. The amendment which I presented did not apply, and would not have been held to apply, to actions to recover damages for rent or damages to the fee, which, it is claimed, these corporations would like to try before juries. These condemnation proceedings are entirely different actions and proceedings from those brought to recover damages for rent or to the fee. But, leaving out the question whether or not, at some time, the elevated railroad companies of New York and Brooklyn might have taken advantage of the provision requiring a waiver by both parties and refused to waive a jury trial, to the injury and delay of the people, and after consultation with some of the ablest gentlemen in this Convention, I came to the conclusion that this question and the suggested impracticability of the working of the system in the cities of New York and Brooklyn, if corporations were given the right to a jury trial, could be averted, and the same result which I sought to accomplish by my amendment, to give to the people the right of a jury trial, could be accomplished by giving to the owner of the property, whose land was forcibly taken from him, the right to demand such trial. I was not particular about the form of the amendment, so long as it secured that result, and I presented an amendment to the Convention that, when private property shall be taken for any public use, the compensation to be made therefor, when such compensation is not made by the State, shall be ascertained by a jury when required by the owner of the property, and if not so required, such compensation shall be ascertained by not less than three commissioners, appointed by a court of record, as shall be prescribed by law. I shall ask this Convention to further except municipalities and other branches of the State government, which are now excepted by the Code of Civil Procedure. My reasons for excepting them I have before fully stated. My amendment was referred to the Committee on Preamble, which has now reported it as I presented it favorably, and declared that the principle should be embodied in our Constitution in the interest of the people. I believe this subject is one which calls for action on the part of this Convention, and that we should take from our Constitution a provision which corporations can use to obtain legislation and decisions solely in their interest. No dele-

gate can say a word against the principle for which I contend, and which I claim should be embodied in our Constitution, that the people's property should not be taken, that the rights of citizens, be they ever so humble, shall not be invaded by private corporations, until the people have had an opportunity of appealing to their peers in the jury-box. The adoption of this amendment will be an additional safeguard wrapped around the citizen, to which he may resort when he fears that his cherished home, which probably no amount of money could have purchased, or his little land, which represents the savings of a lifetime, or his little business, in which his entire little fortune is invested, his all, is in danger from the inroads of private corporations. He will feel secure when he knows he can appeal to the highest tribunal invented or devised by man to administer justice: a jury, who, he feels, will do unto him as he would do unto them, fairly and impartially, without fear, without favor, without interest, without prejudice, when it is decided that he must surrender to the demands of private corporations. The fifty-eight delegates who voted to disagree with the adverse report of the committee before voted substantially to secure to the people the right to a trial by jury to fix the compensation for property taken by corporations in these proceedings. They stamped their approval of the principle that it is the interest of the people that we have met, and that their rights should be secured to the utmost limit, and they stamped their disapproval of the practice of permitting private corporations to select their tribunal. And I am here to-day again maintaining the principle that private property shall not be taken by private corporations unless its value is fixed by a jury, if the people desire; and earnestly and sincerely endeavoring to secure for the people of the State the same right to a jury trial which they enjoy in any other civil action. That is my sole and only object. Wherever I go, whomever I ask, I am told it is right, it is just, it is proper, that the people should have that right, and you may rely upon it, Mr. Chairman and gentlemen of the Convention, that if you give the people that privilege they will not abuse it. I think I have made it clear by my arguments heretofore made that this section 7 of the Constitution does not guarantee to the people the right to a jury trial; and I believe I have demonstrated that the manner of fixing compensation in these proceedings should not be permitted to depend upon legislative will or corporate influence. The Constitution is not a play toy or a foot ball to be kicked around as the Legislature may see fit, nor should its provisions be left indefinite and uncertain, so that they may be annulled or rendered inoperative. It should plainly state that in cases of municipalities or the State, or

any branch of the State government, commissioners or a jury shall fix the compensation, as the Legislature shall decide may be best, in different parts of the State, and it should plainly state that in cases where private corporations take property a jury shall fix it if the people, the owners of the property, so desire. It should not be left one way or the other, as one Legislature may decide, and as the next Legislature, under some influences, may be induced to change it. Cooley, on Constitutional Limitations, in speaking of the subject of eminent domain, says: "The case is not one where, as a matter of right, the party is entitled to a trial by jury, unless the Constitution has provided that tribunal for the purpose." Story, on the Constitution, says: "One of the fundamental objects of every good government must be the due administration of justice, and how vain it would be to speak of such an administration, when all property is subject to the will or caprice of the Legislature and the rulers." Having in view the people's cause and their rights, and being opposed to any existing law in our Constitution, or any law which may be proposed in this Convention which in any wise grants or tends to grant to private corporations, exclusive privileges whereby the people are placed in their power, which views and sentiments I hope are shared by every delegate in this Convention, I feel that I would not have done my duty, if I did not attempt to correct — I feel that you would not have done your duty, if you did not correct a system which is wrong, and opposed to all principles of equity and justice, if you did not endeavor to secure to the people more power, if you did not prevent their property being taken unless its value was fixed by a jury as damages are assessed in other actions, if you did not endeavor to give them the right to say what they wish, and not to corporations to dictate. I ask for the decision of men of intelligence and integrity on a strictly people's measure, in the broadest sense in which that term can be used. You are the judges of it. You know what is in the interests of corporations, what is in the interests of the people. Corporations did not send us here. The people did. Our enacting clause is, "The delegates of the people of the State of New York, in Convention assembled, do propose as follows." And our duty is to propose to the people, to give to those whom we represent, what is strictly and justly their due. Do not defeat the favorable report of your committee, and have it said that you refused to legislate for the people. We should do something to secure the people of the State against the impositions and exactions of corporations in these proceedings. By adopting this amendment, as it is now reported from the Committee on Preamble, you carry out the principle involved; you can do no

harm to anyone; it is fair, and you place the right to demand a jury trial in the people, where it belongs. Not a delegate in this Convention can make the objection that that amendment, as it stands to-day, can work injuriously to the people, or that any corporation can use it to its advantage, to the injury of the people. Secure and guarantee to the people, by the supreme law of the State, a right, sacred and secure against the oppressive exactions of private corporations and their usurpation of powers. Teach private corporations, who, by reason of their greater strength, are enabled to appropriate property for private gain and not for the public use, that although they may control Legislatures, and prevent them from passing laws which secure the rights of the people, that although they may, by hidden and sneaky methods, obtain exclusive privileges whereby the people are placed in their power, that there is yet a supreme power in the State which, though it meets but once in a generation, can lay its hands upon them and protect the interests of the people; a power which can say to them: "Your rights and your powers have been growing too rapidly for the people's good, your control of Legislatures, your selection of your own tribunal, your control and supervision over the appointment of commissioners favorable to your interests, your control of these commissioners to obtain favorable decisions shall cease. You shall not invade private rights, except through the door of the jury-box." Let it be known that the Empire State of New York, with its motto of Excelsior, will not permit thirty-nine other States in the Union to excel it in making laws for the people which guarantee to them the protection of the precious privilege of a jury trial for obtaining justice against corporations in these proceedings.

Mr. Hawley — Mr. Chairman, I desire, the committee will be glad to hear, not to make a speech, but, with your permission, to make an inquiry of the proposer of this amendment. In the argument which has been addressed to the committee, we have heard, with some degree of repetition, about the oppressions and exactions of private corporations. What I desire to find out is whether this proposed amendment is not broad enough in its scope and in its language to include all public corporations as well, municipal corporations and all sorts.

Mr. Marks — As it stands now, it is broad enough, but, I think, the public corporations should be excepted. I think there should be a provision that when such compensation is not made by the State or municipalities, the branches of the State government, and which are set forth in the Code of Civil Procedure, it will except those and apply only to private corporations. I do not believe in

putting the State or municipalities, which take property for strictly public use, to the necessity of jury trials, and I am ready to propose an amendment, or, if any other delegate desires to do so, I shall be pleased to have him do so, excepting the proceedings to condemn property which the Code exempts, such as cities, villages and towns.

Mr. Towns — Mr. Chairman, I would ask the gentleman why he wishes to make this distinction between private and public corporations, if he thinks that it is the duty of this Convention to distinguish between private and public corporations, if they wish to take land for a public purpose.

Mr. Schumaker — Mr. Chairman, I will tell my friend the reason. In some instances there are several thousand property holders. In a park in Brooklyn there are almost ten thousand. If there are ten thousand property holders, where are you going to get your judges from? It will take ten thousand years.

Mr. Towns — That is just the point I was going to bring out. It will take from fifteen to twenty years to settle these questions. The elevated railroads went through the Legislatures five years successively, and it cost them all the way from fifty to a hundred thousand dollars to have this very measure passed through the Legislature.

Mr. Schumaker — Mr. Chairman, I just wish to say a word in answer to my friend. If he will look at the bill, he will see that it is optional to have a jury or to have the old commission. The property owners simply have the commission. They can take the commission from the court or can call for a jury, and, if they are wise, they will take a good commission if they can get it.

Mr. Towns — Mr. Chairman, there is nothing to prevent this corporation from buying lots along the proposed route and exercising that option. I venture to say there has never been a report of a commission, except in a few instances, which has been promptly set aside by the courts, where a commission has not given the full value of the property which it took for public purposes. I cannot see why gentlemen of this Convention should stand upon the floor and say that the price of property or the means or method of taking it should be different as between private corporations and public corporations.

Mr. Schumaker — Mr. Chairman, the gentleman still does not understand. The railroad companies, the people that take the property, the corporations, have nothing to say about a jury. It is given entirely to the property holder to claim a commission or a jury. Is that satisfactory?

Mr. Towns — No, it is not. What is to prevent the railroad corporations from buying the property along the route?

Mr. Marks — Mr. Chairman, suppose they did buy property along the route; they would not seek to condemn their own property. If they buy property along the route, how does it injure anybody else? I do not think there is anything in that. The gentleman himself comes from the part of the State where the abuse is the greatest. The judges of the Supreme Court, time after time, have set aside the awards of these commissioners. Judge Gaynor, of the Supreme Court, in a decision handed down only a few days ago, setting aside one of these six cents awards, said, as the New York Sun of August 1, 1894, reports it: "To confirm the award of these commissioners, would make the owners of the property affected justly question whether their rights are safe in the administration of justice. The facts show that these flats are more or less distressing places to live in, from the smoke and impurity of the air from the railroad, and the consequent depreciation and loss of rents, from the unwillingness of tenants to live in them, was proved."

I think the principle is fair. It gives the right to the people to demand a jury trial. I want to go farther and amend the section by putting in, after the word "State," "municipalities." Or, if the gentleman will wait for one moment, I will take the exact language of the Code.

The Chairman — If the gentleman will put his amendment in writing, and send it to the desk, it will be considered.

Mr. Powell — Mr. Chairman, just a word with regard to the suggestion made by the gentleman from Kings (Mr. Towns). The idea is that if some corporation wants to start a line of railroad or an enterprise of that character, some rival corporation will step in and buy up land in its vicinity in order to delay its work. How will it delay its work? As matter of fact, where private corporations take lands for their use, they take them and wait very often for long years after they have had the lands in their possession before they pay for them. They are not required to pay for the land before they bring it into use and employ it for the purposes for which they were organized. It would be absolutely impossible for one corporation to delay another. There might be a delay occasionally in collecting the money. We might suppose that one corporation was foolish enough to go in and buy land that is to be condemned by another corporation for the very purpose of delay. If any corporation wishes to do that, it is its privilege to do so, but the right of private individuals will in no way be affected. I think, perhaps, it

is well that the Convention should think for a moment of the history of this proposed amendment in its various forms. In the first place, the amendment was proposed by Mr. Marks, which provided that in all cases where land was taken by private corporations, that the value of the land should be determined by a jury. That amendment was referred to the Judiciary Committee. The Judiciary Committee having it under consideration, I presume, seeing that in that form it would be for the interests of the elevated railroads in the city of New York, reported it adversely; but the Judiciary Committee made the mistake of not telling the Convention why they reported it adversely. They kept that information to themselves, and so, without having any opportunity whatever to amend this proposed amendment, so that it would not be for the benefit of the elevated railroads of New York city, the amendment was voted down. Now, I ask the gentlemen of the Convention to look at the question for one moment in another light, and see if this proposed amendment is not fair. Bear in mind, that while this gives to the owner of lands the selection of the tribunal which shall determine its value, the owner of the land never has any choice as to what property shall be taken away from him by the private corporation. We will suppose I own a farm, and some railroad enterprise comes along and proposes to run this railroad through my farm. Do they ask me where they shall be permitted to go through my farm? Do they make any bargain with me? Will they consult me at all? Not so. They simply send their engineers and surveyors upon my land, and if they want to run through my house, they run through it; and if they want to go through my barn, they go through that, and they cut their road through any part of my property that they see fit. Gentlemen, give to the corporation that power to select just what it may see fit to take from my property, giving me no voice whatever in the matter, is it not fair, is it not just, that in determining the value of what they have taken, I shall have the right of selecting the tribunal? And after we have glorified the jury in the manner that we have done, is it not my privilege, as a citizen of the State, if I see fit, to demand that those damages shall be determined by a jury? Now, gentlemen, this proposed amendment has created some little comment on the part of the press, and it has been insinuated that when it was first brought in it was proposed for the benefit of the elevated railways of the city of New York. Possibly in the form in which it was introduced, it might have inured to their benefit, but such I know was not the intention of the introducer. Now, however, it comes before this Convention in a different form, robbed of anything in it of that character which might have made it repellant to

us or repugnant to the people who are to pass upon it. I read just a few words from the "Mail and Express," which devoted a long editorial to the consideration of this proposed amendment. Referring to commissions appointed by the courts to determine the value of property taken by private corporations, it uses this language: "Such boards are, of course, appointed with a view to the special fitness of their members to pass upon questions of values, which are not by any means easy to present to a jury or easy for an ordinary jury to determine." Selected, mark you, for their special fitness. I emphasized those words. They have been selected apparently in the city of Brooklyn for their special fitness, and these commissions have gone to certain parts of the city of Brooklyn condemning easements which had been taken away by the elevated roads, and in case after case have given to the property owners six cents damages; and the wrong has been so flagrant that our judges in the county of Kings have not hesitated in every instance where the matter has been brought before them, to set aside the award of the commissioners, and every action has in every instance where it has been carried to the General Term been sustained by that appellate body. It is also suggested in this same article, that "the result of sending condemnation proceedings to a jury would be to overcrowd the court calendars, which are already crowded enough, and to give the Manhattan Railway Company still more time for the payment of damages due sixteen years ago. Gentlemen, if it is necessary, to do justice to the citizens of this State, to crowd our court calendars, then let us crowd them, and if they become too crowded, then let us increase the number of our judges. Let us, above all things, do justice to the people. I also find this: "Anyone can see how entirely unsuitable a jury is for the trial of such questions;" that is merely a bit of special pleading. If the railroad or any other corporation takes away a part of your property, is there any tribunal more competent to decide its value than a jury of twelve men from the vicinage? I submit not; and I believe, too, if we fail to pass this amendment in its present form, that the charge will be laid at our door that we favor legislation of a discriminating character in the interests of private corporations; and, for that reason, I sincerely hope that we shall adopt this amendment and submit it to the people.

Mr. Dickey — Mr. Chairman, when this amendment was considered before this Convention on the question of agreeing with the report of the committee, I voted to sustain the report of the committee and against the amendment then proposed. As I am about to vote otherwise now, in its new form, I rise to state my reasons briefly. Commissions in condemnations proceedings in the main

have worked well in our part of the country. Our judges have appointed good commissioners. Ordinarily, we agree upon them, and when we cannot agree, our judges have no specal favorites, and appoint good, fair, competent men to discharge the duties of commissioners; so that we have no grievance with respect to commissioners passing upon the questions of taking private property for public uses. The amendment as then proposed gave either party the right to call a jury. As I desire to retain to our people the right to have a commissioner when they prefer, rather than a jury trial, I then voted against the proposition; but, as I understand it now, and in the amendment as now proposed by Mr. Marks, not in the bill as reported, but as he proposes to amend it, it gives the land owner alone a right to choose a jury in cases when he wants to, I am in favor of that proposition for the reason that in any such contingency, a man whose property is taken against his will, an unwilling seller, ought to have the right to have the question passed upon by a jury, if he elects so to do. Therefore, in the amended form, I am in favor of the amendments as proposed by Mr. Marks.

Mr. Marks — Mr. Chairman, the Committee on Preamble have reported this amendment to the Convention as I introduced it. They have come to the conclusion that it is right that the right to a trial by jury should be had when the owner of the property requires it. That is the report of the Committee on Preamble, and I have not now taken the time of this committee to discuss the question all over again; I spent nearly two hours when this question was up before; and I shall not repeat all of my reasons then given for making this change in the Constitution. I presume the gentlemen remember them. I have not stated all my reasons to-day for exempting municipal corporations. They are fully and completely set out in my argument made when the question was here before, and I do not want to burden this Convention with repeating them. The reasons which I gave, when this question was last before you, I consider are sufficient for embodying this principle in our Constitution. You will thus secure to the people the right to a jury trial, and prevent private corporations from selecting their commissioners to give six cent awards, when they should, and a jury would, give substantial damages; you will thus stop the practice of private corporations suggesting to the judge the name of one commissioner, and the party the other, and the judge the third. Two out of these three commissioners are permitted by law to fix the compensation, and the influences which may be and have been charged have been brought to bear by the corporations on the commissioner appointed by the judge to obtain small awards, are familiar to us. I have gone

all over the subject before, and I do not think you want me to go over it again. I submit the amendment in the form in which I believe it ought to be passed to secure the people their substantial right of a jury trial. I have taken from the Code of Civil Procedure the exceptions made there.

Mr. Ackerly — Mr. Chairman, the amendment that has been proposed here, I think, has been discussed principally in regard to its relations to city property. It occurs to me that this is going to have quite an effect upon matters throughout the country districts especially. Previous to about two years ago, juries were permitted in all cases of taking lands for road purposes. In the revision that occurred then, that was abolished, and it was established that the commission should be appointed by the County Court. The jury system was found to be cumbersome. It was found that on many occasions it was advisable to adjourn the case over, and the substitution of a commission in such contingencies had been found, at least in our county, to work well. We found no complaint against it. It occurs to me that if this is adopted here, perhaps it would be taken advantage of by some captious owner of property for the sake of delay, and I suggest whether there ought not to be an exception made here as to land taken for highway purposes.

Mr. Marks — Will the gentleman allow the Secretary to read the amendment as I have proposed it? I have excepted every division of the State that the Code excepts at present, and have only applied it to private corporations, and if this amendment is adopted it will not affect any proceeding to take property for a highway or public place in any city or village. It applies only to private corporations, such as railroads and any other private corporation which is permitted by law to take property for so-called public use.

Mr. Ackerly — It would require, also, an entire revision of the present method of getting a jury.

Mr. Marks — No, sir; I think not.

Vice-President Alvord here took the chair and announced that the hour of five o'clock having arrived, the Convention stood in recess until eight o'clock this evening.

EVENING SESSION.

Thursday Evening, August 16, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, in Albany, N. Y., August 16, 1894, at eight o'clock P. M.

President Choate called the Convention to order.

Mr. Farrell presented, by telegram, a request to be excused on account of engagements at home during the balance of this week.

The President put the question on the request of Mr. Farrell to be excused from attendance, and he was so excused.

Mr. Wiggins — Mr. President, I would like to be excused from attendance from the Convention on Saturday next. Also, Mr. Lester was called away to-day unexpectedly, and desires to be excused from attendance to-morrow.

The President put the question upon the requests of Mr. Wiggins and Mr. Lester to be excused from attendance, and they were so excused.

Mr. Peck — Mr. President, I have a matter of business that was arranged for Saturday before the change in the rules. I would like to be excused from attendance on Saturday.

The President put the question on the request of Mr. Peck to be excused from attendance, and he was so excused.

Mr. Lauterbach — Mr. President, I desire to be excused to-morrow and Saturday.

The President put the question on the request of Mr. Lauterbach, and he was so excused.

Mr. Goodelle — Mr. President, I am compelled to ask to be excused from attendance on Saturday of this week, on account of matters that cannot be postponed.

The President put the question on the request of Mr. Goodelle to be excused, and he was so excused.

Mr. Pool — Mr. President, in view of all the members getting excused, I desire to ask to be excused from attendance from to-morrow afternoon until Tuesday morning.

The President put the question on the request of Mr. Poole to be excused from attendance, and he was so excused.

Mr. A. H. Green — Mr. President, before the rule was made prescribing three sessions a day, supposing Saturday would be a *dies*

non, I made an appointment with a gentleman to meet him in New York on important business on Saturday. I would like to be excused from to-morrow afternoon until Tuesday next.

The President put the question on the request of Mr. Green to be excused from attendance, and he was so excused.

Mr. Durfee took the chair as Chairman of the Committee of the Whole on the matter pending at the time recess was taken.

The Chairman — The Convention is now in Committee of the Whole on the proposition introduced by Mr. Marks.

Mr. Marks — Mr. Chairman, before the Secretary reads that amendment, I ask leave to withdraw it and substitute one in its place, which reads as follows:

"Sec. 7. When private property shall be taken for any public use, the compensation to be made therefor, when such compensation is not made by the State, shall be ascertained by a jury when required by the owner of the property, and if not so required, such compensation shall be ascertained by not less than three commissioners appointed by a court of record as shall be prescribed by law. But the compensation to be made for property taken for any public use by any civil division of the State shall be ascertained by a jury or by not less than three commissioners appointed by a court of record as shall be prescribed by law. Private roads may be opened in the manner to be prescribed by law; but in every case the necessity of the road and the amount of all damage to be sustained by the opening shall be first determined by a jury of freeholders, and such amount, together with the expense of the proceeding, shall be paid by the person to be benefited."

Mr. Kellogg — Mr. Chairman, I received during the day yesterday in the mail several clippings from newspapers in relation to the proposed amendment of Mr. Marks. In substance they state that the proposed amendment is not in the interest of the people, but was supposed to be in the interest of corporations; making the suggestion that if the proposed amendment was adopted and became a part of the Constitution, in many cases it would hinder and delay public improvements, both railroad and municipal.

Now, Mr. Chairman, if there is a dog in the fence here, it seems to me that the Convention should go slow. If, however, there is not, I am inclined, sir, to favor the amendment. I would like to hear what the gentlemen have to say upon this subject.

Mr. Nichols — Will the gentleman who introduced this proposition permit me to ask him a question?

Mr. Marks — Certainly.

Mr. Nichols — I understand rapid transit is contemplated in New York city. I believe it will be conceded on all hands that other lines of transit will be established in New York city; and will it not be necessary for the new lines of transit or transportation to take corporate property and interfere with corporate rights? If that be so, if we pass this amendment do we not put it in the power of corporations to hinder, delay and possibly defeat the new lines?

Mr. Marks — In answer to the gentleman's question, Mr. Chairman, I would say that corporations do not wait to have the value of property determined before building their road. They go right ahead and take the property. There is no provision in our Constitution which says that compensation must be first made before property is taken. It simply states that when private property is taken for public use the compensation to be made shall be in the manner prescribed. Under that section the elevated railroad company in the city of New York went into possession illegally, without the consent of the property owner and took the property, and then came into court and asked to have the compensation fixed. The proposed amendment in no way interferes with any public improvements. If you feel inclined to provide that compensation shall be made before property is taken you have an opportunity of voting for an amendment introduced by a delegate from New York, that property shall not be taken until it is paid for. In addition the underground railroad act gives the city, and the city has the power to lease to a corporation for fifty years the right to the preperty taken before compensation is made. The company can go ahead, build their road and then ask to have the value of the property fixed afterwards, as the law, under which that road is to be built, permits.

Mr. Dickey — Mr. Chairman, I would like to ask the gentleman a question. Does the gentleman claim that corporations, under the law as it is, have the right thus to take possession of property without paying for it?

Mr. Marks — Mr. Chairman, there is no provision in our Constitution prohibiting the taking of property until it is paid for. The elevated roads have done it and they do do it. They go right ahead as you know in the cities of New York and Brooklyn and build their roads, and ten or fifteen years afterwards they come into court and ask to have the compensation fixed. The amendment in no way interferes with any public improvement.

Mr. Dickey — I would like to ask the gentleman whether, while

it may be a matter of fact that they do this, he states that they have any right so to do.

Mr. Marks — I do not believe that is a question under discussion here. Under the present Constitution I believe they have the right, under the law as it stands; but under the law as it may be amended by this Convention they may not have.

Mr. Moore — Mr. Chairman, I should like to ask Mr. Marks a question. Is not the ground proposed to be covered by this amendment substantially covered by the condemnation laws in relation to commissioners?

Mr. Marks — It is not, Mr. Chairman. This amendment provides for a jury in all cases for ascertaining the value of property when taken by any association or person or corporation, except any civil division of the State, or the State itself. It is not compulsory, but, if the owner believes that he will not get justice before the commissioners, or believes that the corporations control the appointment of the commissioners so as to get decisions in their favor, or feels that he would like his peers, his neighbors to fix the value of his property in the same manner as damages are fixed by a jury when he has other litigations, he has the option of calling a jury. You must remember that a majority of two only of these three commissioners is required by the law to fix the compensation. It does not require a unanimous decision, and the practice has been permitted of allowing each party to nominate one commissioner and the judge appoints the third — who he may be, the owner must take the risk.

Mr. Schumaker — You don't claim that is the law, as you state it, do you?

Mr. Marks — The law is that a majority, two out of three, shall fix the compensation to be paid. Look at the Code and you will find it so.

Mr. Kellogg — Mr. Chairman, I desire to get some information upon this matter. I will put it in the form of a question. There are several of my fellow-delegates on this side of the chamber who would like to hear it answered.

Mr. Schumaker — Mr. Chairman, the law is not as the gentleman states it. Commissioners are appointed generally by the Supreme Court, at General Term, unless there is a special law passed by the Legislature giving one judge the power. But there is no such thing in the law as a railroad company or corporation

appointing one man and the judge the other, and the person whose property is taken the other.

Mr. H. A. Clark — Mr. Chairman, it would seem, from the arguments here, that this act related only to rapid transit within the city of New York. It is apparently drawn so that it will cover all highways in New York State. I understand from Mr. Marks that he has made an amendment to this act, but the amendment has not been read since I have been in the Convention to-night, so that I do not know what it is. May we have it read?

The Chairman — The Secretary will read the amendment for the information of the committee.

The Secretary read the amendment as follows:

"When private property shall be taken for any public use, the compensation to be made therefor, when such compensation is not made by the State, shall be ascertained by a jury, when required by the owner of the property, and, if not so required, such compensation shall be ascertained by not less than three commissioners appointed by a court of record, as shall be prescribed by law; but the compensation to be made for property taken for any public use by any civil division of the State shall be ascertained by a jury or by not less than three commissioners appointed by a court of record, as shall be prescribed by law. Private roads may be opened in the manner to be prescribed by law, but in every case the necessity of the road and the amount of the damage to be sustained by the opening shall be first determined by a jury of freeholders, and such amount, together with the expense of the proceeding, shall be paid by the person to be benefited."

Mr. Marks — Mr. Chairman, I do not wish to change the entire system of fixing the compensation to be paid for taking private property as it now exists, when taken by the State, or as the system exists and varies in various cities, counties, towns and villages throughout the State. My amendment is intended to apply only to the manner of fixing the compensation to be paid for property taken for public use by any person, association or corporation, except the State, and any and all branches of the State government. My reasons for excepting those branches of the State government are fully set out at page 429 of the Convention Debates. I argued the question then fully and at length. The power of eminent domain by the State or any division thereof has been called an indissoluble incident of sovereignty, and is exercised to accomplish and secure lawful objects, and I claim —

Mr. C. B. McLaughlin — Will the gentleman permit me to ask him a question?

The Chairman — Does the gentleman give way for Mr. McLaughlin?

Mr. Marks — Certainly, Mr. Chairman.

Mr. McLaughlin — Supposing that in the city of New York it becomes necessary to have another elevated railroad. The present elevated railroad in the city of New York buys the property over which the proposed new road would necessarily pass. Would it not be in the power of the present elevated railroad to prevent the building of the new road, or, at least, to delay its building for several years?

Mr. Marks — Mr. Chairman, there is no possibility of any such condition of things. The railroad company goes right on and builds its road, and after its road is built it comes into court and takes condemnation proceedings. Besides, how can it delay matters, when a special jury called would give speedier awards and justice than any commission ever appointed.

Mr. McLaughlin — Will the gentleman permit another question?

Mr. Marks — Yes, sir.

Mr. McLaughlin — Can a railroad company take private property without first having it condemned by proceedings in court? May not an injunction be obtained to restrain the taking of the property?

Mr. Marks — They have done it as a matter of fact. They have taken property, and then they applied to the court to have it condemned. The elevated railroad company did not condemn a single piece in advance. There is no prohibition in the Constitution to prevent it. There is nothing in that question that is going to interfere with rapid transit in the city of New York. Examine the underground railroad act about which so much has been said. I claim that when any branch of the State takes private property for purely public purposes, one party has no advantage over the other, and the commission may be satisfactory to the owner of the property, as well as to the public. But where it is taken by a private corporation for strictly private purposes, the same privilege should not be given to private corporations as to the public at large.

Mr. Deady — Mr. Chairman, is not Mr. Marks confounding the power of private corporations with something else? Have private corporations any right to condemn and go upon land without paying for it?

Mr. Marks — My friend knows that the elevated railroad companies have done it.

Mr. Deady — I know nothing of the kind, Mr. Chairman.

Mr. Marks — They have done it.

Mr. Choate — Mr. Chairman, will Mr. Marks allow me to ask him a question?

Mr. Marks — Yes, sir.

Mr. Choate — I observe that this amendment was introduced by Mr. Marks, by request. Is there any objection to stating by whose request?

Mr. Marks — That is entirely an error, Mr. President. That is the second time that has occurred, in reference to this same amendment. Somebody at the desk when the thing was up before put in the words " by request." Who did it I do not know. I had it corrected on the minutes, as the record will show. I asked to have the debates changed by striking out the words " by request." I am responsible for the amendment alone. Nobody has requested it, but I came to the conclusion, after seeing the working of the present system in some cases which came under my observation and the injustice committed by the commissioners in those cases, and the wrong which is being constantly perpetrated on the owners of property in Brooklyn by these commissioners and the charges made against them that the system needed correction. I went to the printer's office to find out how the words " by request " got in there. The Clerk at the desk tells me that probably he put it in when he was writing the heading.

Mr. A. H. Green — Mr. Chairman, as this matter has been before the Committee on Preamble and fully discussed there, and the substance of this amendment reported to the House, I think, perhaps, it is as well to make a few remarks on the subject. If you desire to take my property as an individual you have got to pay my price for it or you can't get it; you go without it. That is the first proposition. The exigencies of the public require that private property be taken sometimes for public use. The next thing is to provide an arbiter who shall determine the compensation. Under the right of eminent domain it matters not how I may value my property; it may be my ancestral home; it may have been the home of my forefathers; it may be that every apartment in the mansion is consecrated by some domestic incident that is of value, or it may be that every tree upon the place is a matter of importance to me. That matters not. If the public wants my property, they are going to take it, and it is put down in all the elementary treatises

as taken by force. They have come to take my property away from me against my will. Now, in the matter of taking my property for an individual purpose; if you want my property for an individual purpose, you have got to pay my price for it or you cannot get it. The public can get it, but there must be an arbiter constituted, and he should be constituted with all the fairness that rules and regulations can possibly provide; and, if anything is to be done, it is to be done in favor of the person whose property is taken from him against his will. Now, how does it work? The Constitution says that private property may be taken for public use, to be compensated for by commissioners appointed by the Supreme Court, or by a trial by jury, as may be determined by law. If I am correct in this, the law has provided that it shall be done by commissioners, and you are relegated to the Supreme Court to have commissioners appointed to take your property. This matter was up, irrespective entirely of Mr. Marks's amendment, which is about the same thing. It was simply provided there that the owner of the property should have the option of saying whether he would have a commissioner appointed by the Supreme Court, or he would have a jury. Why was that necessary? It was necessary for this reason that sometimes judges are prejudiced, and they may appoint commissioners that would not do exact justice to the owner, and in that case he has the option of asking for a jury. It simply gave him that option, that he might have his rights preserved to him one way or the other. Now, this matter of eminent domain, up to within about the last ten years, was very sparingly used. Within fifteen or twenty years it has become deputed — not acted upon by the State, but deputed to private corporations to exercise this right of eminent domain in taking a person's property from him without his consent; and the tendency has been all the time to make it easier to get a person's private property, to acquire the individual's rights against his consent. Now, the first law that I have any knowledge of was in reference to the new aqueduct, in which it was provided that before you paid for the property, after the valuation was made, you could enter upon the property right off, within so many days, and take it without paying for it. Then came the law of 1892. I am not much in the practice of the law, but I have seen a good deal of these matters where I have had to be represented in property which was to be taken, and I am somewhat familiar with the procedure. In 1892, in a matter called the Elm street widening, there was a provision that the public could enter upon property and take it before any compensation was made and leave the owner to get his compensation the best he could. The latest law is the late

rapid transit act, under which, upon the commissioners taking the the oath of office, the bare fact of the commissioners taking the oath of office entitled the public to enter upon the property and condemn it, and leave the owner to get his compensation when he can. That, I say, is wrong. The individual should be protected. The powers of the public in official life, the corporation counsel and the court, and the whole army and retinue of retainers are now marshaled against the interest of the owner. He has got to fight them all if he wants to get his rights. He should be protected, and that is the reason I say that he should have the choice of tribunals that determine the value of his property; and, secondly, I say that no man's property should be taken from him, and it is an unheard-of thing, and I do not believe it would be sustained under the Constitution of the United States that your property should be taken away from you until the money is put in your hands and you are paid for your property. It is unreasonable that your home and your place of business may be entered, immediately the commissioners are appointed and take the oath of office, that they can take your property and turn you out and leave you to get your money as you can. There should be a provision added to this amendment to the effect that no man's property shall be taken from him, unless he is paid for it, and the individual's right should be protected in that way as it is not now. Take this very matter of the elevated road. I am not arguing the elevated railroad companies' case or anybody else's case. I don't care anything about the elevated railroad. They have entered upon property there, and I suppose there are some two or three thousand suits pending now where men want to get paid for their property, and they have been ten years pending.

Now, this will not be complete until two things are done; that is to say, that the person whose property is to be taken should have the right of choice between a jury and commissioners, and, secondly, that his property should not be taken from him until provision is actually made for the payment therefor. It is not enough to say that the municipal corporation is entirely solvent and capable of paying at any time. I know of a municipal corporation that is bankrupt and could not pay its running expenses, and who knows when such a thing may happen again? No man's property should be taken from him until he is paid for it. That is an individual right. It is only within the last few years that anything else has been thought proper, and it is a stretch of the law, in my judgment, that it is utterly unjustifiable and improper. I suppose if the court

should say that three and two made seven, that makes the law, but that would not satisfy fair-minded men.

Now, sir, would our friend, Mr. Marks, who has so ably argued this matter, propose to exempt municipal corporations from the effect of this thing? I do not believe in that at all. I believe that municipal corporations should be compelled to pay the owners of property before they enter upon it and take it and use it, just as much as anybody else. The individual right is the thing to be protected. I think the laws of eminent domain are being constantly extended, and this ought to be checked. I hope, Mr. Chairman, that these two provisions will be incorporated in the Constitution in the interest of the individual owner and against the array of litigation, trouble and delay that always occur. I have had cases which ran along for three or four years before the commissioners would come to a conclusion. Incompetents are appointed. I know of cases, to speak for myself, not individual property, but property that I happened to represent, which ran along for two or three years before the commissioners found a valuation, and these delays should not be allowed to obtain against the individual owner. If any side is to be favored at all, it should be the individual owner.

Mr. Alvord — Mr. Chairman, I would like to ask a question or two. It does seem to me, sir, that the larger part of the argument in this case is based upon the alleged corruption of the Legislature, and an entire want of confidence in the judiciary of this State. (Applause.)

It is proposed here to tie up, completely and entirely and forever, corporations in this State. I hold that through the Legislature of the State and the competent authority of the judiciary, we have sufficient force and power to compel the execution of these duties and rights directly. I ask my fellow-members of this Convention to tell me whether this is not intended to be an absolutely socialistic proposition? We people of the interior want no such law. If the people of the city of New York, through its entire municipality, judges and all, are of the kind and sort that these men pretend they are, then, for God's sake, cut it away from its moorings and carry it out into the Atlantic ocean to be swept away by the winds and waves and destroyed, as it ought to be, utterly and completely. I hold, sir, that this matter should be remanded to the Legislature. It is no business of the Constitutional Convention. I dread the march and power of socialism. I dread it, sir; and, so far as my voice and vote are concerned in conjunction with anything and everything that shall come before this Convention, while I shall endeavor to guard the interests of the people in right and legitimate

ways, I never will give my vote nor my voice in favor of the progress of socialism.

Mr. Forbes — Mr. Chairman, I desire to explain the vote which I shall give in favor of this amendment.

First, this is an amendment which comes directly within the line of our duties as a Convention to correct and to amend the Constitution as it now exists. In 1846, when this Constitution was adopted and this present section framed, corporations were few in comparison to what they are to-day. They were then formed largely under special laws. They are now formed under general laws, and any body of individuals can get together and form themselves into a corporation, and can then, if they comply with the other laws, take private property. It seems to me that now is the proper time to consider whether this section should be amended, because of the change in the condition of the State, in regard to corporations.

The next point is this: That what may have been the case fifty years ago, when the State was comparatively small, the people few and corporations fewer, is not the case now. We have outgrown that condition. Corporations exist now in every part of the State, and it seems to me that the property owner should be protected further than he now is by mere commissions. That is all that this section does; it simply protects the owner of the property.

It is stated here that other corporations could not be able to make improvements in case this constitutional amendment should be adopted. We all seem to have forgotten the fact that corporations have charters which can be amended; which are subject to constant amendment by the Legislature. They cannot put themselves in the way of any general improvement; it is simply impossible.

Another things seems to have been forgotten, and that is that, under the law, as it stands, an entry, if it has been made upon property and a corporation is in possession, can be held against the world; and, if the corporation that desires to condemn the property is not in possession, it can take possession of the property under sections 3379 and 3380 of the present Code.

Should we, as a Convention, consider any particular corporation? Is it not a fact that the corporations of this State, which are so numerous, should be considered as a whole? The question is of individual rights. If I have a piece of property, should it be taken away from me with less formality than is demanded in the trial of a matter of difference between myself and my neighbor as to a boundary fence or some other matter of that kind?

Now, it seems to me that we are in a position to take up this matter, because it is already fifty years old, because the State has

changed enormously during that fifty years, because the right of the individual remains the same to-day that it always has been, the thing to be protected.

Mr. A. B. Steele — Mr. Chairman, will the gentleman permit me to ask him a question? I understand that one of the objections he makes is that the railroad may now have the right and does take possession of property before the damages are assessed. Will he tell me what part of this amendment will effect a change in that, and will prevent the railroad company from taking possession of property before paying for it?

Mr. Forbes — My reference to the law was in respect to the objection that is made that one railroad corporation of any kind could prevent another corporation from carrying out the purposes for which it was incorporated. It answers that question. The question is itself an answer to the objection which is made to the proposed amendment.

Mr. Steele — May I ask a further question. Under the present Constitution has not the Legislature the right to give jury trials in cases of this kind? In other words, does not the Constitution, as it now reads, permit the Legislature to say whether the assessment of damages shall be by a jury or by a commission of three persons in any case whatever? And, if so, why is not this strictly a matter of legislation? And, further, has the Legislature ever refused to provide for a jury assessment?

Mr. Forbes — In answer to that question, Mr. Chairman, I will say that if we were certain that the Legislature would do right in all things, we might as well adjourn and go home at once. We are here to control and to regulate the Legislature.

Mr. A. H. Green — Mr. Chairman, I have been asked to suggest what would be the advantage to a man in having a jury that he could not himself provide? If he has a jury in this case, he can go to the ordinary panel of the jury and commence his action; the jury is drawn from the ordinary panel, he challenges or criticises the jury and has a chance to get a fair jury; and without any reflection as to the matter which disturbs our friend from Onondaga so much, he may not get what he deems a fair commission appointed by the court. He has a right to that. I have understood that always. Sometimes he thinks that he would rather not go to such and such a judge, and brings his action before another judge. But, if a man goes to the ordinary panel, when the jury is drawn, he has a right to criticise the fairness of the jury. If he thinks his property may

be taken away from him against his consent and by an unfair tribunal, he has the option of choosing another tribunal.

Mr. Hill — Mr. Chairman, I would like to inquire of the gentleman who has last spoken whether or not this amendment was unanimously reported by the committee?

Mr. Green — I don't know as in that exact language, but in principle.

Mr. Schumaker — It was not a unanimous report. You know how you voted.

Mr. Green — I beg your pardon.

Mr. Schumaker — You voted against this measure. You said it was not broad enough.

Mr. E. A. Brown — Mr. President, I desire to sustain, unqualifiedly, the position taken by my colleague in the Twentieth District to the effect that this proposed amendment of the organic law of the State is legislation, pure and simple. Now, Mr. Chairman, it has been asserted, with the appearance of candor and good faith, which I do not desire to question here, except as to the correctness of the position taken, that the owners of property taken by the right of eminent domain for railway or other corporate purposes have no choice, and no right, and no suggestion as to the course by which a railway or other corporation shall cross their land. The statutes of this State now provide that in the first instance the corporation shall file maps in the county clerk's office of every county through which their line will pass showing the course, the distance, the route and the amount of land proposed to be taken. If any property owner affected by the proposed laying out of such a railway desires to correct that, the condemnation law provides that he shall be heard, and that the court shall decide whether he is right or whether the route proposed to be taken by that corporation shall be the final route that the corporation shall take.

Another thing, Mr. Chairman, there is a statute of this State which provides that in case a private corporation is formed under the laws of this State for the purpose of supplying water to villages, hamlets, towns, etc., of this State, it shall have the right of eminent domain. It shall have the right to take such land as may be necessary for its purposes. It shall have the right to condemn those lands and to enter into contracts for the purpose of supplying villages along its line with water. Now, if this amendment is to pass, this Convention says that all those rights will be submitted to the cumbersome and the almost obsolete practice of going before a jury. If that is so, sir, any corporation desiring to condemn land

for a mile or over in the rural districts of the State where there are only two Circuit Courts held each year, will require years before it will have the right to enter upon and take possession so that it may furnish to those villages and hamlets pure, wholesome water under the laws of the State. In the rural districts of this State — and I have some experience in the matter — we are entirely satisfied with the honesty of the courts. We are entirely satisfied when we agree with the representatives of railway corporations as to the nomination of appraisers or commissioners who are to pass upon the value of our lands. I say, sir, and I say it without fear of contradiction, that in no case has a single instance occurred where a property owner did not get more than the value of his property which was taken for corporate purposes. Where a piece of property was taken in the village of Ilion in this State by the West Shore Railroad, the entire cost value was only $800. I had personal charge of the case for the property owner, and we recovered, through the commissioners, $1,800 from that railroad corporation. In another case in the city of Utica, which came under my observation, $65,000 were allowed upon property which cost less than $40,000.

I say, sir, that this proposed amendment would incorporate into the organic law of the State an expensive, dilatory and unsatisfactory provision. I say, sir, that the condemnation laws of this State are fair, equitable and right; and, in saying that I cast no reflection upon the gentlemen who reside in the city of New York or city of Brooklyn, or any of the cities of this State.

Mr. Marshall — Mr. Chairman, I consider this proposition both unnecessary and dangerous. It is not necessary, because I believe that the present Constitution gives ample protection. Section 7 of article 1 provides: "When private property shall be taken for any public use, the compensation to be made therefor, when such compensation is not made by the State, shall be ascertained by a jury or by not less than three commissioners appointed by a court of record, as shall be prescribed by law."

The Legislature has adequate power to make such provisions as to give to the property owner the election contemplated by the proposed amendment, if it is desired to give him such election; if it is fair or just or proper that the property owner alone should have such election. I think that the mere statement of this fact should be sufficient to defeat any contemplated change in the Constitution. I have, however, said that this is a dangerous proposition, and I will proceed briefly to give my reasons for that statement, without, in any way, intending to reflect upon Mr. Marks, or his

motives, for I have the highest regard for his integrity and ability. I fear, however, that he has been misled by his zeal and enthusiasm to advocate a bad measure, which he honestly believes to be in the interest of the people.

How does this proposition come here? What is the history of this proposition before this Convention? Who has demanded that the organic law shall be changed in this particular? Has any objection been presented by property owners in any part of the State asking that the Constitution shall be amended? I have heard of no such application.

The first proposition which relates to this subject presented here was that known as introductory No. 15, which provides: "When private property shall be taken for any public use by any individual, association or corporation, except a municipal corporation, the compensation to be made therefor, when such compensation is not made by the State, shall be ascertained by a jury." That was referred first to the Judiciary Committee, and when it was there presented the question was asked of the introducer whether such a provision was not exactly what the elevated railroad companies in this State had for some years been clamoring for from the Legislature.

I remembered that the McKnight bill had been before the Legislature, and that in the numerous elevated railroad cases it had been the struggle of the elevated railroad companies to get the cases which were brought against them before juries, so that the trials should proceed before common-law tribunals, or before a mixed tribunal, enabling one part of the case to be tried before a court of equity and the remainder of the issues to be tried before a common-law jury. Why was this? The elevated railway companies found that in such cases as were brought before juries they were apt to accomplish more satisfactory results than they could obtain from courts of equity. The reason for this was that the citizens who were drawn on juries, who did not live along the line of the elevated railroads, expressed themselves as entirely content with the elevated railroad system, believing it to be a great public benefit, and, therefore, they were disposed to give rather small verdicts, while commissioners of courts, before whom similar questions were tried, recognizing the fact that damage had been done to property, awarded compensation which was much more substantial.

After the elevated railroads had made this discovery, they began to present to the courts all sorts of propositions, to the end that the questions of damage arising in these elevated railroad cases should be triable before juries instead of before courts of equity.

So, in the case of Lynch v. Metropolitan Railroad Company

(129 N. Y., 274), the question was first presented as to whether or not under the Constitution, where a money judgment was asked in the complaint, in an action brought by a property owner against the railroad company to restrain it from operating its railroad, or having the damages assessed in the action, the company should have the right of trial by jury, under the existing Constitution, of the question as to whether or not there should be damages assessed and how much the damages should be. The Court of Appeals held that the case, being an equity action, the high court had the power to dispose of the question of damages, and that the railroad company did not have the constitutional right of trial before a jury. After that decision had been announced by the Court of Appeals the railroad company came before the Legislature to procure legislation which would, in those cases, enable it to go before a jury in any case, and the result was that the so-called McKnight bill was passed by the Legislature. It is known as chapter 208 of the Laws of 1891, and amended section 970 of the Code of Civil Procedure, so that it declared "where a party is entitled by the Constitution or express provision of law to trial by jury of one or more issues of facts, or where one or more questions arise on the pleadings as to the value of property or as to the damages which a party may be entitled to recover, either of the parties may apply, on notice, at any time to the court for an order directing all such issues or questions to be definitely and plainly stated for trial, and requiring the court on such application to cause such issues or questions to be so stated." Thereupon the elevated railroad company sought to have issues settled in all their cases to be tried before a jury especially as to the amount of the damages to be awarded. The property owners protested, claiming that the provision of the Code was unconstitutional and that it could not have application to cases that were brought on the equity side of the court. The result was that the Court of Appeals in the case of Shepard et al. v. Manhattan Elevated Railroad Co. (131 N. Y., page 215), held in favor of the property owners and declared that in such cases the railroad company, which was constantly struggling to bring these questions before juries, should not have the right to do so.

Thus the history of the elevated railroad litigation in New York city is uniform in this respect, that there has been a constant struggle on the part of the railroad company to have the compensation of property owners fixed by a jury, and a struggle on the part of the property owners to have the question tried either before a court or before commissioners. That being the case, why was the application made to compel the property owners to present their issues to juries

and why is this proposition now made to this Convention to have the organic law changed so that the property owner should have the option of a trial before a jury? The property owner does not desire it, there is no demand for this provision by him. There is, however, it seems to me, a very good reason why such an application should now be desired by the railroad company. There is pending before the people of the city of New York the question as to whether they shall have a new and improved method of rapid transit, either by means of an underground or by means of a new elevated railroad. That new railroad company will have obstacles placed in its way, probably by the present elevated railroad company. It is not for the interest of the present railroad company to permit another competitor to come into the field. Even if that railroad should be constructed, every year's delay is worth thousands of thousands of dollars to the existing railway company, and it is very easy — I think that any good lawyer would take the contract to keep a new railroad out of operation by the aid of such a provision as this for quite a number of years — by inducing property owners along the line of the railroad to make objections; to demand trials by jury; to interpose the delays incident to the cumbersome method of trial by jury of the questions arising in condemnation proceedings. I do not think that there is a lawyer in this Convention who would not be able to make a long and wearisome contest, one which would vex and harass the new railroad enterprise, and, perhaps, cause those interested in it to lose heart and to give up the venture. It would, at least, leave in possession of the field the corporation which is now engaged in managing the elevated railroad system of the city of New York.

The suggestion has been made here that the railroad company has a right of immediately going into possession of its proposed route and building its railroad before an assessment of damages is attempted. That proposition is an erroneous one as a proposition of law under our existing laws and statutes. The elevated railroad company has been instanced as an example of a case where a railroad was constructed before damages were assessed. The reason in that case is a very apparent one. It was supposed when the elevated railroads were constructed in the city of New York that there was no property interest in the streets in the adjacent abutting owners which was affected, and it was not until the Story case was decided in the 90th New York, after the completion of the elevated railroad, that the Court of Appeals, after a long controversy and with great difficulty, reached the conclusion that the abutting owner had a right and easement which was interfered with, which

was "a taking of property" within the meaning of the Constitution when the elevated railroad was constructed and operated. Then the question came up as to what the relief should be, and the Court of Appeals very properly held that the railroad having been constructed, there should be no injunction against its operation, provided it should, within a certain period of time fixed by the court, institute proceedings for the condemnation of the property, or should pay a certain amount of damages fixed by the court as compensation for the right taken in lieu thereof.

Mr. A. H. Green — Does the gentleman claim it to be the law, in reference to the new elevated railroad, that it cannot take possession of the property upon which it is to be constructed before condemnation?

Mr. Marshall — I claim it has no right to take the property if this proposed constitutional amendment is adopted before condemnation.

Mr. Green — What is the law?

Mr. Marshall — I say that is the law, especially since this proposed amendment would operate as a supercedure of the provisions of the rapid transit act, relating to condemnation, which refers to the appointment of commissioners alone, and not to trial by jury. But, to resume. I have brought actions over and over again against street railroads, obtaining injunctions restraining them from laying down their tracks or operating their railroads until they had made compensation to the abutting owners or to steam railroads whose property was taken or interfered with without resorting to condemnation proceedings. Injunction after injunction has been obtained against steam railroads and other corporations who have assumed to take possession of property before there had been a proceeding instituted by condemnation and compensation made or provided for.

I think I have said all that I care to say upon the branch of the subject. There is much in these suggestions to make us pause before we put our sign manual to any amendment of the Constitution which will be susceptible of an interpretation and use which would be injurious to the public interest. There is no demand for such a constitutional provision as this. Everybody who has had any experience with the condemnation of land knows that the present system affords adequate protection to the property owner. There never has been a piece of property condemned, to my knowledge, in Central New York, for example, when the West Shore and other railroads were constructed, where the property owner did not secure a much larger compensation than the actual value

of his property, and, I believe, more than he would have obtained from a jury, had the question been tried before such a tribunal. I remember that the Delaware, Lackawanna and Western Railroad Company was required by a commission to pay to the owners of the Bennett elevator, in Buffalo, the enormous sum of $385,000 for a single piece of property. A jury would have been appalled by these figures. For these reasons I think that we should get through with this provision once for all, and defeat it to-night.

Mr. Francis — Mr. Chairman, I do not propose to enter into this discussion further than to correct what seems to be a misconception, in reference to this proposed amendment of the Constitution and all measures of a kindred character. It has been my effort in committee, and I betray no secret of executive session — it is known to all the members — I have earnestly opposed every suggestion and measure of the sort as being purely legislative, and matters with which we have nothing to do, and which could only properly be acted upon by the Legislature. Saying so much as this, I shall be content to cast my vote against this measure.

Mr. Hawley — Mr. Chairman, when the discussion opened this afternoon I called the attention of the proposer of this amendment to its scope, and he promptly admitted that it covered a great deal more ground than he desired to have it cover, and immediately proposed, and did, by the amendment which is now under discussion, emasculate the amendment as it was reported by the committee by the insertion of a lot of exceptions. I think that he would have improved the amendment, if he had made no exception, but had made the State itself subject to the provisions which he desired to incorporate into it. I know of no reason why the State should not do as ample justice to a citizen, when it takes his property by the strong hand, as a little railroad that is a great convenience to a neighborhood, and I know of no superiority, no better fortune that is likely to await a private land owner in the Board of Claims than that which would be likely to come to him from a commission selected by a justice of the Supreme Court. And I do not think I go very far from the general experience of those who have had any experience on the subject, when I say that they would prefer to have their private rights adjudicated in almost any other tribunal than the Board of Claims, where the title to approval depends upon the smallness of the yearly footing of the judgments against the State.

But, Mr. Chairman, when I first sought to get the floor I had no intention of saying just what I have now said; I only wanted to trespass upon the good nature of my friend who introduced this amend-

ment, by calling his attention to another great interest with which, probably, he has had no experience, but which is a great, an important, interest in the rural sections of the State, and that is to the effect of this amendment upon the statutory system which we have for the drainage of land. We have a system by which we can get a right of way for a ditch through a territory of any extent, the effect of which is to drain large tracts of marshy land which are detrimental to the public health. That is done, not by any civil division of the State, not by any corporation, but by certain drainage commissioners provided for by the statute. Now, within the last few years I have had a little experience in one of these cases. The parties numbered over 150, every one of them being opposed to the improvement, which was necessary for the public health and for the reclaiming of a large tract of territory. And, if this amendment had been in force, that improvement could not have been made in ten years in the county of Seneca, because there would have been 150 jury trials. We have two Circuits a year in that county and they last about a week each. Now, there is a great public interest. The trouble with these gentlemen is that they are seeking to uproot a real or a fancied evil, which is local in its character; and, therefore, Mr. Chairman, I venture to propose as an amendment to this section that its operations be confined to the counties of New York and Kings.

Mr. Moore — Mr. Chairman, I desire to say a single word upon this proposed amendment. I believe that we are here in the interest of the people; and after listening to all this debate, to various reasons assigned *pro* and *con*, I cannot see that the interests of the people will be subserved by changing the present wording of the Constitution. It looks to me, from all that I can learn, that this amendment is a sort of matter between two elevated railroads, one in being and the other about to be in being, or else two that are in being. That is the way it looks to me. And also this seems to be a sort of a mermaid proposition; very fair at the top, but slimy and scaly underneath; I do not believe that the people will derive any advantage from a change in the organic law of the State upon this question; therefore, Mr. Chairman, I shall cast my vote against the proposed amendment.

Mr. Marks — Mr. Chairman, before answering a few of the questions which have been propounded I desire to call attention to the statement made by me as to the words "by request" being put in the amendment. I find that on the indorsement the words "by request" are written in typewriting by the typewriter, but on the

inside I find that the Secretary wrote it himself in ink. It is not in my handwriting, but I think it is due to the Secretary to say that he probably was justified in putting in the words "by request," as he saw those words on the back of the amendment handed in by the Committee on Preamble, as the typewriter had so indorsed it, and the Secretary copied from the indorsement of the amendment and put the words at the heading of the amendment and sent it in that form to the printer. I examined the amendment when I discovered the words "by request" printed and found them in the handwriting of the Clerk on the inside. I did not examine the paper cover of the amendment, where the typewriter had, by mistake, put on the words "by request." When the mistake occurred once before you will find, by referring to the debates, that I corrected it. The Clerk in reading the report of the committee, or the stenographer in taking it down, put in that the amendment was introduced by request, when it should have read that the adverse report was made by request.

Now, Mr. Chairman, a proposition comes here from Buffalo, where, I believe and have heard that they do not want commissioners, but desire a jury to fix the value of property taken for private purposes. I call your attention to No. 230 of the proposed constitutional amendments proposed by Mr. G. A. Davis, a very distinguished member of this Convention, from Buffalo, which amendment is to the same effect as mine, and reads that compensation "shall be ascertained by a jury or by not less than three commissioners at the election of the property owner, said jury to be impaneled in the same manner as juries for the trial of a cause in a court of record, and said commissioners to be appointed by a court of record as shall be prescribed by law." And then that gentleman from Buffalo goes on in his amendment and provides that "the necessary use of lands for the construction and operation of works serving to retain, exclude or convey water for agricultural, mining, milling, domestic or sanitary purposes, is hereby declared to be a public use." And the remainder of his amendment is the same as mine. So that I am not alone in the Convention in proposing amendments to the Constitution to the effect that the owner of property shall have the right to demand a jury when his property is going to be taken from him. We have spent week after week passing amendments to prevent sneaky legislation by the Legislature. My friend, Mr. Vedder, has spent days and days in discussing his amendment to secure great publicity and deliberation in the passage of bills by the Legislature, so that the people may know what the Legislature is doing and prevent sneaky legislation.

We are here to prevent the Legislature from depriving cities of home rule. We do not trust the Legislature, because they change our charters every year. We passed an amendment to-day relating to supply bills and appropriation bills that will prevent the Legislature from tacking a rider on a bill so that money will be appropriated for another purpose than shall relate specifically to some particular subject in the bill. Why do we do that if we can trust the Legislature? My friend on my left has asked who has petitioned for this? Why, gentlemen, we do not recognize petitions. The woman suffragists claimed that they had a genuine petition of 626,000 people of the State of New York before you on the question of woman's suffrage, and we paid no attention to that. We voted according to our own convictions and according to what we believed to be for the best interests of the State and I don't think it necessary that we should have petitions for the change I propose, when the principle is right and when the change is justified by existing abuses.

Mr. Dickey — Mr. Chairman, I would like to ask the gentleman how he voted on that proposition?

Mr. Marks — The record will show how I voted on that proposition. These proceedings in which it is claimed the elevated railroad companies have been trying to get jury trials were actions to recover damages for loss of rent and damages to the fee, which are entirely different from proceedings to take property by the right of eminent domain. My friend, Governor Alvord, says that we must address the Legislature. He knows the Legislature does not afford relief. We are here correcting and prescribing for and limiting the Legislature. This amendment should be a part of the fundamental law so that no property shall be taken from a person, unless he has the right to a jury trial, if he wishes it. That is all there is of the proposition. He says: "You can trust your judges."

I have another extract from the New York Sun of a few days ago, which I will read:

"When a motion to confirm the report of the commissioners for six-cent damages in a suit of a property owner on Mrytle avenue against the Brooklyn Elevated Railway Company came up in the Supreme Court yesterday, the lawyers for the company asked leave to withdraw it, but Justice Gaynor would not allow the case to be so disposed of. This is the Supreme Court, Justice Gaynor said, no matter who sits here, it matters not a whistle who sits here. Lawyer Sidney V. Lowell, who appeared for the property owner, said the company wanted to pick a judge before whom to make the

motion and declared that no such judicial outrage as those six-cent damages awards had ever been committed."

Isn't that enough to show the scandal and the disgrace with which these commissioners' proceedings are viewed by the public at large? Here is another extract from the New York Sun of another date in an entirely different case from the one last mentioned, and also reported only a few days ago:

"The General Term of the Supreme Court in Brooklyn has confirmed the decision of Justice Gaynor, setting aside the award of six cents damages made by commissioners. Chief Justice Brown, who writes the decision of the General Term, says:

"A trial conducted as these were is a farce and the misconduct of the commissioners deprived the reports of that respect which is always due to the determination of a judicial tribunal."

Is it necessary to go around the State to get petitions to a proposition which I claim is fair and should be fundamental law?

Lawyer John R. Dos Passos, a well-known attorney in the city of New York, in an interview with a reporter of the New York Herald, relating to my amendment, said, a few days ago, and I quote from the New York Herald:

"I think the proposed amendment to the Constitution a very reasonable and important one. Heretofore the method of paying for property acquired for public use has been regulated in a manner quite unsatisfactory to both the corporation condemning the property and to the owner thereof. There has always been a feeling that the commission appointed was either in the interest of the corporation, or of the persons whose property was taken, and in very few instances have those proceedings passed through the court without more or less public or private suspicion and comment. The right given by the proposed amendment to the owner of property to have the jury ascertain the compensation to be made, is one eminently in keeping with the present legal system and with the feelings of the legal profession. I think it will meet with the approbation of all property owners, but I believe corporations will fight the proposed amendment,"—and, Mr. Chairman, I believe they are fighting it to-day, and are spreading rumors and endeavoring to spell out some possible claim, that it will be in the interest of corporations; trying to give false color to a measure which is solely and entirely in the interest of the people, and endeavoring to raise doubts which you know cannot exist. The Herald goes on to state: "General Egbert L. Viele, who has recently been examined by a parliamentary committee in London on a cognate subject, expressed

the opinion that no private property should be taken except by a jury."

"Mr. Phillips, of the real estate firm of C. J. L. Phillips & Co.," the Herald continues, "was emphatic in his belief that there was a great demand for a change in the law. Property owners under the present condemnation proceedings had no guarantee that their rights would be observed, and there were innumerable instances of injustice."

Gentlemen, I stand here simply on the broad principle that we should have incorporated in our fundamental law a proposition that the owner of property taken from him by force, having no say as to whether he wants to give it up or not, shall have the right to say, "I want to go to my peers, to my fellowmen, and have them fix the compensation."

Before I proposed the amendment I carefully went over the Constitutions and the statutes of the various States of the Union, and I found that seventeen States in the Union, by their Constitutions, and twenty-two other States of the Union, by statute, guaranteed to the people the right to jury trial when railroad corporations take property for public use. Is that not a record to be followed? Thirty-nine States out of forty-three containing the principle, either in Constitutions or statutes. Have any of you anything to say against the principle involved? Is it not right and just? Many delegates to this Convention also approved of the exception of the State and branches of the State government, and said it might interfere with their manner of fixing the compensation for property. And mind you, gentlemen, it is not a jury trial to take the property. I leave that just as it is. Let the court decide whether property is necessary to be taken for a public use. I simply say when it is decided that a corporation has the right to take property for public use and that it must be surrendered to a so-called public use, give the owner, give the man whose property is taken, it may be all he has, give him the right to say, I want my fellowmen, the men who live in this vicinity, to fix the value of my property. I want no commissioners appointed about whom I know nothing, who are not selected by me. I do not select commissioners to decide my cases. I have called your attention to the proposition of Mr. Davis, of Buffalo. I am not particular what form you put this amendment in. If Mr. Davis's proposition suits you, it does me. My amendment or Mr. Davis's does not say there must be a jury trial. It is optional with the owner. If a client whose property is about to be taken calls on you and asks: Shall I demand a jury, or shall I go to commissioners? You know your business. You know the situation

and you know whether or not a jury in that particular case would be better able to give justice or whether the influences may be such that commissioners cannot be trusted.

If, in the first instance you do not think that a jury trial should be had, let me give you another suggestion which some of the States in the Union have adopted. They provide that commissioners shall be appointed first, and some of them provide that after the commissioners report the value of the property, the railroad company or the corporation has the right to enter upon the property and take it for its use, and if the owner desires to appeal, he can do so to a jury and the corporation must deposit the amount awarded by the commissioners into court. Other States have laws which say that no man shall be deprived of the right to appeal to a jury if he feels aggrieved at the award of the commissioners. If there is any reason, any sense or any justice, why in the first instance you do not wish to put it in your fundamental law that a man is entitled to a jury trial; if you are going to deprive a man of a jury trial because it might complicate matters, or you fear the bugaboo that it might interfere with the underground road, then, in the name of justice, make this provision that commissioners shall fix the compensation; that the railroad or corporation shall not be prevented from entering upon the property after the commissioners have fixed the value, but then make a provision that if the owner of the property is aggrieved at the award of the commissioners he may go on and appeal to a jury as is done in many States. The appeal to a jury need not go on the calendar the same as other cases, but a special jury can be called as were called when highways were opened. And the commissioners and judges will know that a jury stands ready to do justice. I do not care how you do it, but I say, this is the place to establish fundamental law. This is the place where the people should be protected, and in the name of all that is just, I ask you to adopt some proposition to correct existing and possible future evils, but sustain the principle set out in the favorable report of the committee, of which committee Mr. Andrew H. Green, who so ably upholds the principle of this amendment, is a member. That committee have come to the conclusion that the proposition is right; they have discussed it, they have debated it day after day and week after week. They have been first on one side and then on the other. They once, against my protest, and against my written request for an adverse report, reported an amendment that it should be at the request of either of the parties. I went before the committee and said: "Gentlemen, I do not want an amendment that it shall be at the request of either

party. This Convention have beaten it once; they say you should not give a jury trial when required by either party. I want it when required by the owner." The committee refused at first; they did refuse to give me an adverse report; they did not want to listen to my protest that you could not consistently vote for such an amendment after defeating the first. It is entered on the Journal that I requested an adverse report in writing. They handed in the proposition that it should be when required by either party, which was substantially the same as I first proposed it, but the committee reconsidered the question and came to the conclusion that this was a proper subject for fundamental law, in the form in which I reproposed it — that there should be a jury when demanded by the owner. I ask you to do what is fair and just, and that is to establish a principle in your Constitution giving to the people, if you say it should not be given to corporations, the right to demand a jury trial in the first instance. If you fear delay and think commissioners will report sooner than a jury trial could be had, and do not wish to prevent a corporation from entering and taking advantage of the right to enter on the land after the commissioners have fixed the value, then, by all means, say this shall not prevent the right to an appeal to a jury from an award of commissioners.

Mr. A. H. Green — Mr. Chairman, I would like the privilege of recurring once more to this matter. Our friend, Mr. Marshall, seems to think that there is no legislation that authorizes entering upon private property without paying for it. In the laws of 1894, it is stated that: "The said commissioners shall take and subscribe the oath required by the twelfth article of the Constitution of the State of New York and shall forthwith file the same in the office of the clerk of the county in which said city is situated. On filing said oath in the manner provided in the last section, the said city shall be and become seized and possessed in fee absolute of all those parcels of property which are on the maps referred to in section forty of this act."

And the said board, and the said city, and any person or persons acting under their or its authority may enter upon and use and occupy in perpetuity all the parcels of property and all the rights, terms, franchises, easements or privileges appurtenant to any part of the property described on said map, etc. Now when they have acquired the right to that property they are to sell it over to the corporation and the city is to issue fifty millions of bonds. A more injudicious act in my judgment was never passed. That is the law authorizing that matter.

Mr. Mantanye — Mr. Chairman, it seems to be very much the

fashion in this Convention, when gentlemen desire to discredit a proposition which has been made, to say that it is not organic but that it is legislative, or else they say that it is in the interest of some corporation, in order to give it a bad character. This it seems is a rule that is adopted by even the friends of some incipient corporations, or those who expect perhaps to be interested in them, of saying that some other corporation may profit or get rights under the proposition. It seems to me that it is no matter who may get rights. We are making organic law here or are proposing organic law for all the people of this State, whether it may be individuals, partnerships, joint-stock associations or corporations, which are made up, of course, of individual stockholders. Now as to the suggestion that this is special legislation, or that it is legislation; if it be legislation, then the whole section which is proposed to be amended was legislation, and has been from the time when the Constitution was formed. Therefore, to act upon that suggestion would be to move the repeal, or to suggest that that section be repealed or taken out of the Constitution. It seems to me that the proposition which is suggested to be put in here by way of amendment, does not change the section at all as to its real meaning, or what was intended by it when the section became a part of the Constitution; because the section as it stood before this proposed amendment, and as it stands now, provided that where property was taken for public use, and that included the quasi-public use of taking it for the benefit of corporations, like railroad corporations, the damages should be assessed either by a jury or by commissioners, and then was attached the provision that that option might be exercised by the Legislature. Now, in my mind, at least, there is no doubt that it was the intention then that the Legislature would pass that option over to the individual, or the person or company whose land was being taken; but the Legislature exercised the option itself instead of giving it to the person, and made the provision that it did.

I would like to call attention to the history of the legislation that has been had under this section. The Legislature first provided that in cases where property was taken for public use by the State or by municipal corporations, as, for instance, in case of taking land for highways, that the damages should first be assessed by commissioners appointed by the Court of Common Pleas, or the County Court of the county, as it afterwards became. It then provided that in case the party whose land was taken was dissatisfied with that, he could take an appeal from that assessment in a very simple way, by giving notice to the commissioners of the highway, or the proper officers, that at a certain time he would appear before the

town clerk of the town and have a jury drawn for the purpose of reassessing those damages, and it was done; they were drawn from the jury list of the town. I have been in several of those proceedings, and I can say that the proceedings upon that appeal before the jury were much cheaper, much quicker and easier gotten along with than were the proceedings before the commissioners previously. The commissioners were entitled to three or four dollars a day. Their fees were stipulated, and they would spend several days, adjourning from time to time. The jury's fees were fixed by law, and nobody could change them. They met and looked over the property, heard such witnesses as they wanted to, and made a finding at once.

So there was given by the Legislature in those cases both rights, first by the commissioners and then by a jury. But when the railroad corporations began to grow up and provision was made for their taking land, the only provision which was made was that the damages should be assessed by commissioners. There was no appeal in particular from that, except as to whether their proceedings were regular or whether they had violated any rules of evidence in the proceedings before them, and, if so, that could be reviewed before the judge before whom the report came for confirmation. If there was an error, then other commissioners were appointed and a new trial was had. This matter continued along for some years. There began to be dissatisfaction with these commissioners who were being appointed. It was felt that they were, perhaps, interested parties; parties whose land had been assessed were not satisfied with the way things were going, and thought that they ought to have an appeal to a jury as in other cases. Application was made to the Legislature from time to time to have the law changed in those cases where property was sought to be taken for a *quasi* public purpose, and at the same time for individual use, as it might be said to have it assessed at least in the same way, by the review of a jury if the parties were dissatisfied with the finding of the commissioners. The result was that the matter was equalized, not in that way, but by changing the manner of assessing the damages in the other cases where the property was taken by towns by wiping out the jury clause.

Now, as I say, this provision simply comes in here and assures to the individual whose property is taken, or to any person, whether he be a natural person or otherwise, the right that I think was intended to have been given by the other section of the Constitution. Is assures it to him only in that one class of cases. It has been suggested here that there is a general wrong in this section,

if it can be that property may be taken before the price for it has been paid. My understanding is that it cannot. If the party whose property is being taken is willing and desires to insist upon that right, he has his remedy by bringing action for an injunction to restrain the public, or to restrain the corporations which seek to take his property, from entering upon or using it, until they have paid him his money. In cases of municipal corporations, the rule is generally that when the damages are assessed the person whose land is being taken knows that his money is surely to come, the compensation which has been fixed will surely come, but that he has to go through with the usual course of having the money raised by taxation or in some other way, and so he allows them to enter, allows the public to go on with its road or its public work, whatever it may be, knowing that his money must come. If there is any failure, then he can bring his action to set aside what has been done, or his mandamus to enforce the right to it. In case of a railroad corporation, it is found by experience that the company must have title to its land anyway. It gets no title until it has paid the compensation that has been assessed; therefore, it cannot give a mortgage to secure bondholders and make the necessary loans which must be made to go on with its business.

So that adjusts itself in that way, or, if the party is not satisfied to wait, he can bring an action for a permanent injunction, and have a temporary injunction restraining the entry upon his lands until the money has been paid; and the company must then come in, and, if it desires to immediately go on, it may have the injunction vacated upon its giving bonds, or making a deposit to cover the payment of such damages as may accrue, and it goes on. But really in that case it amounts to a payment or securing payment before the entry is made, unless the party may waive it, knowing that the money must necessarily come to perfect the title.

Now, I can see no harm, I can see no colored gentleman in the fuel-pile here at all, as some sharp-eyed people would seem to infer that there might be. It is a very plain statement that in case an individual's property is being taken, whether it is a natural person or a corporation, that he has the additional right of electing which he will have to assess the damages — a jury or commissioners appointed. I can see no reason why this should not be a part of the law. I can see many reasons why it should; and that this section should be made definite and certain by limiting the power of the Legislature, when we have seen how it has been exercised by providing right here that the individual in those cases shall be permitted to exercise the option instead of the Legislature, when in

that case the Legislature is really wiping out one of the alternatives that are given by the State.

Mr. Alvord — Mr. Chairman, for the purpose of permitting the Convention, when they shall get therein, to vote directly upon this subject, and to sit again, if they so desire, I move you, sir, that the committee do now rise, report progress and ask leave to sit again.

The Chairman put the question on the motion of Mr. Alvord, and it was determined in the affirmative, whereupon the committee arose and the President resumed the chair.

Mr. Durfee — Mr. President, the Committee of the Whole have had under consideration the proposed constitutional amendment (printed No. 385), entitled, " Proposition to amend section 7 of article 1 of the Constitution, relating to the taking of private property for public use," have made some progress in the same, but not having gone through therewith have instructed the Chairman to report that fact to the Convention, and ask leave to sit again.

The President — The question is on agreeing to the report of the Committee of the Whole.

Mr. Alvord — Mr. President, I move that we disagree with the report of the committee, and that the amendment be rejected, and upon that I move the previous question.

Mr. Dean — Mr. President, I call for the ayes and noes.

Mr. Marks — Mr. President, I rise to a point of order.

The President — The gentleman will state his point of order.

Mr. Marks — My point of order is that no delegate, after moving in the Committee of the Whole to rise and report progress and for leave to sit again, can, by any such scheme, when the committee has risen, ask to disagree with the report of the committee and thus attempt to kill the measure, and at the same time and in the same breath move the previous question without giving gentlemen an opportunity to debate the motion to disagree. I do not think it is fair, I do not think it is in order to move to disagree with the report, and at the same time move the previous question, and cut off all debate.

The President — The point of order is not well taken. The Chair will state that the question and the only question to be put is on agreeing with the report of the committee asking leave to sit again. If that should be refused, then, under rule 29, the amendment would be subject to the disposition of the Convention.

Mr. Dean's call for the ayes and noes was sustained.

Mr. Vedder — Mr. President, permit me to ask whether the question now is upon agreeing with the report or disagreeing with it?

The President — The question is upon agreeing to the report.

The Secretary proceeded with the call of the roll.

Mr. Marks — Mr. President, I ask to be excused from voting, and will briefly state my reasons. I do not believe that this is a fair way to treat so important a question. I am still of the opinion, Mr. President, that corporations have been endeavoring to create a false impression as to the nature of this amendment. If this committee is given leave to sit again and the members are dissatisfied with the form of the amendment proposed, if that amendment is beaten in Committee of the Whole, the committee may consider an amendment to the effect that the Legislature shall not pass any laws preventing the appeal to a jury by the owner of the property, from the award of commissioners, the jury to be summoned at once upon application of the owner, and providing that when such appeal is taken the person or corporation taking the property shall, upon depositing with the court the amount awarded by the commissioners, be entitled to enter into the possession of the property condemned. That would remove all other objections that the delay of going to a jury will interfere with the rights of the people in any way, and, if you provide for summoning a jury of freeholders, the cases will not take the course of other actions, but would be disposed of in two or three weeks, and at one session. It would be speedy and honest justice. I think this motion for leave to sit again should prevail so that we in some shape can get the principle embodied in our Constitution giving the people the right to a jury trial in some form or another. I vote aye.

Mr. Powell — Mr. President, as one of those who have taken some interest in this proposed amendment, I ask to be excused from voting, and will state my reasons. Every effort has been made by those who are opposed to this amendment to avoid a fair discussion of its merits and to mislead the minds of those who have desired to vote fairly upon it. There is only one question involved in this proposed amendment, and that is whether or not the man whose property is taken by eminent domain by a private corporation shall be denied the right of a trial by jury. Some weeks since we glorified the jury as the one perfect tribunal for the determination of justice between individuals. To-night we evidently intend, by our votes, to say that while the jury is good enough to determine between individuals, as to rights in dispute, that when it comes to a private corporation, a jury is not good enough. We

provide, in other words, in the Constitution the right of trial by jury, and to-night we say that when the property of the private citizen is taken by a corporation he shall not have the trial by jury; or, if we do not put it, perhaps, quite so emphatic as that, we deny him the right to demand a trial by jury.

This, sir, is a question entirely between the private corporations and the individual, and when we vote against it we say here, the representatives of the people, that the private corporation shall have a right so large that when the private citizen comes into conflict with the corporation he shall be denied his trial by jury. Let gentlemen go on record as they see fit. I withdraw my request to be excused from voting, and vote aye.

Leave to sit again was refused by the following vote:

Ayes — Messrs. Arnold, Barrow, Blake, Bowers, Campbell, Carter, Cassidy, Coleman, Cornwell, Davenport, Dean, Deyo, Dickey, Durfee, Fitzgerald, Forbes, Galinger, Gibney, Giegerich, Gilleran, Green, A. H., Green, J. I., Hecker, Hedges, Hirschberg, Hotchkiss, Hottenroth, Kinkel, Mantanye, Marks, McArthur, McDonough, McLaughlin, J. W., Meyenborg, Morton, Mulqueen, Nicoll, Nostrand, Parker, Pashley, Peabody, Peck, Porter, Powell, Pratt, Putnam, Rogers, Speer, Springweiler, Sullivan, W., Titus, Towns, Tucker, Turner, Veeder, Vogt, Whitmyer, Williams, Woodward — 59.

Noes — Messrs. Abbott, Acker, Ackerly, Allaben, Alvord, Baker, Banks, Barhite, Barnum, Becker, Brown, E. A., Brown, E. R., Cady, Church, Clark, H. A., Cochran, Cookinham, Countryman, Crosby, Deady, Deterling, Doty, Emmet, Floyd, Foote, Francis, Frank, Andrew, Frank, Augustus, Fraser, Fuller, O. A., Gilbert, Hawley, Hill, Holcomb, Holls, Johnson, J., Johnston, Kellogg, Kimmey, Kurth, Lewis, C. H., Lewis, M. E., Lincoln, Lyon, Manley, Marshall, Maybee, McCurdy, McIntyre, McKinstry, McLaughlin, C. B., McMillan, Mereness, Moore, Nichols, O'Brien, Osborn, Parkhurst, Phipps, Pool, Root, Sanford, Schumaker, Steele, A. B., Steele, W. H., Sullivan, T. A., Tibbetts, Vedder, Wellington, President — 69.

The hour of 10.07 P. M. having arrived, the President declared the Convention adjourned.

Friday Morning, August 17, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber at the Capitol, Albany, N. Y., Friday morning, August 17, 1894.

President Choate called the Convention to order at ten o'clock.

The Rev. J. J. Thomson offered prayer.

Mr. O'Brien — Mr. President, I move the reading of the Journal of yesterday be dispensed with.

The President put the question on the motion of Mr. O'Brien, and it was determined in the affirmative.

Mr. Porter — Mr. President, Mr. Coleman desires to be excused for Saturday and Monday.

The President put the question on granting leave of absence to Mr. Coleman, and it was determined in the affirmative.

Mr. Crosby — Mr. President, Mr. Kellogg asks to be excused until Monday afternoon on account of illness.

The President put the question on granting leave of absence to Mr. Kellogg, and it was determined in the affirmative.

Mr. Pashley — Mr. President, I ask to be excused for the whole of Monday.

The President put the question on granting leave of absence to Mr. Pashley, and it was determined in the affirmative.

Mr. C. B. McLaughlin — Mr. President, I ask to be excused from the afternoon session to-morrow.

The President put the question on granting leave of absence to Mr. McLaughlin, and it was determined in the affirmative.

Mr. Hotchkiss — Mr. President, I ask to be excused after this morning's session until Monday morning.

The President put the question on granting leave of absence to Mr. Hotchkiss, and it was determined in the affirmative.

Mr. Giegerich — Mr. President, I desire to be excused from attendance to-morrow afternoon.

The President put the question on granting leave of absence to Mr. Giegerich, and it was determined in the affirmative.

Mr. Andrew Frank — Mr. President, owing to the illness of my partner I would like to be excused until next Wednesday.

The President put the question on granting leave of absence to Mr. Frank, and it was determined in the affirmative.

Mr. Parmenter — Mr. President, I ask to be excused until Monday evening.

The President put the question on granting leave of absence to Mr. Parmenter, and it was determined in the affirmative.

Mr. Spencer — I ask leave of absence for to-morrow.

The President put the question on granting leave of absence to Mr. Spencer, and it was determined in the affirmative.

Mr. Bowers — I ask to be excused from this afternoon's session until Monday evening's session.

The President put the question on granting leave of absence to Mr. Bowers, and it was determined in the affirmative.

The President — The Chair would remind the Convention that it is responsible for the presence of a quorum to-morrow.

Mr. Meyenborg — Mr. President, I ask to be excused for Monday.

The President put the question on granting leave of absence to Mr. Meyenborg, and it was determined in the affirmative.

The President — The first business in order is the disposition of Mr. Marks's amendment. By the vote taken before the adjournment of the Convention last evening, the Convention refused the Committee of the Whole leave to sit again, which leaves it open for the immediate consideration of the Convention.

Mr. Cochran — Mr. President, with the consent of the introducer of that amendment, I move that it lie on the table.

The President — The Chair is of the opinion that that is where it is now. The rule says that it is open for immediate consideration. You move to lay it on the table.

Mr. Foote — Mr. President, I hope this motion will not prevail. I think this matter should be disposed of now —

Mr. Cochran — Mr. President, this motion is not debatable.

The President — It is not debatable. Mr. Cochran moves to lay Mr. Marks's amendment on the table.

Mr. Dickey — Upon that I demand the ayes and noes.

The President — Those who support Mr. Dickey's call for the ayes and noes will please rise and stand until they are counted to the number of fifteen.

The call for the ayes and noes was not sustained.

The President put the question on the motion of Mr. Cochran, and stated that the effect of it would be that it could be taken up by the Convention at any time hereafter.

The motion to lay on the table was lost.

Mr. Root — Mr. President, I move that the proposed amendment be "rejected entire."

Mr. Dickey — On that, Mr. President, I demand the ayes and noes.

The President — Those who support Mr. Dickey's call for the ayes and noes will please rise and stand until they are counted to the number of fifteen.

The call is obviously sustained, and the Secretary will call the roll. Those in favor of rejecting the amendment entire as their names are called will say aye and those opposed will say no.

The Secretary proceeded to call the roll.

Mr. Marks — Mr. President, a number of delegates do not seem to understand the effect of the motion. I will ask the President to state it.

The President — The motion is to reject the amendment entire. Those who answer "aye" are in favor of rejecting it entire, which lays it at rest forever.

The Secretary again proceeded with the call of the roll.

Mr. Dickey — Mr. President, I ask to be excused from voting, and will state my reasons. I will say, in answer to the suggestions of Messrs. Brown and Hawley, when the matter was under consideration last night, that a contingency might arise in their respective counties where they have but few courts, and they might have a hearing in condemnation proceedings, because they have so few circuits in the year, that they ought to have courts enough to do their business, and that it is not necessary in these condemnation proceedings to have them tried at circuit. The Legislature has very well provided for special juries, such as in lunacy and other special proceedings, and, instead of the demand for a jury trial, causing delay, it would tend to expedition —

The President — The Convention will preserve order so that Mr. Dickey can be heard. (Laughter.)

Mr. Dickey — I am much obliged to you, Mr. President, because I am forced to strain my voice in order to obtain the attention of the Convention. I hope the members will give me their attention, as I have but a few minutes in which to say what I desire on the matter.

As the law is now, if a man takes an umbrella and you sue him for it, you are entitled to a jury. If a corporation takes a hundred thousand dollars of real estate from you, you are not entitled to a

jury. The corporation can pick their own judge and can have commissioners appointed against your will and take your property and you can have absolutely no redress. The purpose of this amendment is, if a man's property is taken, to have a trial before a jury. Mr. Marks has made a good plucky fight for the people, and, if it is called socialism, I am going to vote with him, and I ask the Convention to vote with him and vote against the motion of the gentleman from New York to reject this amendment. (Applause.)

Mr. A. H. Green — Mr. President, I ask to be excused from voting and will give my reasons. I regret that my friend, Mr. Schumaker, is not in his seat at present. He mistakenly stated yesterday that I had voted against this proposition that I now advocate, and which I believe to be right and I think ought to be adopted by this Convention. He stated that I had voted against this in committee. I have no doubt that Mr. Schumaker intended to state what he believed to be correct. I will take the liberty of reading from the minutes of the meeting: "Mr. Green moved that this committee approve of the proposed proposition of Mr. Marks (No. 364). The motion was adopted." When this matter came up on the final vote in the committee, the proposition of substituting the right for a jury, the option on the part of the property owner for a jury, as against giving it to both parties, the record which I have here shows that it was adopted, six in the affirmative and none in the negative. It was adopted, and I quote this from the minutes of the meeting where these subjects were considered.

Now, sir, as I said, this is a proposition that commends itself to the judgment of every fair-minded man. If property is taken by force from a man, he should have the option of saying whether he should go to a jury or not. It seems to me to be a fair proposition and nobody can be harmed by it.

Mr. J. I. Green — Mr. President, I ask to be excused from voting and will briefly state my reasons. In all the discussions upon this question I have not heard, Mr. President, a single gentleman say that this amendment is wrong in principle. As I understand it, it simply gives to the property owner the option of saying whether or not he shall have his matter tried by a jury of his peers. For that reason, sir, I believe that the amendment is a proper and just one, and I, therefore, withdraw my request to be excused, and vote no.

Mr. Holls — Mr. President, I ask to be excused from voting, and will very briefly state my reasons. In its present form I think this amendment is dangerous, if not mischievous. But I feel satisfied

that it can be improved and that the present methods of condemning property in very many ways could be better. If this motion is voted down, it seems to me very practical to send this amendment to the Judiciary Committee for further report. It seems to me that is a wise course to take. I, therefore, withdraw my request to be excused, and vote no.

Mr. Mantanye — Mr. President, I ask to be excused from voting, and will state my reasons. If this proposed amendment is to be rejected, it then follows, as a matter of course, in order to be consistent and honest, that this Convention must amend the section in question by striking out the provision that is in there now, for a trial of these questions as to the valuation of land taken by jury. It says in that section now that the damages shall be assessed either by commissioners or by a jury and then it is qualified by the following words which say: "As the Legislature may direct." If it said in the manner as the Legislature shall direct, then, of course, the party would have had his option; but with that unfortunate wording the Legislature is assumed to abolish that alternative for jury which the Constitution intended to give. So I say, to be consistent, we must entirely wipe out the provision for jury and not leave that foolish provision there, to hold out to the people a hope that they may have a jury trial which they cannot have. If my home is taken for some private purpose, my household goods and gods will be removed somewhere else, and I say that I should be given the right to have the damages assessed in a way that is satisfactory to me. Taking these matters into consideration, I say this amendment is proper and not objectionable, and I, therefore, withdraw my request to be excused, and vote no.

Mr. Marks — Mr. President, I desire to be excused from voting, and will state my reasons. I hope that this Convention will not, at this stage, reject entirely a proposed amendment, which, I believe, is the broadest amendment in the interests of the people of the State of New York which is at present before this Convention. I think the subject is important. I think that corporations do not want it. They do not want a jury to fix the price of property taken in these proceedings. They know a jury will be fair, and they fear what is fair. I beg of you not to reject it, but give the matter further consideration. There are a number of delegates who voted against the proposition who have informed me that they are not yet satisfied that they did right in voting against it. Give them a chance to consider it. If the amendment is too broad, let it go back into the Committee of the Whole. Why do not the self-constituted leaders on the floor of this House, who, I presume,

have the interests of the people at heart, enter the arena and battle for the rights of the people, let them take it under consideration and formulate some kind of an amendment in the interests of the people. I will be satisfied with any kind of an amendment which gives to the people the right to a trial by jury. Gentlemen, do not reject the report of your Committee on Preamble which has reported this amendment favorably. Take it back and in any form provide for a jury trial. You have suggested two or three possible objections. The objections are that it might interfere with rapid transit in the city of New York. Now, if I am incorrect in my statement as to the underground railroad law, I wish any gentleman to correct me. The underground railroad in the city of New York, under the laws passed by the Legislature, will have the right to take possession of the property before the award is made in condemnation proceedings. The act of 1894 gives the city the right to the fee when maps are filed. Before the owners of property are awarded any damage for their property taken, the city may let it out to a corporation for fifty years — the fee of the property vests in the city before the owner is paid one cent. I hope, gentlemen, you will not imperil the work of this body before the people, but give every gentleman a chance in the Committee of the Whole to further consider this matter and secure the result desired. The objection that a jury trial would delay matters is also without foundation, as a jury, drawn as in civil actions, need not be provided for. You can have a jury drawn as the practice existed in cases of highway openings in the country, and in two weeks you have had a verdict. It is speedier than a commission or any jury trial. I withdraw my excuse, and vote no.

Mr. C. B. McLaughlin — Mr. President, I ask to be excused from voting, and will state my reasons. I believe the Constitution, as it now is upon this subject, is much better than it would be if this amendment is adopted. Under the present Constitution of the State, the Legislature now has the power to grant trial by jury, if that is thought to be a wise way of assessing damages in cases of condemnation. I have not, as yet, heard any one upon this floor say that an application has been made to the Legislature for trial by jury and that such an application has been denied. I have yet to hear that any complaint has been made by the property owners of the city of New York or any other place in this State, that they are not entirely satisfied with the present system of the assessment of damages. Why! the gentleman who introduced this amendment, Mr. Marks, made the very best argument that could be made for the present system. He called the attention of this Convention to a

case in which the Supreme Court, sitting at Special Term, set aside an assessment of damages and that was affirmed by the General Term. Now, that is where the rights of property owners to-day are protected. If the gentlemen from New York city want this, I have not a word to say; but, in my judgment, the balance of the State does not want it. We are satisfied with the Constitution, as it now is. I withdraw my request to be excused from voting, and vote aye.

Mr. Moore — Mr. President, I desire to be excused from voting, and will briefly state my reasons. I am not opposed, Mr. President, to the principle involved in this proposed amendment; but to me it seems a one-sided thing which gives one party the opportunity to select the tribunal which shall fix the damages, but gives the other side no right. I think the people's rights are as well preserved under the Constitution as it now stands, because they have the opportunity to go to the Legislature and get a law passed, which will enable them to have a jury trial to fix the compensation for damages, as it can be done under this amendment. I, therefore, withdraw my request to be excused, and vote aye.

Mr. Powell — Mr. President, the question was asked here last night who desires this change, and it has been intimated here this morning that no one desires it. I wish to answer that question and that proposition. I say that every man and every woman who owns property on the line of the elevated roads in the city of Brooklyn desires it. I wish to say that against the present system and the present method of condemning property there is a universal cry of horror in the city of Brooklyn. The rights of citizens in block after block all along the lines of the elevated roads are being taken away, their easements being destroyed and their being granted by commissions, in instance after instance, only six cents damages. A prominent attorney in the city of Brooklyn told me the other day that he had advised a property owner who owned ten lots along the line of the elevated railroad to settle for almost anything he could get, rather than trust one of those commissions to determine the damages. And so by the pressure of the present system, as it works in the city of Brooklyn, property owner after property owner is sacrificing his rights for a mere mess of porridge. The city of Brooklyn asks that this present method of condemning property be changed. I, sir, withdraw my request to be excused from voting, and vote no.

Mr. Roche — Mr. President, I ask to be excused from voting and will briefly state my reasons. I understand that the effect of

an affirmative vote in this case will be to effectually kill this proposition, and, as there is no other amendment before the Convention upon this subject, that it will thereby preclude the possibility of the Convention taking any action whatever upon the subject-matter of this proposition. Now, I am not satisfied with the amendment of Mr. Marks. I think it is capable of considerable improvement. I understand there are some delegates who have propositions or proposed amendments which they are ready to offer, with a view to perfecting this amendment of Mr. Marks. I think, therefore, that a fair opportunity ought to be given to them for their presentation and for the further consideration of this matter by the Convention itself. In order that that may be done, I withdraw my request to be excused from voting, and vote no.

Mr. Schumaker — Mr. President, I ask to be excused from voting, and will state my reasons. I have just been told by my friend, Judge Green, that he has made a statement in this Convention in relation to my misapprehending his vote in the committee. Now, I do not believe in telling tales out of school, or in giving any kind of a description of this dispute on this matter in the Committee on Preamble and Bill of Rights. My friend, Judge Green, was opposed to anything that would give the municipalities of New York a right to call a jury, and I understood him to vote against this measure. I think that he did, and I would not have said anything about it if Mr. Francis was in his seat when the gentleman asked whether this was a unanimous report. I looked around and he was not there, and Mr. Alvord was not there, and I said it was not a unanimous report. Now, that is the whole matter. Whether Judge Green voted against it or voted for it, I will take his word as to how he voted. That is all there is about it. If I have misunderstood him and misapprehended his meaning, I am very sorry for it, and, therefore, I wish to ask to withdraw my request to be excused from voting, and vote aye.

Mr. Smith — Mr. President, by mistake I voted when the name of Mr. Phipps was called. I ask that the record may be corrected.

The President — Is Mr. Phipps present?

Mr. Phipps — Yes, sir.

The President — Have you voted, Mr. Phipps?

Mr. Phipps — I have not.

The President — How does Mr. Phipps desire to vote?

Mr. Phipps — I vote aye.

The President — How does Mr. Smith vote?

Mr. Smith — I vote no.

Mr. Ackerly — Mr. President, I wish to be excused from voting, and will give my reasons therefor. I was absent on committee work on the first roll-call. At the afternoon session yesterday I raised objection to this amendment as to its affecting highways especially. I wish to say that during recess Mr. Marks prepared an amendment which was acceptable to me and submitted it at the evening session, but on the further discussion of the bill during the evening I became satisfied that it ought not to pass for various reasons. One of them is that it has not been alleged upon this floor that any application has been made to the Legislature to change the method as authorized by the present Constitution and has been refused. And for that reason, one of the reasons, I withdraw my request to be excused, and vote aye.

Mr. Becker — Mr. President, I desire to be excused from voting, and will state my reasons. I believe this measure ought to be defeated permanently. I do not see how it can be amended or fixed up so as to bring about a good result, either for the people or for the administration of justice in general. In the first place, I am absolutely opposed to any form of law in the Constitution or out of it that prescribes a different rule for one class of persons, whether they are artificial or actual, from that which is prescribed for another. I do not believe in putting in a discrimination of that kind in the Constitution. For that reason this measure is absolutely defective. On the other hand, I believe the rights of the citizen are better protected by a carefully-selected commission than by a jury, one of whom may be purchased, thus leading to a divided jury or a greatly reduced verdict. I also believe that this amendment would lead to the obstruction of eminent domain proceedings, so that rival competing lines would be delayed from being built. I have heard of no complaints against the existing law. It seems to work well, and I have acted a hundred times oftener for property owners than I have for corporations in such proceedings. I, therefore, withdraw my request to be excused from voting, and vote aye.

Mr. Davis — Mr. President, I desire to be excused from voting, and will briefly state my reasons. Being the introducer, sir, of proposition No. 230, which, in a large degree, is similar to that of Mr. Marks it being one that I believe covers all of the objections that I believe have been made by the various members of this Convention, having drawn that proposition and introduced it into this Convention from honest motives only, I believe that this proposition should be presented in place of that of Mr. Marks's and be

accepted by this Convention. It is true that there has been a great deal of discussion over this matter, and I believe honestly, with few exceptions. When Humpty Dumpty gets upon his feet and declares that this is scaly, I believe he casts before his face his own reflection. This is an honest measure, and I believe that a jury is the proper tribunal to assess the damages that I may sustain by reason of being thrown out of my home by some great corporation, with nothing but the canopy of heaven over my head. I believe it is right in principle and it is right in justice. The leader of the majority of this House has very well and honestly stated to this Convention in forcible terms that the jury was the great safeguard between the people and the courts. It has been charged here that this limitation against the liability for injury causing death, that that matter has been before the Legislature for years and it was impossible to get the Legislature to do anything about it. Why? They say that the Legislature has been owned by corporations. If that is true in that case, why wouldn't it apply in this? —

The President — The gentleman's time is up.

Mr. Davis — I believe, Mr. President, it is the proper way to assess the damages. I, therefore, withdraw my request to be excused, and vote in the negative.

Mr. Peck — Mr. President, I ask to be excused from voting and will briefly state as the reason, because I think a measure of this importance, which has been discussed to the extent that this measure has been discussed, and while it is in the process of perfection by its friends, should not be killed by indirection. I wish to vote upon this measure after it is perfected at the hands of its friends, and, therefore, at this stage of the proceedings I vote no.

Mr. C. A. Fuller — Mr. President, I voted upon this proposition under a misapprehension. It is my intention to support the proposition of Mr. Marks. I voted aye. I desire to change my vote to no.

The President — The motion is carried. Ayes, 70; noes, 67.

The vote in detail is as follows:

Ayes — Messrs. Abbott, Acker, Ackerly, Alvord, Baker, Barhite, Barnum, Becker, Brown, E. A., Cady, Cassidy, Chipp, Jr., Church, Clark, H. A., Cookinham, Countryman, Crosby, Deady, Doty, Emmet, Floyd, Foote, Francis, Frank, Augustus, Fuller, O. A., Gilbert, Goodelle, Hamlin, Hawley, Hill, Johnson, J., Kimmey, Lewis, C. H., Lewis, M. E., Lincoln, Lyon, Manley, Marshall, Maybee, McCurdy, McIntyre, McLaughlin, C. B., McMillan, Mereness, Moore, Nichols, O'Brien, Osborn, Parkhurst, Parmenter, Phipps,

Pool, Putnam, Redman, Root, Schumaker, Spencer, Steele, A. B., Steele, W. H., Storm, Sullivan, T. A., Tibbetts, Towns, Vedder, Wellington, Whitmyer, Wiggins, President — 68.

Noes — Messrs. Arnold, Barrow, Blake, Bowers, Burr, Bush, Campbell, Carter, Cochran, Coleman, Danforth, Davenport, Davis, G. A., Dean, Deterling, Deyo, Dickey, Durfee, Fitzgerald, Forbes, Frank, Andrew, Fuller, C. A., Galinger, Gibney, Giegerich, Goeller, Green, A. H., Green, J. I., Griswold, Hecker, Hedges, Hirschberg, Holcomb, Holls, Hotchkiss, Hottenroth, Jacobs, Johnston, Kinkel, Kurth, Mantanye, Marks, McArthur, McClure, McDonough, McKinstry, McLaughlin, J. W., Meyenborg, Morton, Mulqueen, Nicoll, Nostrand, Ohmeis, Parker, Pashley, Peabody, Peck, Porter, Powell, Pratt, Roche, Rogers, Rowley, Sandford, Smith, Springweiler, Titus, Tucker, Turner, Veeder, Vogt, Woodward — 72.

Mr. Dean — Mr. President, I desire at this time to call attention to rule 6. There are gentlemen who sit in this Convention time after time, during a roll-call and never answer to their names. It seems to me that we are fairly entitled to have gentlemen vote upon this question.

The President — Memorials and petitions are in order. A memorial has been received from the citizens of New York in respect to the management of caucuses and is referred to the Suffrage Committee. Also, a civil service memorial which is referred to the Select Committee.

Mr. Becker — Mr. President, I ask unanimous consent at this time out of order, as I am compelled to be away this morning, to have the time of the Committee on Legislative Organization extended, say until Friday of next week, to make its report. Mr. Brown, the author of the bill that is pending before the committee, is unavoidably compelled to be absent from the Convention, and Mr. Bush who is in charge of the interests of the minority of the committee cannot be here until Monday night. It will be necessary to go over the proposed bill carefully in order to insure grammatical accuracy, etc., and that will delay it a day or two. I, therefore, ask the leave of the Convention that the time of this Committee on Legislative Organization to report be extended until a week from to-day.

Mr. Osborn — Mr. President, I had intended to confer with the chairman of that committee on the subject of which I am about to speak, and I hope he will not consider it discourteous in me to speak to the Convention about it before mentioning the subject to him. There is before the Committee on Legislative Organization the

subject of apportionment. There is also before that committee connected with the subject of apportionment, but not necessarily a part of that subject, the proposition in reference to the terms of Senators and Assemblymen and also their compensation. Now, it seems to me that that committee could with great propriety report to this body in advance of the full report on the apportionment of the State, its views upon the proposition in reference to the terms of Senators and Assemblymen and their compensation, and I would suggest, therefore, that those two subjects be considered upon their merits in connection with the report which I understand it to be submitted from the Cities Committee in reference to the proposition for separate elections, and apart from any feeling which be aroused by the apportionment question proper. I would suggest, therefore, that the Convention ask the Committee on Legislative Organization to report at the earliest possible date upon the subjects of the terms of Senators and Assemblymen and their compensation.

Mr. Becker — Mr. President, I will say in reply to the gentleman that it seems to me that this is a matter which the committee must regulate for itself; that neither he nor I here have any power. I understand it to be the wish of the gentleman that that matter should lie over until the Convention take definite action on the subject of the separations of State and city elections. I would be very glad to consult with the members of the committee, and if they desire to make a report before that time they can make it. Do I understand that is satisfactory to Mr. Osborn?

Mr. Osborn — That is satisfactory.

Mr. Bowers — I would like to ask the chairman of the Committee on Legislative Organization a question. Do we understand that the interview published in the papers this morning with the chairman of that committee is authoritative?

Mr. Becker — The chairman replies that he has no knowledge of any such interview.

The President put the question on the motion of Mr. Becker to extend the time within which the Committee on Legislative Organization should make its final report to a week from to-day, and it was determined in the affirmative.

Mr. Becker — Mr. President, on account of a long standing and pressing engagement made prior to the time that sessions were fixed for Saturday and Monday, I desire to be excused until Monday evening.

The President put the question on granting leave of absence to Mr. Becker as requested, and it was determined in the affirmative.

The President — The Chair wishes to state that an error has been made in the count of the vote in respect to Mr. Marks's amendment. The true result is that the motion of Mr. Root was lost, 68 ayes and 72 noes. (Applause.)

What is the further pleasure of the Convention in respect to Mr. Marks's amendment?

Mr. Moore — Mr. President, I move that it be referred to the Judiciary Committee.

Mr. Bowers — That is a burlesque motion.

Mr. Moore — Mr. President, I will answer that. I will state to Mr. Bowers that I do not make burlesque motions whatever they do on the other side of the house.

Mr. Marks — Mr. President, I move to amend the motion that it be referred to the Committee of the Whole, so that we can have full discussion again.

Mr. Root — Mr. President, I rise to a point of order. Mr. Marks's amendment cannot be entertained, because it is a proposition equivalent to the proposition which was decided by this Convention at its session last evening. The Convention then decided that the proposed amendment should not go back to the Committee of the Whole. The amendment of Mr. Marks is that it shall go back to the Committee of the Whole, and the rules expressly prohibit the entertaining of equivalent propositions.

The President — The Chair is of the opinion that the Convention has a right to deal with this matter as they see fit, notwithstanding that they have disagreed with the request of the Committee of the Whole for leave to sit again. The Convention has still control of the matter and may recommit to the Committee of the Whole if they so desire. (Applause.)

Mr. Veeder — Mr. President, I was going to ask for recognition, simply for the purpose of moving a reconsideration, if the ruling of the Chair had been different, but I am perfectly satisfied with the ruling.

The President — The question is on the amendment of Mr. Marks to refer his amendment to the Committee of the Whole.

Mr. Veeder — Mr. President, is that motion debatable?

The President — It is.

Mr. Veeder — Mr. President, now I submit that that is the better course to pursue. If the matter is referred to the Judiciary Committee and subsequently reported by the Judiciary Committee, unfortunately the Convention is not of opinion that the Judiciary

Committee is always right, and consequently the same discussion will occur, and then whether they make a favorable or adverse report, it will then have to go to the Committee of the Whole and on general orders. The house is now fully informed on the subject under discussion, and why refer it to the committee and allow it to remain there, and then when the report comes in take up the whole subject anew. I submit it is, therefore, better, if it is to be further considered, that it should go to the Committee of the Whole and be disposed of.

Mr. Dickey — Mr. President, if this motion to send it back to the Committee of the Whole is carried, it will permit the substitution of Mr. Davis's amendment.

Mr. Vedder — Mr. President, I could not exactly hear the point of order made by Mr. Root, and I could not quite catch the ruling of the Chair. I wish to make this point of order that the motion is not in order in the condition that this matter is now in. The Convention yesterday refused to confirm the report of the Committee of the Whole.

Mr. Cochran — Mr. President, I rise to a point of order. The Chair has decided this question. The gentleman can appeal from that, but I do not see any necessity for arguing this matter.

Mr. Vedder — Mr. President, there was so much disorder in this part of the House that I did not hear Mr. Root's point of order nor the decision of the Chair. But supposing that the ruling of the Chair is correct and a proposition is on its third reading, and was rejected, could a motion be made that that bill be read again without first reconsidering the motion by which the proposition was lost? If when a motion is defeated a similar motion can be made immediately, there is no end to motions which can be made, and there must be an end at some time. The action of the Convention yesterday that the Committee of the Whole should not sit upon this proposition again is the order to-day and cannot be changed unless by moving a reconsideration of that vote. You cannot keep on putting motions that are defeated. You cannot put them over and over again. The only orderly and logical way to proceed is to move a reconsideration of the vote.

Mr. Veeder — To save all discussion on this subject, I move a reconsideration of the vote, refusing to let the Committee of the Whole sit again on the proposition. That is the motion I desired to make in the beginning. That will save all question and save us from any error.

Mr. Moore — Mr. President, I rise to the point of order that the

mover of the resolution did not vote with the majority upon that question.

Mr. McClure — Mr. President, I make the point of order that the Chair has already decided that the Convention could send this amendment to the Committee of the Whole, and that the motion of Mr. Veeder is out of order.

The President — The Chair decides that Mr. Vedder's point of order is not well taken, and that Mr. Veeder's motion is out of order.

Mr. Veeder — That you, Mr. President, I am satisfied.

Mr. Bowers — Mr. President, I move to lay the whole matter upon the table.

The President put the question on the motion of Mr. Bowers to lay the whole matter upon the table, and it was determined in the negative, ayes, 58; noes, 66.

The President — The question is on Mr. Marks's amendment that his amendment be referred to the Committee of the Whole. Mr. Moore moved to commit it to the Judiciary Committee, a motion perfectly in order. Mr. Marks moves to amend that motion by substituting the Committee of the Whole, which the Chair holds to be entirely in order.

The amendment of Mr. Marks was adopted.

The President then put the question on the motion to recommit the matter to the Committee of the Whole, and it was determined in the affirmative.

Mr. Roche — Mr. President, I ask leave of absence from now until Tuesday morning, and I will state that I will try to be here on the Monday evening session, and as there are several propositions of mine which are on the calendar, I will move these propositions on Tuesday, or the earliest hour at which they can be reached.

The President put the question on granting leave of absence to Mr. Roche, and it was determined in the affirmative.

Mr. Augustus Frank — Mr. President, I ask to be excused from attendance until next Monday evening.

The President put the question on granting leave of absence to Mr. Frank, and it was determined in the affirmative.

Mr. Towns — Mr. President, I ask to be excused to-morrow and Monday, in order to have an operation performed on my arm.

The President put the question on granting leave of absence to Mr. Towns, and it was determined in the affirmative.

Mr. Danforth — Mr. President, by reason of professional engagements, a reference, made for to-morrow before the rule fixing our present sessions was proposed, I ask leave of absence for to-morrow.

The President put the question on granting leave of absence to Mr. Danforth, and it was determined in the affirmative.

Mr. Manley — Mr. President, I ask leave to be excused for to-morrow and Monday.

The President put the question on granting leave of absence to Mr. Manley, and it was determined in the affirmative.

Mr. Gilbert — Mr. President, for reasons which are of a purely public character, I wish to be excused until Tuesday.

The President put the question on granting leave of absence to Gilbert, and it was determined in the affirmative.

Mr. Mulqueen — Mr. President, in view of the good work that we have done this week in passing nearly five general orders yesterday and sitting three nights and three sessions a day yesterday and to-day, I would ask unanimous consent that we do not have a session on Saturday. I believe, Mr. President, that we will hardly have a quorum on Saturday, in view of the excuses that have already been granted, and it seems hardly fair to keep men here when the probability is that we will not be able to do any business. I am in favor, Mr. President, of coming here at nine o'clock in the morning and sitting all day and all night in order to complete the business, but it does seem hard on us that we cannot go home to our families once a week at least. It, therefore, seems proper that the Committee on Rules give us Saturdays to attend to our private affairs.

The President — Do you make a motion that we do not sit Saturday?

Mr. Mulqueen — I do.

Mr. Pratt — I move to amend that no session be held on Saturday afternoon.

The President — Does Mr. Mulqueen accept that?

Mr. Mulqueen — No, sir; I believe that if we are given Saturday that the members of this Convention would be willing to come here and sit all night on one of the days next week in order to make up for the time lost on Saturday.

Mr. Hawley — Mr. President, I make the point of order that this motion must necessarily go to the Committee on Rules.

The President — The Chair is of the opinion that under the pecu-

liar order which was passed, the point of order is not well taken, because the resolution reads, "unless otherwise specially ordered by the Convention," if I am not mistaken in that.

Mr. Acker — Mr. President, it seems to me that if our experiences in the past have taught us anything, a session for to-morrow morning will amount to nothing. If we are to stay here and do any business to-morrow, we must have more than one session. If we must be excused to attend our business and attend the horse races, well, then, let us say so, and not keep a majority of a quorum here until midnight to-day and then wake up to-morrow and find there is nobody here. It is our duty to go on with our work or else stop to-night. Either work or not work. To-morrow morning if we have only one session we will accomplish nothing, as the members will all leave for their homes to-night. If you want to do business you should sit here two sessions to-morrow or else conclude it to-night. Let us have no play-days, no half-holidays. Let us do something or nothing.

Mr. Hill — Mr. President, it seems to me this matter has been thoroughly considered by this Convention, and we ought to sit Saturday morning. If we decide not to sit to-morrow morning we will find this evening's session will amount to nothing. I am in favor of sitting to-morrow morning and to-morrow afternoon. It seems to me that we can well afford this week to sit Saturday, and then if we find it not successful, next week we can adjourn over Saturday.

Vice-President W. H. Steele in the chair.

Mr. Durfee — Mr. President, there are over forty in number on the calendar of general orders. Reports of committees that are to be handed in within a day or two will largely increase that number. By the utmost diligence yesterday we succeeded in dispatching four of the proposed amendments which were least likely to provoke extended debate, although the last one, that which we have been concerned about this morning, as it turned out, did provoke debate, but the larger proportion of the amendments, which are sure to provoke extended discussion, are still before us. Under these circumstances, I submit that we ought to proceed in accordance with the order that we have already made and with diligence and attention to the duties that we are here to discharge. Another week, or two weeks hence, if the business shall then be so far progressed that we may safely dispense with Saturday sessions, I shall be most happy to join in that action; but for

the present it certainly does appear to me that the motions which are now pending ought not to prevail.

Mr. Moore — Mr. President, I certainly hope that this Convention will remain in the same mind one whole week. That is what I hope about it. I have personally always been in favor of this Convention sitting about as the Legislature does; but that is not to the point now. I certainly hope the resolution and the amendment will both be defeated, and that we will continue to carry out our original arrangement by sitting all week.

Mr. Choate — Day before yesterday this Convention voted that it was not yet time to trust women with the conduct of public affairs. If this amendment of Mr. Mulqueen's passes, I, for one, shall be satisfied that men are not fit to be trusted with the conduct of public affairs. (Applause.) What are we here for? For work or for play? The situation has not changed one particle since, a week ago, we adopted the resolution that the public service necessarily required us to hold sessions every day, besides the evening session. Talk about work accomplished this week! Why, the great work of this Convention still remains to be done. Think of it, only three weeks more for the consideration of these questions. You have only broken the edge of the work that is laid out for this Convention to do. Why, gentlemen, consider for a moment. The judiciary article alone; how much time will that consume in a body in which there are one hundred and thirty lawyers, each one having his own view on each section of that article? The report of the Committee on Cities, involving the interests, the feelings and the prejudice of almost every section of the State; the report of the Committee on Education, which, in itself, as I understand, has involved in the heart of that committee very wide controversy, and necessarily will in the meeting of this Convention; the report of the Committee on Charities, of a similar complexity, although involving only one question, if you please, yet one which divides the community very largely. And then, above all, the question of apportionment. Mr. Osborn has well said that that is a question which may involve not only matters of principle, but matters of feeling, and we may expect long and close discussion upon it. Now, let us show ourselves men. Do not let us throw away an opportunity for work. I regret very much that so many gentlemen have asked to be excused, and have received leave of absence for to-morrow. For one, I believe that any member of this Convention who has business to attend to elsewhere ought not to be excused. Let him go at his own expense, and attend to his business, and lose his *per diem*, and make it up out of the business that he is to attend to.

Now, gentlemen, it will be a great mistake to pass either Mr. Mulqueen's resolution or the amendment, and for one, I hope the Convention will take care of its own honor and its own reputation and not do so foolish and boyish a thing as to change its course on this matter.

Mr. Dean — After passing by an almost, and, I think, an entire, unanimous vote a resolution to sit here continuously six days in the week and three times a day, it seems to me that it is the height of absurdity, absolutely ridiculous, for this Convention, at this time, to consider even the proposition of adjourning over to-morrow. I, therefore, move that the resolution lie upon the table.

Mr. Acker — I move the previous question.

Mr. Dean — I will withdraw my motion for the purpose of giving place to the previous question.

Mr. Mulqueen — I would ask the gentleman to withdraw his motion for just a moment.

The President *pro tem.*— Does the gentleman insist upon the previous question?

Mr. Acker — Yes, sir; I insist upon it.

Mr. Mulqueen — Mr. President, I want to say that I yield to no man —

The President *pro tem.*— The Chair would remind the gentleman that the previous question precludes debate.

Mr. Mulqueen — Oh, I understood that it had been withdrawn.

The President *pro tem.*— It was not withdrawn.

The President *pro tem.* then put the question, shall the previous question be adopted, which was determined in the affirmative.

The President *pro tem.* put the question on the amendment offered by Mr. Pratt, that no session shall be held on Saturday afternoon, and it was determined in the negative.

The President *pro tem.* then put the question on the original motion as offered by Mr. Mulqueen, that there shall be no session to-morrow (Saturday), and it was determined in the negative.

Mr. Gilbert asked unanimous consent to introduce a proposed constitutional amendment.

Mr. Veeder — I would like to have it read for information before it is received.

The President *pro tem.*— The Chair knows of no way in which it can be read before it is received.

Mr. Veeder — Then I object. I ask to have it read for informa-

tion. I think that is entirely proper. Then we know whether or not we want to object or not. I do not want to object if I think it is all right. If I think it is not all right I want to object.

Mr. Gilbert — It seems to me that that is very proper. The only object of the proposed amendment is to change the day on which the Legislature shall assemble from Tuesday until Wednesday. That is the sole purpose of it, and that for the purpose of rendering it unnecessary for the members to come here Sunday to prepare for caucus. It is only to change the day of the week from Tuesday to Wednesday.

Mr. Veeder — I withdraw my objection.

Mr. Gilbert — I would ask that it go to the Committee on Legislative Powers.

The President *pro tem.*— It requires unanimous consent for the reference asked by Mr. Gilbert. If there is no objection it is so referred.

O. 385.— By Mr. Gilbert, proposed constitutional amendment, to amend section 6 of article 10, in relation to the time when the Legislature shall assemble.

Referred to Committee on Legislative Powers.

The President *pro tem.* announced that notices, motions and resolutions were in order.

Mr. Vedder — Since notices are in order, and the amendment has just been referred to the Committee on Legislative Powers, I want to give notice now that there will be a meeting of that committee to take up this matter at half-past two to-day.

Mr. Moore — I desire to call the attention of the Convention to the fact that printed Document No. 15, in which are contained the rules of this Convention, and which was ordered some three or four weeks ago to be reprinted in corrected form, with all the new rules in it, has not yet been produced or put upon our files. I, therefore, move, Mr. President, that the Printing Committee be instructed to produce this document, No. 15, properly printed, at the session of the Convention next Monday morning.

The President *pro tem.*— The Chair will inform the gentleman that that matter is now in the hands of the printer and is receiving all the expedition that can be given to it. Is that satisfactory to the gentleman?

Mr. Moore — Well, Mr. President, it is not satisfactory to me as a member of this Convention to come here every morning and have

to look through a mass of debates and documents to try and find out what is or what is not a rule. These rules have been amended from time to time, and the only possible way that we can ascertain them is either to trust the memory or the judgment or the *obiter dictum* of the presiding officer or of some other member of this Convention. It seems to me that this Convention ought to have the power to compel the finishing of at least one document by the people who have this printing contract in charge, in time for us to use it before it is time for us to adjourn.

The President *pro tem.*— Will the gentleman repeat his motion?

Mr. Moore — My motion is that the Printing Committee be instructed to produce this document, No. 15, ready for use by this Convention, and upon the files of members, next Monday morning at the opening of the session of this Convention. Personally, and I believe I speak for the members of this Convention, too, I think they are tired of this dilly-dallying in printing matters which ought to come up for our use here. I move that, Mr. President, right or wrong.

The President *pro tem.* then put the question on the motion of Mr. Moore, and it was determined in the affirmative.

Mr. Roche — I was going to move an amendment to that. The Chair put the question so quickly that I could not do it. I now make a similar motion as to the debates of the Convention; that the files be produced here next Monday morning up to date. I think it is an imposition upon this Convention the way in which the printing of its documents and proceedings is done, or rather is not done, and it is well worthy of inquiry how long and how frequently the answer is to be made here, when we ask in regard to the documents and printing of this Convention, that they are being done with all possible expedition. I think this Convention should take some steps to expedite the expedition, whether they are financial or otherwise. It is utterly discreditable, the way in which these documents are kept back from the Convention, and the report of its proceedings. Here is the file relative to debates, and we have nothing upon this file since last Friday morning. There seems to be no reason for that; or, if there is, why the Convention ought to be made acquainted with the fact.

The President *pro tem.*— If Mr. Roche will listen to the Chair for a moment — the Chair is informed that these records are being handed around to the members at their request, in order to be corrected before they are placed upon the files.

Mr. Roche — I do not think that is any answer, or that it is any

excuse. Here is a whole week of the proceedings of this Convention, and without desiring whatever to dispute one word of what the Chair states, it seems to me that it is not possible that the proceedings of an entire week of this Convention are being handed around among the individual members for the purpose of correcting them; and, if it is true, then it ought to be stopped; because it is not the individual members who alone are interested in the proceedings and in the debates. All of us have a right to have these proceedings before us at the earliest day possible, because subjects frequently come up here as a matter of debate in connection with which we desire to refer to what has occurred previously or to what some member may have said upon the floor; and it is utterly impossible that we should do so if these things are to be held back here a whole week, or if they are to be held back at the good pleasure of individual members in order that they may reconstruct their speeches.

Mr. Roche then restated his motion:

R. 175.— Resolved, That the Printing Committee cause also to be produced and placed upon the files of the members the Journal of this Convention and the debates of the Convention up to this date, next Monday morning.

Mr. Alvord — Mr. President, in the Convention of 1867-8, we had a rule that the matters which the preceding day brought forward, should, upon the day then present, be upon our files. We very seldom, if ever, failed to have the proceedings of each day, the next succeeding morning, upon the files of the Convention. I can see no reason why we could not hold the printers at least to their contract and agreement and have these matters each and every day up to the end of the preceding day. I think that the remarks made by the gentleman from Rensselaer are entitled to great weight and consideration, and his resolution ought to be the unanimous voice of this Convention.

Mr. Hamlin — I agree in substance with all that the gentleman from Rensselaer has said in regard to the printing of this Convention, but, sir, I see no object in referring this matter to the Printing Committee. There have been resolutions and resolutions passed by this Convention requiring this printing to be done, but this committee has no authority over The Argus Company. The situation of this Convention is very different from that of the Convention which has been referred to here by the gentleman from Onondaga. It had some power over its printing, but this Convention is bound hand and foot; and, while your Printing Committee is willing to do anything within its power, there is no object, as it seems to

me, in referring this resolution to that committee. It is rather a question between the Comptroller and The Argus Company, and I submit that the resolutions passed by this body in regard to its printing should be directed to the officers of this State who have some control over the contractors.

Mr. Roche — If it is the Compiler who has charge of the work, then I will change my motion and direct it to the Compiler, and not to the Printing Committee, if he is the proper person.

Mr. Cochran — Mr. President, it seems to me, sir, that this should go to the Printing Committee, in order that the cause of the delay may be ascertained. It may be, sir, that the delay is not due at all to the printers, but, possibly, to the insufficient force of stenographers we have in this Convention. We should remember that we are now having almost continuous sessions. It may be that the stenographers are unable to transcribe their notes in time to submit them to the printer. I do not think we should blame anyone until we know where the blame is properly due. I think it should go to the Printing Committee so it could be ascertained.

The President *pro tem.*— Do you make that as an amendment to Mr. Roche's motion?

Mr. Cochran — Well, I did not understand that he changed his motion.

The President *pro tem.*— Yes, Mr. Roche has changed his motion so as to refer the matter to the Compiler.

Mr. Roche — Only, Mr. President, in the event that the Compiler is the proper person. If it belongs to the Printing Committee I am entirely willing to have the motion remain as it was introduced at first.

The President *pro tem.*— That is a difficult matter to decide here.

Mr. Roche — Then leave it to the Printing Committee.

Mr. McClure — Mr. President, we have been here from ten o'clock until half-past eleven, and have practically done nothing, in the face of the rule that provides that we shall sit and continue to sit on Saturdays and do some business. Now, this is important, but it is not important enough, this printing and Compiler question, to waste a whole day upon it; and for the first time in the proceedings of this Convention I move the previous question.

The President *pro tem.* put the question on the adoption of the previous question, and it was carried in the affirmative.

The President *pro tem.* put the question on the motion of Mr. Roche, and it was determined in the affirmative.

Mr. Barrow — Mr. President, I move that the regular order of business be now suspended, and that the Convention go into the consideration of general orders.

Mr. Cady — Mr. President, I hope that that motion will not prevail at this time. To-morrow will not be a day, as I understand it, on which the regular order will necessarily be pursued. There are reports of committees to be made at this time, at least one committee that I know of, of which I am chairman, and I am very desirous of having that matter brought before the Convention and the committee relieved of it.

Mr. Barrow — I withdraw my motion.

The President *pro tem.*— Notices, motions and resolutions are in order.

Mr. Root — Mr. President, I move to amend rule 29, by striking out the words at the end of the rule as follows: "To bring up the subject immediately before the Convention," and by substituting in their place the words: "To reject the proposed constitutional amendment."

The President *pro tem.*— It is referred to the Committee on Rules, if there are no objections.

Mr. Root — Mr. President, I move to amend rule 7, by inserting after the word "request" the words: "Any member may explain his vote for not exceeding three minutes."

The President *pro tem.*— Referred to the Committee on Rules.

Mr. Davis — Mr. President, I desire to be excused from attendance next Monday and Tuesday.

Mr. Alvord — Mr. President, I desire to say that in my opposition to these excuses, I am simply carrying out the provisions which have been established by this Convention, that we shall meet here upon certain days and at certain hours. The way in which we are going on will simply give us absolutely less than a quorum in attendance. We have already excused fifty-three men yesterday and to-day from attendance upon their duties to-morrow. I trust, therefore, sir, that the time has come when a mere excuse simply for business or pleasurable purposes shall be withheld by a vote of this Convention. If a man, in consequence of illness in his own person or his family, requests to be excused, I will cheerfully vote for it, but as for excusing men upon the other pretenses, I shall now, as I have undertaken in the past — and I hope and trust with a sufficient majority behind me — decline to give any further excuses. If a man is obliged to go away on business, as has been well said

by our presiding officer, I have this much to say, that he probably goes with the anticipation and expectation of putting his money into his pocket by the operation. Do not let us, therefore, upon false pretenses, permit him to put the money of the State also in his pocket.

Mr. Bowers — Mr. President, I desire to say, in answer to the suggestion of the gentleman from Onondaga, that I do not believe that any member of this Convention asks to be excused for the purpose of saving his ten dollars. We make the request to be excused, personally, I have made it, from attendance at this Convention, simply that it should be known whether a delegate intended to be present or not. Many of us have asked for very few excuses, and none of us has in mind the desire to save the ten dollars to which the gentleman has referred, and to which the President referred. It is a matter of courtesy and of propriety, and I have maintained it from the start, to ask to be excused, that the Convention might know how it stood in the way of having a quorum present. If members should go away without any notice, you would be on Saturdays, as you were last Friday after you adopted the rule, without any quorum to do business. I do not think such reflections should be made upon the members. We are quite ready to come here, quite ready to make sacrifices. The talk of ten dollars a day is mere nonsense. Now, as to giving these excuses, we stand in this position. This rule, it is true, was adopted last Friday, but we have been hitherto proceeding under a rule by which we did not sit Saturdays and Mondays. Large numbers of delegates have made engagements in advance for those days which they could not cancel, and they are compelled now, under these peculiar circumstances, to ask to be excused in the large numbers that they have. It would have been very proper, under such circumstances, if we had adjourned over to-morrow, for it is perfectly plain that there will be a very light attendance, possibly not a quorum; and it is owing to the fact that we could not make our arrangements to stay here day in and day out, as we intend to do for the remainder of the period, and I think it would be pressing the matter very far to refuse to excuse the gentleman who has just asked to be excused, when there have been twenty or thirty excuses already granted this morning. I have spoken more to a question of privilege, and more to protect one man from being punished by the Convention, by being compelled to stay here when we have already excused twenty or thirty, than from any other motive; and I hope that the excuse that is askd for will be granted, and I also hope that every delegate will, from this time forth, so arrange his business and social affairs as that he

may be here and attend to his work, and only go away, as suggested by the gentleman from Onondaga, in the case of illness or something of that nature.

Mr. Davis — Mr. President, it is a well-known fact that the gentleman from Onondaga for the past three weeks has voted in the negative upon every motion to excuse a member, and it has not been until this moment that he has risen to his feet and made the speech that he has. It is not for to-morrow, Mr. President, that I ask to be excused. It is for next Monday and Tuesday. I do not ask the excuse for the purpose of saving the little ten dollars a day. I care nothing for that. Mr. Bowers has very ably stated the motives of members in asking for excuses. I believe that it is due to this House to be informed when a member expects to be absent. I am an official of the county of Erie. The laws of the State of New York require my attendance in the county of Erie on Tuesday, and whether the Convention sees fit to act as Mr. Alvord suggests or to grant my request, it will be necessary for me to be absent next Tuesday. I ask the Convention to grant me this excuse.

Mr. McMillan — Mr. President, there is a question that is above and beyond all this. Mr. Davis, I assume, has asked leave to be excused for the reason that in the event that there shall be a call of this House and the sergeant-at-arms be sent for those who are not excused, he may be relieved from the humiliation of purging himself from contempt before the bar of this Convention. That is the reason why these excuses are made, and not for the reason that members wish to preserve the ten dollars that are paid to them. (Applause.)

Mr. Choate — If Mr. Davis had stated when he made his request that he desired to be absent on official business nobody would have objected. I stand by the gentleman from Onondaga in all that he has said, and this talk of any reflection on anybody being intended or inadvertently made, is, in my judgment, wholly without foundation. Now, let us see how this matter stands. The law under which we sit prescribes a certain compensation. It gives the Convention power to regulate the compensation in case of absence. We went on here for two or three months and found the attendance getting very slight. We passed this rule, which should deprive any member of his compensation during absence on days on which he had not leave of absence, and it brought up the attendance immediately to what was not only a quorum, but to almost the entire body of the delegates elected. Now, my proposition is, that no gentle-

man in this Convention ought to have, by leave of the House, absence to attend to private business, or to attend to what Mr. Bowers so well refers as social pleasure. If he does so, let him do it at his own expense, and let the rule be enforced, and I do not feel at all oppressed by the sentimental views that he has uttered. I judge from the experience of the past that if you resort to such administration of the rules as that, the attendance will be all that ought to be required.

Mr. Hotchkiss — Mr. President, I do not propose to detain the Convention by debating any part of this question. I merely wish to suggest, in answer to some portion of the remarks of the President, that he will recall that the period during which the attendance was slack was during the period prior to the first of July, when most of the absentees, being lawyers, were confined to their homes by business in the courts. That certainly was my condition, and I believe it to have been the condition of a large proportion of the gentlemen who were then detained.

Mr. Tekulsky — Mr. President, it seems to me that there is a great deal of unnecessary talk about the compensation paid here to the delegates of this Convention. For the benefit of those gentlemen who have millions behind them, I wish to state that the ten dollars a day to the majority of the members of this Convention does not pay them for their expenses and their neglect of business. I do not know of a delegate in this Convention, who has any business at all to attend to, whom his attendance here does not cost more than he receives, besides the neglect of his business and the loss of trade. Now, Mr. President, it is not a question of what a man receives. There is not a delegate in this room that desires to be excused that has not a good and sufficient reason, and it is not for the reason that he wishes to go off on a pleasure trip, or a fishing excursion or to go to the races. He desires to go because he is compelled to go. No man, when he took his oath of office here, took an oath which bound him to remain here right or wrong. As long as the Convention has a quorum in attendance it is right to excuse any one of the delegates for a day or two when he gives good and sufficient reasons. His compensation has nothing at all to do with the question. The question is whether the gentleman shall be excused for the time that he is to be away. For one, I want to give fair notice here, Mr. President, that I am properly at some times called away in order to attend to my affairs, which I have neglected since I have been here, and I have not been excused but for two days since the Convention opened; and if I could not be

excused, I should certainly offer my resignation as a delegate to this Convention.

Mr. Dean — Mr. President, I move the previous question.

The President *pro tem.* put the question on the adoption of the previous question, and it was determined in the affirmative.

The President *pro tem.* then put the question on excusing Mr. Davis, as requested, and he was so excused.

The President *pro tem.*— Reports of standing committees are now in order.

Mr. Vedder, from the Committee on Legislative Powers and Duties, to which was referred the proposed constitutional amendment, introduced by Mr. C. A. Fuller (introductory No. 200), entitled, " Proposed constitutional amendment to amend section 16 of article 3 of the Constitution, relating to restrictions as to private and local bills," reported in favor of the passage of the same, with some amendments.

The Secretary read the proposed amendment, the report of the committee was received, and said amendment referred to the Committee of the Whole.

Mr. Root, from the Committee on Judiciary, to which was referred the proposed constitutional amendment, introduced by Mr. Becker (introductory No. 329), entitled, " Proposed constitutional amendment to amend section 1 of article 10 of the Constitution, so as to prevent the removal by the Governor of public officers except for cause," reported in favor of the passage of the same, with some amendments.

The Secretary read the proposed amendment; the report of the committee was agreed to, and said amendment referred to the Committee of the Whole.

Mr. Root, from the Committee on Judiciary, to which was referred the proposed constitutional amendment, introduced by Mr. Doty (introductory No. 86), entitled, " Proposed constitutional amendment to amend section 17 of article 1 of the Constitution, relating to the appointment of commissioners of codification," reported in favor of the passage of the same.

The report was agreed to, and said amendment was referred to the Committee of the Whole.

The Secretary called the Canal Committee.

Mr. Cady — In connection with the bill which I report, on behalf of that committee, I desire, in deference to the wishes of certain members of the same, to make a brief statement of the attitude

of that committee and as to their position upon the measures pending before it. All of the proposed amendments referred to the Canal Committee, with the exception of two, have been disagreed with by the committee. The principal amendments referred to the committee grouped themselves under two heads. First, those which provided for the sale or disposition of canals to the federal government; and, second, those which contemplated very extensive improvements and large expenditures upon the canal system of the State. As to the first class of amendments, those relating to the sale or disposition of the canals, the committee was unanimous in opposing and disagreeing with them all. As to the other amendments, contemplating, as I say, extensive improvements and large expenditures, a majority of the committee were opposed to them. But four members of the committee, Mr. Williams, Mr. Floyd, Mr. Hottenroth and Mr. Fraser, voted in favor, in the committee, of those proposed amendments, and desire to have that vote of theirs publicly stated. And for that reason I now make this statement verbally, without submitting a written statement.

Mr. Cady, from the Committee on Canals, then reported proposed constitutional amendment to section 3, article 7 (introductory No. 386, printed No. 430), relating to canals, which report was received, and said amendment referred to Committee of the Whole.

Mr. Cady, from the Committee on Canals, also reported proposed constitutional amendment to amend section 6 of article 7 (introductory No. 387, printed No. 387), which was received, and said amendment referred to the Committee of the Whole.

The President *pro tem.*— The report from the Judiciary Committee is also a favorable report upon the last section of overture No. 36, introduced by Mr. Lauterbach.

Mr. Cady — Mr. President, I desire at this time, and in conjunction with the report of the Canal Committee, to move that amendment No. 254, introduced by Mr. Cassidy, and heretofore favorably reported by the Committee on State Finance and Taxation, and which I moved to lay upon the table some time since, on the coming in of that report, be now taken from the table and referred to the Committee of the Whole. That is, after consulting with Mr. Acker, chairman of the Committee on State Finance and Taxation, and with Mr. Cassidy, the mover. They were referred to both committees and should be considered jointly.

The President *pro tem.*— If Mr. Cady will defer that motion until after reports of committees are received, it will then be entertained by the Chair.

Mr. Augustus Frank, from the Committee on Banking and Insurance, to which was referred the proposed constitutional amendment, introduced by Mr. Hawley (introductory No. 207), entitled, "Proposed constitutional amendment to amend section 6 of article 8 of the Constitution, relating to banks," reported in favor of the passage of the same.

The report was agreed to and said amendment referred to Committee of the Whole.

Mr. Augustus Frank, from the Committee on Banking and Insurance, to which was referred proposed constitutional amendment, introduced by Mr. Marshall (introductory No. 69), entitled, "Proposed constitutional amendment to amend section 7 of article 8 of the Constitution, relative to the liability of the stockholders of banking corporations," reported in favor of the passage of the same.

The report was agreed to and said amendment referred to the Committee of the Whole.

Mr. Augustus Frank, from the Committee on Banking and Insurance, to which was referred proposed constitutional amendment, introduced by Mr. Kellogg (introductory No. 188), entitled, "Proposed constitutional amendment to amend section 4 of article 8 of the Constitution, relating to unclaimed deposits in savings banks or institutions for savings, and defining the powers of the Legislature in relation thereto," reported adversely upon the proposed amendment.

The report of the committee was agreed to and the proposition rejected.

Mr. Augustus Frank, from the Committee on Banking and Insurance, to which was referred proposed constitutional amendment, introduced by Mr. Andrew H. Green (introductory No. 372, printed No. 435), reported that the proposed amendment had been considered by the committee, and that the committee asked for the printing of the amendment and report for the consideration of this Convention.

The President *pro tem.*— There being no objection, it is so ordered.

Mr. Hedges, from the Committee on Militia and Military Affairs, to which was referred proposed constitutional amendment (introductory No. 40), introduced by Mr. Holls, entitled, "Proposed constitutional amendment to amend article 11 of the Constitution in regard to militia," reported adversely thereto.

Mr. Holls — Mr. President, I wish to state that that was introduced by request, and that I am entirely satisfied with the judgment of the very competent and careful committee which has considered it, and sincerely hope the report will be agreed to.

The report of the committee was agreed to and the proposition rejected.

Mr. Marshall, from the Committee on Future Amendments, to which was referred the proposed constitutional amendment, introduced by Mr. C. H. Truax (introductory No. 256), entitled, "Proposed constitutional amendment to amend article 14 of the Constitution," reported in favor of the passage of the same without amendment.

The report of the committee was agreed to, and said amendment referred to the Committee of the Whole.

Mr. Cochran — May I ask for information. I find that on July twenty-seventh the Committee on Future Amendments reported this proposed amendment adversely to the extent that they reported another amendment which they said covered it. May I ask if this is the amendment which was reported at that time?

Mr. Marshall — Mr. President, that was an error on the former occasion. This was not included in the former report. By mistake the introductory number was included in the report.

Mr. Cochran — So it appears in the Journal.

Mr. Marshall — Yes.

Mr. Marshall, from the Committee on Future Amendments, to which was referred the proposed constitutional amendment, introduced by the Committee on Future Amendments (introductory No. 368, printed No. 375), entitled, "Proposed constitutional amendment to amend article 13 of the Constitution, relating to future amendments," reported in favor of the passage of the same, with some amendments.

The President *pro tem.*— The Secretary will read the amendments.

On motion of Mr. Mereness, the reading of these amendments was dispensed with.

The report of the committee was agreed to, and said amendment referred to the Committee of the Whole.

Mr. Marshall — And keeps its place on the general orders?

The President *pro tem.*— Keeps its place on general orders.

Mr. Hirschberg, from the Committee on Privileges and Elections, submitted a report, which was read by the Secretary, as follows:

REPORT OF THE COMMITTEE ON PRIVILEGES AND ELECTIONS.

In the matter of the contest of William H. Davis, Luther W. Emerson, Henry J. Brown, George W. Tompkins and Christian F. Gull for seats in the Convention now occupied by Mirabeau Towns, William H. Cochran, John G. Schumaker, John B. Meyenborg and Almet F. Jenks for the Second Senatorial District.

To the Constitutional Convention:

The Committee on Privileges and Elections, to whom was referred the petition of William H. Davis, Luther W. Emerson, Henry J. Brown, George W. Tompkins and Christian F. Gull, claiming that they were duly elected delegates to the Constitutional Convention from the Second Senatorial District of the State of New York, at the last general election, and are entitled to the seats now occupied by Mirabeau L. Towns, William H. Cochran, John G. Schumaker, John B. Meyenborg, and Almet F. Jenks, respectfully report:

That they have heard the proofs and allegations of the parties, and have given to both parties ample opportunity to submit such evidence as they desired. That they have carefully considered the evidence, and that, in the opinion of said committee, the following facts were established:

As a result of the official canvass of the vote for district delegates to the Constitutional Convention from the Second Senatorial District, the board of canvassers certified that the contestees and the contestants received respectively the following number of votes:

Mirabeau L. Towns	18,993
Wm. H. Cochran	19,018
John G. Schumaker	19,009
John B. Meyenborg	18,990
Almet F. Jenks	18,962
William H. Davis	16,601
Luther W. Emerson	16,594
Henry J. Brown	16,595
George W. Tompkins	16,601
Christian F. Cull	16,590

There were also a few scattering votes for other candidates.

From these figures it appears that the sitting delegates received the following majorities:

M. L. Towns	2,392
W. H. Cochran	2,424
J. G. Schumaker	2,414
J. B. Meyenborg	2,389
A. F. Jenks	2,372

The Second Senatorial District is composed of the Seventh, Ninth, Tenth, Thirteenth and Twenty-second wards of the city of Brooklyn. The claim is made by the contestants that frauds were committed at the last election of such a character as to justify the rejection of the returns in several of the election districts in this Senate District, particularly in the Ninth and Twelfth wards.

The evidence shows that a large number of voters in various districts received assistance in folding their ballots, and it is claimed that this assistance was rendered under circumstances not justified by the statute, and that receiving assistance under such circumstances was a fraud on the election law of such a character, and was carried on to such an extent, as to justify the rejection of the entire returns in the districts where such assistance was received. There is some evidence that in a large number of cases the persons who received assistance were not physically disabled to such an extent as to justify such assistance. But the number of persons who thus wrongfully claimed physical disability, and thereby received assistance in folding their ballots, is not definitely ascertained in any district. The contestants claim that by reason of this uncertainty, the whole number is vitiated, and should be rejected. In most cases the persons thus claiming assistance took the oath of disability prescribed by the election law; but in a large number of cases no such oath was taken, and in several districts assistance was rendered without any form of claim by the voters, and apparently without protest by the election officers.

It is conceded that the persons receiving this assistance, whether after or without taking the oath of disability, were legal voters in the district where they respectively voted. In some districts the irregularities of this character were so numerous as to justify the conclusion that they were purposely permitted by the election officers, and the violation of the election law by such officers, in permitting voters to disregard the requirements of the statute, would in some cases justify the exclusion of the entire return. The proof of such violations in this contest is confined to a very few districts, and even if all the returns which we could find were affected by such irregularities, were excluded, there would still remain a large majority of votes, certified by regular returns, for each of the sitting delegates. The aggregate number of votes which we would be

justified in rejecting under any circumstances would not be sufficient to overcome the majority as certified for the sitting delegates.

There is also evidence of a few fraudulent registrations and repeatings, and also of electioneering within 150 feet of the polling places. But the number of cases of these violations is not sufficient to materially affect the result.

Your committee are of the opinion that the evidence in this contest is insufficient to warrant the exclusion of the contestees from their seats in this Convention, and that the petition of the contestants should be dismissed.

We, therefore, recommend the adoption of the following resolution:

Resolved, That the petition of William H. Davis, Luther W. Emerson, Henry J. Brown, George W. Tompkins and Christian F. Gull, heretofore presented in this Convention, praying that they be awarded the seats now occupied by Mirabeau L. Towns, William H. Cochran, John G. Schumaker, John B. Meyenborg and Almet F. Jenks, as delegates from the Second Senatorial District, be and the same is hereby dismissed.

All of which is respectfully submitted.

Dated *August* 16, 1894, A. D.

M. H. HIRSCHBERG,
Chairman.

Mr. Hirschberg — Mr. President, as this report emanates from the Committee on Privileges and Elections, it is, perhaps, unnecessary that I should state that it is unanimous. I, therefore, in view of that fact, and the lateness of the hour, move that it be received now, and that the resolution recommended by the committee be adopted.

The President *pro tem.* put the question on the adoption of the report.

Mr. Mereness moved that the roll-call be dispensed with, and it was so ordered.

The question on the adoption of the report was then determined in the affirmative.

Mr. Hirschberg — I move that the report be printed with the other documents of the Convention.

The President *pro tem.*— If there are no objections to the motion of Mr. Hirschberg, this report will be printed and placed upon the files of members. If there is no objection it is so ordered.

Mr. Cady — Mr. President, I now renew my motion, if it be in

order, in relation to the amendment of Mr. Cassidy, and ask that No. 254 be taken from the table and referred to the Committee of the Whole.

The President *pro tem.*— If there is no objection, it will be so referred.

Mr. Bush — Mr. President, I would like to ask leave of absence until Monday night.

The President *pro tem.* put the question on excusing Mr. Bush, as requested, and he was so excused.

The President *pro tem.* announced general orders.

The Secretary called general order No. 14, introduced by Mr. Mereness.

Mr. Mereness moved that the Convention go into Committee of the Whole on this amendment.

The President *pro tem.* put the question on the motion of Mr. Mereness, and it was determined in the affirmative.

Mr. Cookinham in the chair.

The Chairman — The Convention is now in Committee of the Whole on proposed constitutional amendment No. 49, general order No. 14.

Mr. Doty — Mr. Chairman, I believe it may be said that at this point in the work of the Convention, three propositions have been fairly well established:

First.— That there is a weakness among many members to dignify a local or occasional evil into a universal one, and to make haste to apply constitutional treatment.

Second.— That there exists in this body a general distrust of the Legislature and of every other legislative and administrative department of State government; and,

Third.— While there is a general attachment to the idea of home rule in the abstract in the Convention, scarcely a measure has been reported where the question is involved which in its practical operation is not designed to destroy home rule.

It is not frequent that one measure embodies all these propositions, but the pending proposed amendment does. I may be wrong in my judgment of what work the people have appointed us to perform, but I believe that as a general proposition we will best subserve the public interests by confining our attention to those features of the Constitution as to which there is a distinct and generally recognized demand and necessity for alteration and amendment.

Mr. Chairman, no abuse exists or is likely to exist in this State

which will justify us in proposing to the people an amendment so extraordinarily unwise as this one, and I have been unable to discover in the argument in support of the proposition a single substantial reason for its adoption. It may seem, without much consideration of its effect, a good and harmless thing to put into the Constitution, simply to enhance its consistent character, even if it will not effect any useful purpose, but a superficial examination of its provisions cannot fail to convince one that the proposition is not only unwise but dangerous.

The existing provisions of the Constitution have for nearly half a century furnished the State with adequate protection from the imaginary abuses which this proposition is designed to reach, and there is to-day no complaint heard from any quarter that calls for response from the Convention on this subject. On the contrary, the adoption of this amendment would surely create difficulties whose extent can only be imperfectly anticipated.

The amendment, by an inexorable rule, completely ties the hands of every department of State and municipal government from the Legislature to the board of trustees of a village in the matter of compensation; it abridges home rule at a most vital and important point and takes from those bodies, most competent to act upon the question safely and justly, the power to say how their officers and servants shall be compensated. In general terms, the amendment prohibits the payment of extra compensation or salary to any officer, State or municipal, under any and all circumstances during the term for which he was elected or appointed.

It takes no account of emergencies or exigencies which may arise during the next quarter of a century in this State to make it not only proper but necessary, for the purpose of securing efficient public service, to increase the compensation or salary of public officers during their term of office. A few instances will only imperfectly indicate the practical operation of this amendment. The rapid growth of various parts of the State imposes many additional duties on public officers during their term of office. The office of surrogate, for example, is becoming one of increasing importance, and even during the space of six years its character in certain localities may be elevated to a point where the existing salary is utterly inadequate to secure efficient service. The same may be said of the office of county judge, and, indeed, of every other public office.

The existing ballot law imposed very considerable additional duties upon county clerks throughout the State, for which boards

of supervisors very properly granted extra compensation, but which they would be prohibited from doing if this amendment were in operation. I know of a village where the members of the board of health receive a salary of ten dollars a year; it happened that an epidemic of small-pox overtook this ordinarily healthy village, and, from a practical sinecure, the office of health officer became an onerous and dangerous one; the board of trustees of the village very properly awarded to the members of the board of health an additional remuneration commensurate with their extraordinary services. Under the proposed amendment this would be impossible. It would be equally impossible to increase the pay of the town night-watch, no matter how pressing the emergency; in fact, the proposed amendment invades every city, county, town and village, and imposes an effectual restraint upon the power to regulate their own affairs upon the question, according to the needs of the particular locality, under constantly changing conditions.

The charter of the city of Rochester provides that the salaries of its officers shall be fixed each year for the current year, although the term of office extends beyond the year. This amendment would prohibit this practice, and would seem to prevent, also, the increase of compensation of all persons appointed to serve during the pleasure of the appointing power.

These instances are some that have casually occurred to me; a careful study of the subject will point out many more serious difficulties in the way of the operation of this bill. It is loading down the Constitution with an unnecessary, unsafe and unpopular measure, whose merits are completely overborne by the evil feature which it contains. The proposed measure will be, in my judgment, not only universally disapproved, but, if not an absolutely dead letter, will be a serious hindrance to the public service.

Mr. Chairman, I have introduced an amendment to this proposition, which in some measure mitigates the effect of it, but I do not regard the amendment as furnishing sufficient safeguards to urge its adoption. I, therefore, hope that not only the original amendment, but the amendment which I proposed, will be voted down.

Mr. Mereness — Mr. Chairman, if I understand the gentleman who offered this amendment correctly, he is opposed to the whole spirit of the amendment before the Committee of the Whole, and has virtually asked the committee to vote down his amendment and the main proposition as well. When this matter was before the committee on a former occasion, I stated generally the purpose for which it was offered, and I think there was a very full attendance on that occasion, and I do not know that I care to go over the

ground again. As abuses, I called the attention of the committee on that occasion to a number that occurred during the term of Governor Cornell, which were of such magnitude that he felt called upon to veto acts of the Legislature. I think there is no doubt about the correctness of the principle involved, because it is a principle which is recognized in several other sections of the Constitution. As I stated before, all officers whose salaries are fixed at a definite sum by the Constitution are prohibited by another provision from having that salary changed during the official term, and I can see no reason why that principle, which now prevails in reference to salaries fixed by the Constitution and to all State officers, should not be added generally to all public officers who hold office for a definite term. The principle is also recognized in another provision of the Constitution, to which I called the attention of the committee, which is that no private or local bill shall be passed which shall increase or decrease the compensation, fees, percentage or allowances of any public officer during his term of service; but, as I called to the attention of the committee on the former occasion, the decision of the Court of Appeals was to the effect that that did not apply to a salaried office, and because of the difference of the words used, this amendment was suggested. It was very carefully considered by the Committee on the Powers and Duties of the Legislature, and, although the original proposition was practically in the form suggested by Mr. Doty in his amendment, which he has discredited, the committee thought the language finally reported was better calculated to accomplish the purpose desired.

Now, as to the necessity of this matter, I think that it is sufficient to say that in sixteen States of this Union, and notably in the great States of Pennsylvania, Illinois and Missouri, besides several others, it has been found necessary to put a provision into the Constitution which should prevent a public officer from soliciting the support of constituents, when he knew what he had to receive, and then as soon as he was elected, to go about, seeking by wire pulling and log rolling, to get his salary increased. I submit that it is not fair to the persons who have to pay those salaries to have to be put to that disadvantage, and I believe further, that the language used by the committee in its final report is well calculated to accomplish the purpose sought to be accomplished, and for that reason I hope that the amendment of Mr. Doty will be voted down.

Mr. Countryman — Mr. Chairman, will the gentleman allow me to ask him a question? I would like to inquire whether he understands by this amendment that it includes judges of the courts?

Mr. Mereness — I do not know why it should not.

Mr. Countryman — You intend to include them?

Mr. Mereness — It seems to me the language includes all public officers. A judge is a public officer, and I suppose is included.

Mr. Peck — I would like to inquire whether it is intended to operate in a case of this kind, where a city or a village has entered into a contract with a man, on the assumption that a certain excavation required, for instance, will all be of earth, and it turns out on the excavation being begun, that it is of rock. Now, would it be possible, if this amendment were adopted, to pay that man extra compensation for the extra work?

Mr. Mereness — In answer to that I have only this to say; the present Constitution contains all of this amendment, I think, except the final clause. The present provision is that the Legislature shall not, nor shall the common council of any city, nor any board of supervisors, grant any extra compensation to any public officer, servant, agent or contractor. Mr. Chairman, that provision has been in the Constitution of the State of New York for a great many years, and I believe that it is in the Constitution of every other State in this Union.

Mr. Peck — Mr. Chairman, the present provision of the Constitution refers only to the Legislature of the State, or the common council of a city, or the board of supervisors, which have comparatively little of that kind of work to do. In those cases they have engineering surveys made in advance, or the contract is limited to different kinds of excavation in the contract itself, so much for earth excavation, so much for rock; and it makes a very difficult kind of contract to be drawn for small civil divisions, and not likely to be provided for in advance, these difficulties not being likely to be anticipated. It seems to me that the civil divisions, to which it is to apply, ought to be confined to incorporated divisions, where these things can be more carefully attended to than they can, for instance, in school districts.

Mr. Mereness — Mr. Chairman, in answer to what Mr. Peck has said, a school division is not a civil division of the State. In answer to an inquiry made on the former occasion, by the gentleman from Seneca (Mr. Hawley), the civil divisions of the State, as defined by the Revised Statutes, are the several counties of the State, the Senate Districts of the State, the Congressional Districts of the State, the several towns and villages and cities of the State, and the Assembly and Judicial Districts. Those are the only civil divisions of the State, set forth in the Revised Statutes.

Mr. Choate — Mr. Chairman, I hope that this amendment offered

by Mr. Doty, and the provision to which it is offered as an amendment, will be voted down. It seems to me that the proposition contained in this amendment is a most unwarrantable interference, not only with the reasonable power of the Legislature, but with the reasonable power of each municipality, town, village and city, to manage its own affairs of detailed economy. This subject came before the Convention of 1867, and instead of enlarging this restriction, as is here proposed, the result of their careful and prolonged deliberations was to reduce it. The Constitution as it then stood, as it now stands, merely prohibited the Legislature and the common councils of cities and boards of supervisors from granting extra compensation to any public officer, servant, agent or contractor, and that was held by the Court of Appeals to be prohibiting them from giving away money after the work had been done, and not to an increase of salary for services to be performed. Now, the Convention of 1867 reduced it to this: "The Legislature shall not grant any extra compensation to any public officer, servant, agent or contractor, nor increase or diminish any compensation, except that of judicial officers, during their term of service." They proposed to leave out entirely the interference with the actions of common councils of cities and boards of supervisors, and took care especially to provide that it should not apply to the salaries of judicial officers. Now, Mr. Chairman, my proposition is, that in the affairs of a city, of a county, of a town or of a village, the people are competent to decide for themselves on such a trifling matter as this, and that it ought to be left to the Legislature to say whether a salary of a State officer for services yet to be performed may not be increased. It is not only easy to be imagined, but it has often, in fact, occurred, that unexpected duties come upon officers after their salaries have been fixed, not only officers of the State, but officers of the cities, towns and villages, and it will interfere and prevent the employer, who is the only competent party to judge, from determining whether, in case, if you please, a district attorney finds himself by some sudden commotion, charged with ten times the amount of duty that was expected when he took his office and the salary was fixed, or the officer of any subordinate division of the State finds himself in any such position, it is not in the power of his employers to make his compensation adequate. I hope, for one, that in respect to this and all other amendments, this unwarranted, unreasonable, uncalled for interference with the Legislature and with the subdivisions of the State in matters of detailed economy will not be encouraged. Who finds any reported grievance here? Who says that the power left to the Legislature and the subordinate divisions of the State, by the

Constitution as it now stands, has ever been abused? I trust, for one, this whole matter will be voted down.

Mr. Doty — Mr. Chairman, I sincerely hope that I shall not be misunderstood on this proposition. I intended that my remarks should apply with quite as much force to the amendment that I proposed as to the main proposition. The amendment which I proposed was presented hastily, and without consideration, hoping to neutralize, to some extent at least, the effect of the main proposition. I am just as much opposed to the proposition as amended as I am to the original proposition, and, if it be proper, I desire now to withdraw my amendment, so that I shall not be at all misunderstood, or that my position shall not be at all ambiguous upon this question.

The Chairman — Mr. Doty desires to withdraw his proposed amendment. I suppose it is before the committee. If there be objection, the Chair will hold that he has no right to withdraw it, otherwise it will be permitted.

Mr. Doty's amendment then is withdrawn. The question then occurs upon the amendment offered by Mr. Spencer. The Secretary will read the amendment.

The Secretary read the amendment as follows:

By Mr. Spencer — Insert in line 3, after the word "salary," the words "or compensation."

The Chairman — That is the question now before the committee.

Mr. A. H. Green — Mr. Chairman, I desire to offer an amendment to this provision to this effect: Adding after the word "line," "nor the board of estimate and apportionment of the city of New York." We have practically no legislative bodies there. Our esteemed President has said that he hoped that this amendment would be voted down, for the reason that no abuses have existed. I think his knowledge of abuses must be very limited. Every man knows what the abuses have been that have been created under the existing provisions; and so I hope, for one, that instead of its being voted down, it will be voted up. It ought to be voted up. The interference with these compensations, the increase of pay, on the part of the Legislature, and on the part of the civil divisions, are numerous, and ought to be corrected and prevented. This amendment should be perfected so as to prevent the difficulties arising as suggested by my friend at the left (Mr. Doty), and with proper amendments, which I hope will be proposed and accepted. I think it is a wholesome thing. It is the easiest thing in the world to get rid of doing a thing here which will be of great public benefit

and public economy and insure it, instead of the riot that has run in increasing the compensation of officers here. It is in the interest of economy and in the interest of the people of the State that it shall be done, and I hope it will be done.

The Chairman — The gentleman may send his proposed amendment to the desk.

Mr. Peck — Mr. Chairman, there is a proposition very likely to be reported to this Convention which will increase the work of the Secretary of State enormously, by requiring him to superintend the taking of enumerations of the inhabitants of the State, instead of leaving it to be done under the direction of the Legislature. Now, if that should be done, and that enormous amount of work should be imposed upon him, and this amendment should be adopted, you not only could not increase his salary for doing it, but could not increase his compensation in any way. It seems to me that this amendment goes too far, and I heartily concur in the suggestion of the President, if he will allow me, and in the remarks which he has made on this subject. It is a matter of administrative detail which can safely be left to the officers who have to respond annually or biennially to the people who have elected them.

There is another matter to which I am requested to call the attention of the Convention, and that is that the surrogates of this State have had their duties very largely increased by the Legislature requiring them to have assessed the transfer taxes of the State. Now, those matters were not in contemplation at the time that they were elected. They were not in contemplation at the time that those gentlemen accepted the duties of the office of surrogate; and is it right, is it business-like, is it honest, that the people of this State should impose those additional burdens, and at the same time prohibit themselves and all the counties of the State from paying for them? I think that this is a mistake, and I hope that the original section, instead of being extended, will be restricted, as was done by the Convention of 1867.

Mr. Woodward — Mr. Chairman, I am opposed to this amendment in the way it reads at the present time, for the reasons given by our President. I was elected, just before the war, as county treasurer. I held that office two terms. My salary was fixed when I was first elected. Soon after the war broke out I issued half a million of county bonds for our county. I had the preparation of those bonds, the signing of the coupons, the signing of the bonds, and then the paying out of those bonds to the supervisors in accordance with their votes. I had to take charge of those bonds and

keep them safely after they were executed. They were also signed by the chairman of the board of supervisors. Three-quarters of those bonds were paid before I left the office as county treasurer. That was a duty that was not expected to be thrust upon the county treasurer when he was elected. That was a duty that did not belong to the county treasurer's office when the salary was fixed. The salary was fixed at a very moderate sum, and the supervisors afterwards saw fit to allow me an additional compensation. Now, this amendment would cut off any such case as that. An officer being chosen and his salary fixed, there might be thrust upon him four times the duty that he would ordinarily have to discharge in his office, and, consequently, if he could receive no further compensation than the salary fixed, when it was supposed he would not have these things to perform, there would be great injustice done to the officer. For that reason, I think this amendment should not be passed, unless the clause should be inserted that such salary shall not be increased unless there are other duties and larger duties thrust upon the officers, as is the case in many counties. In the instances I have cited, the various counties allowed the treasurers for the issuing of these bonds. In some counties he was allowed a thousand dollars, and, I think, in some counties, two thousand dollars. I was allowed the sum of five hundred dollars, which did not half pay for the labor I had to perform, but, being a little modest, I did not ask the supervisors to give me a large compensation. I mention this as an argument, being an example within my own knowledge and within my own experience, and I consequently bring it forward as an argument against this proposition. (Applause.)

Mr. A. H. Green — Mr. Chairman, it appears to me that if an official takes his position he is bound to serve for the compensation fixed when he took it. That is a bargain, and there is no wrong in it whatever. Now, what my friend suggests as to the Secretary of State; I dare say he is a very respectable, nice gentleman, but those duties will be performed by his subordinates. He will have a coterie around him that will aid him very much, and, I think, his duties will not be very much increased by it. It has been said here by our President that there is no occasion for this sort of thing. I will call attention to one or two instances that occur to me. One is this: The commissioners of taxes and assessments had their salaries largely increased last year. The salaries of the police of New York last year, against the protest of the mayor, against the protest of the board of estimate and apportionment, and of the local authorities of New York, were increased in the Legislature to an amount that added to the tax levy of New York nearly three-quar-

ters of a million of money. This was against the direct protest of the locality. Now, will anybody say to me that this thing ought not to take some shape in the Constitution so that we could prevent these things? Why, a man who says that is ignorant of what is going on in the Legislature, and what is going on in the municipalities. I think, sir, some amendment, when it is perfected here, should pass; it is a proper thing for the Constitution. It is the easiest thing to get rid of anything the gentlemen do not want here, by saying that it is legislative, that it ought to go to the Legislature, and not be put into the Constitution. We were sent here to put things into the Constitution, to provide for exigencies that have not been provided for. I notice how easy it is to say: "Well, we had better keep the old Constitution as it is, not tinker with it much, let it alone; we did not come here to do much of anything; leave it to the Legislature." It is no credit to the intelligence of this Convention that they have not invention enough to put these amendments in form that will do no injury and be of very great benefit. It is easy, I say, to get rid of these things if we do not want them, in this way.

Mr. Vedder — Mr. Chairman, this proposition was referred to the Committee on Legislative Powers and Duties, which committee reported it favorably, with some amendments. Now, we are only following out to its legitimate conclusion, the Constitution as it is at present, which provides in section 18 of articie 3, as follows: "The Legislature shall not pass a private or local bill * * * creating, increasing or decreasing fees, percentage or allowances of public officers during the term for which said officers are elected or appointed." It was supposed when that constitutional provision became a part of the organic law, that it would prevent the increase of salaries of officers during their official term. But so much was it in doubt that cases thereunder went to the Court of Appeals before the law upon this question was settled, and the Court of Appeals decided that those grants, creating, increasing or decreasing fees, percentages or allowances of public officers, during the terms for which such officers were elected, or appointed, did not apply to salaries. This question has not, therefore, been left entirely to the Legislature. In other places, in article 6, relative to the compensation of judges and justices of the Supreme Court, the Constitution used to say that their salaries should not be increased or decreased during the term for which they were elected, and the article, which was amended in 1874, simply prescribed that their salaries should not be decreased during their term, so that the framers of that provision and the framers of other provisions of 1874

and 1846, believed that the matter ought not to be left entirely with the Legislature, either of the State or localities. There is no reason for the passage, therefore, of this present amendment. In many parts of the State, as soon as an officer is elected a county judge, a surrogate, a district attorney, a county treasurer, by reason of the power which that election gives him, he begins in many cases to ask to have his salary increased for the term during which he was elected. Sometimes, without that, the people may see fit to increase the salaries; but it is endeavoring to shut the door to what is considered an evil to-day, and to say conclusively that here is a term of office, to which office many applicants, and worthy applicants, are aspiring, and that they ought to accept that office for the whole term for the fees, perquisites, salary or allowances which the law has affixed to it before they accept it. That door is now open, and we believe that it ought to be shut by a constitutional provision. The very article which he amends, or attempts to amend, section 24 of article 3, reads that: "The Legislature shall not, nor shall the common council of any city, nor any board of supervisors, grant any extra compensation to any public officer, servant, agent or contractor." That is embedded and anchored in the Constitution to-day. It would seem to be broad enough to include a salary, for what is an increase of salary but an extra compensation, for which the official was elected? Simply because the word salary was not included, although other terms which were equivalent to that, for each increase, whether of salary or extra compensation, given by the Legislature, or the common council of a city, or a board of supervisors, takes that amount out of the taxpayers of the State, out of the taxpayers of the locality, and it was that that the fathers of the present Constitution desired to prevent. I think the provision is a good one. A man ought to perform his contract. It is a contract. Here is an office, and to it is attached a certain salary. The man asks for it, he seeks it, and has made a contract thereby with the people who elected him that he will serve that term for the salary or allowance which is affixed to that office. He ought to be prevented from going to the people and asking for more. The distinguished President of this Convention says that if an extra amount of work should be imposed upon him within his term, there ought not to be any bar against the people paying him for that.

(The President here resumed the chair.)

The President — Mr. Vedder will resume his remarks after the recess. The Convention now take their recess until three o'clock.

AFTERNOON SESSION.

Friday Afternoon, August 17, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, in the Capitol, at Albany, N. Y., August 17, 1894, at three o'clock P. M.

President Choate called the Convention to order.

Mr. Cookinham took the chair in Committee of the Whole, on the matter pending at the time recess was taken.

The Chairman — The Convention is in Committee of the Whole upon consideration of the amendment offered by Mr. Green, of New York, to the amendment of Mr. Mereness. What is the pleasure of the Convention?

Mr. Hill — Mr. Chairman, may we have the amendment read?

The Secretary read the amendment as follows: "Insert after the word 'State,' in line four, the words, 'nor the board of estimate and apportionment of the city of New York.'"

Mr. Vedder — Mr. Chairman, I do not know exactly where I left off when I was left in mid-air by the gavel of the President, whether I was going up or coming down.

Mr. Cookinham — The Chair is unable to inform the gentleman.

Mr. Vedder — I have only this to say in addition to what I have already said, that another reason which I, perhaps, did not advance why I suggest this amendment, is, that it would save the people a great deal of annoyance. There being no provision against it, no complaint could be made to-day against an officer who was in office, seeking, as he might, to have his salary increased. There could be nothing possibly said against an officer whose salary was increased during his term of office, but it would save the Legislature a great deal of annoyance if this provision could be passed. It would also save the local legislature, the county boards of supervisors, a great deal of annoyance, in regard to the county officers seeking to have their salaries raised during their term. I remember a few years ago, when I was in the Senate, that some county judge had his salary increased during the term for which he was elected, and that was followed immediately by ten or fifteen bills from other counties to have the salaries of their county judges increased, and for no reason except that they said the other county judge, who did not do any more work and was not any greater man than they, had had his salary increased, and, therefore, theirs should be increased. I

remember, also, in the county which Mr. McKinstry so grandly represents on this floor (applause), the surrogate wanted his salary increased, and he no sooner was comfortably seated in the office than he began a campaign upon the Legislature of the State to have his salary increased, and for months petitions were flowing in an unending stream upon the Legislature asking that his salary be increased, and another stream, a little larger, of remonstrances were flowing into the legislative halls, and a failure was had —

Mr. Dickey — Mr. Chairman, I would like to ask the gentleman a question, whether any members of the Senate or Assembly resigned because of these importunities?

Mr. Vedder — No, nor did the surrogate; but members of the Senate and Assembly felt that if they should resign, that then the wicked would cease from troubling, and the weary ones be at rest. They felt that way. But the desire to hold office was so strong that they did not resign. That is the way the thing works. Now, I suppose they builded in wisdom better than they knew when they put into the Constitution the salary of the Governor, the Lieutenant-Governor, and also the salaries of the Senators and Members of Assembly, so that they might not be increased. There is nothing in the Constitution, as I now remember, prohibiting the increase of the salaries except this, that it being fixed by the Constitution, the Legislature could not change it. So, therefore, the Constitution does not say in terms that the Legislature may not fix the salaries of Members of Assembly. It being fixed by the Constitution, it is beyond the power of change by the Legislature. That is why the salaries of Senators were fixed, and that is why the salaries of other State officers, like the Governor, who might have an influence upon the Legislature, and the Lieutenant-Governor, and so forth, were fixed. I believe it to be a wise provision and ought to be embodied in the Constitution. The sentiment, the intention, is there in the old Constitution to include salaries, and, as I said, the question was so close that no one was satisfied until the Court of Appeals of this State pronounced judgment that it would not prevent increase of salaries during the term. I, therefore, Mr. Chairman, hope that the Committee of the Whole will vote in favor of this proposition, which, I believe, is a wise and patriotic one.

Mr. Kerwin — Mr. Chairman, I rise to a point of order.

The Chairman — The gentleman will state his point of order.

Mr. Kerwin — Under rule 28, Mr. Chairman, if, at any time, in Committee of the Whole, it be ascertained that there is no quorum present, the Chairman shall immediately report that fact to the

Convention. This is the first Friday that we have been in session under the new rule. I have made a count of the House, and I make the point that there is no quorum present.

The Secretary called the roll and stated that ninety-two members were present.

The Chairman recognized Mr. Nicoll.

Mr. Doty — Mr. Chairman, I will ask Mr. Nicoll to give way. I desire to ask a question.

Mr. Nicoll yielded the floor.

Mr. Doty — The gentleman has expressed the opinion that there is a contract relation between a public officer and the authorities employing him. I ask him if it is not a fair, legal and business proposition that that relation should be mutual, and that if there are duties imposed upon any officer largely in excess of those which pertained to the office when he entered it, he should not, in the same proportion, be entitled to additional compensation?

Mr. Vedder — The question was asked of me, I believe. I would simply say in reply to that, that if the officeholder would make a contract with the people, that if his duties were more than he expected, he might have an increase of salary, and if they were less than the people expected he would perform at the time, he should have it decreased, then there would be a mutuality of contract. Unless that were done, I do not think that the gentleman's question has any pertinency whatever. The point that I was making was this: whether contract or not — it may not be a contract that would be enforceable in law, but it is a sort of an understanding that he has with the people. He has taken the people into his confidence in asking for the office, when he asks the caucus to send delegates to the county convention for him, when he asks the county convention, which represents the people composing his party, to nominate him to that office, he does it with the implied understanding that during his term he will not ask for any increase of salary; that he takes the office with its emoluments and its honors, just as it was when he was asking for it. That is what it means. It is not a mutual contract that is put on paper, but is, in the way of confidence, a contract which rests in something higher than mere paper or an instrument in writing, a contract whose obligations repose in the highest kind of honor and confidence in dealing with the people in that behalf. That is what I mean by that.

Mr. Nicoll — This amendment proposed is a much more important matter, in my judgment, than has been regarded up to this point by the Convention. It relates to thousands and thousands and

thousands of public officers in this State, drawing millions and millions and millions of dollars from the public treasury, either from the treasury of the State or from the treasury of some of the civil divisions of the State. As the Constitution now stands we have three provisions relating to the question of salaries, and their increase or diminution during the term of office. Section 9 of article 10 of the Constitution provides that "no officer whose salary is fixed by the Constitution shall receive any additional compensation. Each of the other State officers named in the Constitution shall, during his term of office, receive a compensation to be fixed by law "which shall not be increased or diminished during the term for which he shall have been elected or appointed, nor shall he receive to his use, any fees or perquisites of office or other compensation." So that the principle of this amendment is now embodied in the Constitution, so far as State officers are concerned, and as to all officers named in the Constitution. Of course, that constitutes a very small class of officers in this State, and this provision of the Constitution relates to a comparatively few men. We have another provision of the Constitution, found in article 3, section 24, which says: "The Legislature shall not, nor shall the common council of any city, nor any board of supervisors, grant any extra compensation to any public officer, servant, agent or contractor." That, of course, relates only to compensation awarded after services have been performed, and not to the increase of salaries in future, or during the term of the incumbent. That, as I understand it, from decisions of the courts, is a prohibition against giving a public officer, even if he has rendered some pecuniarily valuable service, any extra compensation. We have a third provision in article 3, section 18: "The Legislature shall not pass a private or local bill in any of the following cases: creating, increasing or decreasing fees, percentage or allowances of public officers during the term for which said officers are elected or appointed." And those three provisions of the Constitution are the whole body of law upon this subject. Now, all of them have been interpreted by the courts of this State, and the limit of their application has been settled and defined for a number of years; and as they have been finally interpreted I understand the position of the law to be as follows: These things the Legislature cannot do at the present time; they cannot increase or diminish the compensation of any of the officers named in the Constitution. That is one. Second, they cannot, by special laws, increase or diminish the compensation of officers who are compensated by fees, allowances or percentages. And that is the sum total of the present prohibition to the Legislature against the

increase of salaries during the term of office, except one; and they cannot grant extra compensation, as I have already said, for work performed. Now, what they can do at the present time is this: They may, by general laws, increase or diminish the compensation of officers who are rewarded for their services by fees, allowances or percentages, and they may, also, at the present time, by special laws, increase the salaries of officers in any of the civil divisions of the State. The simple statement of those propositions, seems to me, to discover an anomaly in the present organic law. Why should the Legislature be prohibited from increasing or diminishing the salaries of officers named in the Constitution? Why should they be prohibited from passing special laws increasing fees of officers who are rewarded by fees, percentages and other perquisites, and why should they be permitted *ad libitum* to increase the compensation of those public officers, constituting by far the greatest number, who are rewarded by a fixed salary? Take, for instance, the city of New York. We have a district attorney holding office for three years. Under the Constitution his salary may not be increased or diminished. We have a commissioner of public works, exercising vast power over all the public works of the city, deriving a salary which may be doubled at any time if he persuades the Legislature to increase it. Now, that is the evil, that is the anomaly which this amendment proposes to cure. In the city of New York, for instance, we have three methods of providing for the salaries of public officers. Some have their salaries fixed in the act of the Legislature creating them, such as the police justices, the mayor himself, the common council, the great heads of departments, police officers, heads of the fire department and others. We have also a class of officers, subordinate officers, whose salaries are fixed by the boards of assessment and apportionment, and we have a third class of officers whose salaries are fixed by the common council. As to all those three classes of officers, drawing ten or fifteen millions of dollars out of the city treasury every year, there is no constitutional prohibition against the Legislature increasing their compensation by special laws; and the same thing which exists in the city of New York is found, I have no doubt, in the other cities of this State. Now, the absence of that prohibition, the same terms directed against the increase or diminution of the salaries of State officers, or officers named in the Constitution, constitutes one of the very gravest abuses which exist in this State, and the cities thereof, at the present day. Not a Legislature convenes in Albany to which hundreds and hundreds of applications are not made at every session for the increasing of salaries. The convening of the Legislature is

eagerly awaited for the purpose of presenting schemes for increasing the salaries of these various classes of officers. Bargains are made, political engagements are entered into, deals are contracted, upon the very faith of promises to induce or persuade the Legislature to increase salaries during the term, and not only is the Legislature importuned in this way, but the same kind of application is made to the common council and to the board of estimate and apportionment in the various cities of the State. The slightest reflection will recall to members of this Convention the fact that in the various cities of this State every year application is made by various officers for an increase of their salaries. One of the most difficult things those boards who have that power in charge have to do is to resist and stem the tide of these applications. Therefore, I am in favor of this amendment, with some slight changes. I think that instead of saying, "Neither the Legislature nor the legislative department or auditing board of any civil division of the State," it would be better to say, "Neither the Legislature nor any department or board which exercises legislative or auditing functions in any of the civil divisions of the State." I make that amendment.

Mr. Mereness has suggested that it would accomplish the same purpose to say, "Neither the legislative nor any other board." I make that suggestion because the board of estimate and apportionment in the city of New York is not a legislative department, nor is it an auditing board. It is really an executive board, exercising legislative functions. And as that is one of the boards to which most of the applications are made, I think we should make it clear that it is covered by this article. It also seems to me only reasonable to conform this article as much as possible to the present provision of the Constitution relating to State officers. That provides that salaries shall not be increased or diminished during the term of office of the incumbent; and I have to suggest, therefore, that we amend this proposal by inserting after the word "increased," on the seventh line, the words "or diminished."

Mr. Mereness — If I may be allowed to explain, that was in the original proposition, to increase or diminish. I think that that ought to be in, but I do not wish to antagonize the report of the committee.

The Chairman — Does the Chair understand Mr. Nicoll to move that as an amendment?

Mr. Nicoll — I understand it is moved as an amendment.

The Chairman — There are two amendments pending at present.

Mr. Nicoll — Well, then, I will have to wait until those are disposed

of. Now, that is all I wish to say upon the subject. It seems to me one of very serious consequences. It has been said that there is no evil existing. Of course that depends altogether upon what you experience. From what I myself have seen, from the various plans which I have heard suggested for the increase of salaries, the numerous applications I have heard made and have heard resisted by the present board of estimate and apportionment in New York city, I have no hesitation in saying, both as regards the Legislature and as regards the common councils in cities, that this is one of the most serious evils with which we are confronted in this State. The Legislature ought not to have this power. There is no excuse for giving the Legislature the power to increase or diminish the salaries of these officers. There is no distinction to be made in the principle between the comparatively few officers in this State exercising State functions, and the thousands and thousands of officers who are exercising other functions in the civil divisions of the State. I hope that this amendment, in some such form as has been proposed, will be adopted by this committee.

Mr. M. E. Lewis — Mr. Chairman, I quite agree with the sentiments expressed by the gentleman from New York, Mr. Nicoll, in reference to this proposition. Experience of several years in municipal affairs in the city of Rochester, one of the large cities of the State, has impressed upon me the advisability of incorporating in the Constitution a provision similar in terms to this provision. Under the charter of the city of Rochester, the salaries of all municipal officers are fixed by the common council between a maximum and a minimum limit. No sooner is a public official installed in his office than he begins to lobby with the members of the common council for an increase of his salary; that is, an increase over the salary of his predecessor. One of the chief duties of the common council of the city of Rochester has been to resist the importunities of public officials seeking an increase in their salaries. I am not prepared to say that the article, as reported by the committee, is in terms perfect. I have not yet given it the attention which perhaps the subject deserves, but I agree heartily with the principle expressed in the amendment, and I hope that the Committee of the Whole will look upon it favorably and take favorable action upon it.

Mr. Barhite — Mr. Chairman, when this proposed amendment was before the committee of which I have the honor to be a member, I was strongly in favor of it, and there have been no arguments advanced to the present time which lead me to change my

opinion. I think that one of the crying evils of the present time, in regard to office-holding, is the ease and facility with which officers, through bargains, through others in influential positions, can get their salaries raised. I think, probably, every delegate upon this floor can recall instances where an officer has been nominated and elected, or has been appointed to some important office, with the understanding among a certain few that his salary should be increased after he began the duties of the office. Now, if in a bargain of that kind, all of the people could be made a party to it, if every taxpayer who has to help pay that official's salary could know of the bargain which was made, it might be right and proper, but the difficulty is, that the very people in interest know nothing about it until the matter is sprung upon them and the salary is increased. In our own county we had a small instance of this a few years ago, at a time when we had a very competent and able county judge upon the bench. It was his opinion from the amount of services which he performed for the county that his salary should be increased. There was a similar opinion on the part of our surrogate, and at that time both officials, besides attending to their judicial duties, were also increasing the salary of both the county judge and the surrogate, but the county judge, as it happened, had what in the Legislature would be called a pull, and what in this body I will refer to as an influence. The final form which that bill took was that both salaries were increased and that the county judge was still permitted to practice law, while the surrogate was shut off from that privilege. Now, there was an injustice done, perhaps not only to the people, but certainly to a public official. The duties of the surrogate were not as laborious and did not take so much time as those of the county judge, and yet he was told that he must take his salary, and should get nothing further from the practice of his profession, while the county judge, who ought to have been required to give every moment of his time to the duties of his position, was permitted, not only to have his salary increased, but was also allowed to continue the practice of the law, and thereby add many thousands of dollars a year to his income.

Now, it is cases of this kind which, in my opinion, work strongly in favor of this proposed amendment. As was said by the gentleman from Cattaraugus (Mr. Vedder), while the contract between a public official and the State to receive a certain amount of money for services may not be, strictly speaking, what we call a contract, yet it certainly is a moral contract, which should be binding upon every public official in the State. A man who is a candidate for a public office, and who knows what the duties of that office are —

and if he does not know the duties he certainly should not be a candidate — who knows what the salary of that office is, takes the office upon the understanding that he is to receive a certain amount of money and no more, and he should not be allowed after he has served a portion of his term, has partially completed his service, either by direct or indirect methods, to go to the Legislature or to any other body which has jurisdiction over the matter, and say that he wants an increase of pay. It is a very difficult matter for members of the Legislature, for bodies which have control of salaries of public officers, in all instances, to refuse these requests. It may be, in a short time, that they expect to look for favors from these very gentlemen who are asking favors from them, and it is nothing more than human nature that they should be more lenient, more yielding, in cases where they expect favors in the future, than in cases where they are not looking for anything of the kind. There should be a provision in the Constitution that will prevent every judicial officer in the State from having his salary increased during his term. A judicial officer is in a position where his influence and his discretion are of value, and public officials who have control of his salary may not feel like offending him. I do not think they should be placed in a position of either refusing or of running the chance of having it claimed that it was through his influence and favors that they expected of him, that they took the action they did. It seems to me, Mr. Chairman, that this bill or this amendment is a good one, and that it ought to receive the entire vote of the House.

Mr. Veeder — Mr. Chairman, if it is in order, I would like to offer a substitute for the whole matter.

The Chairman — A substitute is in order.

Mr. Mereness — Mr. Chairman, does Mr. Veeder wish to offer a substitute?

Mr. Veeder — If I am permitted to.

Mr. Veeder offered the following substitute:

"The Legislature shall not, nor shall the common council of any city, nor any board of supervisors, or other authorized body, grant any extra compensation to any public officer, servant, agent or contractor, nor increase or diminish the salary or compensation of any such during the term of service."

Mr. Hill — Mr. Chairman, I understand the substitute now offered does not materially change the scope of the proposed amendment now before us. It differs apparently in phraseology, but the principle is still preserved. Thus far in this discussion it appears that the chief objection raised to the proposed amendment

is that it invades the province of legislation. It must be admitted that the proposed amendment, if adopted, would have that effect. But, Mr. Chairman, as has been so well stated by Mr. Nicoll, of New York, and by Mr. Lewis, of Rochester, the evil is so great in cities that even though it have that operation and prevent the increase or decrease of salaries of legislative officers — and by that I mean officers who are created by the Legislature — still the proposed amendment should prevail. There is at present no limitation whatever upon the power of the Legislature to increase or decrease the salaries of officers, except of those officers who are expressly enumerated in the Constitution itself, such as State, executive, legislative and judicial officers. It transpires in many cases after men are inducted into office, and after they have surrounded themselves with numerous clerks and assistants, that their duties suddenly become so colossal that they think it necessary that some provision should be made to relieve them from the onus of the situation in which they are placed, and they, therefore, appeal immediately to the Legislature for relief and for an increase of salary.

This has become a crying evil in all the municipalities of the State. The disposition to ask for increase of salary, the zeal with which that disposition is pursued, the anxiety that it may not come, are such as to interfere seriously with the proper discharge of official duties. Why, Mr. Chairman, should there not be an inhibition in the Constitution prohibiting the increase or decrease of salaries of officers created by the Legislature during their official terms? Is there any well-founded reason for this omission? It has been the experience in some parts of the State that no sooner are persons inducted into office than the application is made for an increase of salary, and in some cases the salary has been doubled, where the duties have not been increased at all. It is so easy for a man in office, who cannot perform the duties that devolve upon him, under his oath of office, for the salary fixed by law at the time of his election or appointment, to resign, that I can see no objection whatever to the adoption of this amendment. If I were in office and I could not perform the duties of the office for the salary fixed by law, I would be willing to resign and permit somebody else to be elected thereto. It seems to me the same inhibition should apply to officers created by the Legislature, or to those not enumerated in the Constitution, as applies to those that are enumerated, and that, during the term of incumbency, no official salaries should be increased or decreased. If the work is so great in a given case that the officer cannot perform it for the salary stipulated, he should resign his office and let somebody be elected who will perform it

for the salary provided by law. Should it then transpire that it is right in view of the increase of the duties of the office that the salary should be increased, the Legislature is proverbially quick to act in that direction. The person can be reappointed or re-elected to the office. But, Mr. Chairman, as has been stated by the gentleman from New York (Mr. Nicoll), there are three provisions of the Constitution relating to official salaries which ought to be taken into consideration together, and a complete scheme of amendments ought to be proposed to the end that the Constitution may be preserved harmonious and consistent with itself, and also to the end that all officers, both those enumerated in the Constitution and those not enumerated, should be brought clearly within the inhibition that now applies to the officers who are enumerated.

Mr. Maybee — Mr. Chairman, the suggestion has been made during the course of the discussion that this proposed amendment ought not to be adopted, because it would prevent giving additional compensation to an officer whose duties had been increased by some statute passed by the Legislature. That suggestion, it seems to me, is not entitled to much consideration, notwithstanding the distinguished source from which it emanates. It seems to me that when a man accepts a civil or political office he takes it with the understanding that he is to discharge, not only the duties that then appertain to that office, but also any duties which may be imposed upon it by a subsequent statute or by subsequent legislation. When a citizen accepts a public office, it seems to me, that there is an understanding between him and the State that he shall give to the duties of that office all the time at his disposal and at his command, if the State demand it. If the State shall pass a law increasing his duties, adding to the duties which he is required to perform, it seems to me that that constitutes no reason why the compensation of the office should be increased.

There is no question that this is a flagrant evil. All over the State, in the counties before boards of supervisors, civil officers are constantly making application for increase of salary. It leads to lobbying and wire pulling and to disgraceful political performances on the part of these officers and on the part of boards who are authorized to increase their compensation. In the Legislature there are applications of the same character. There is a constant effort on the part of officers elected to political positions to get an increase of salary so that the compensation which they receive shall go further to enrich them and to fill their pockets than would the salary that was attached to the office when they were elected to it. There is an implied understanding, an implied agreement between the officer

and the people that he shall perform the duties of the office and give his whole time to it, if need be, for the compensation that was fixed at the time that he accepted the nomination. I think this amendment ought not only to preclude the possibility of increasing salaries after the term of office begins, but I think it ought to preclude the possibility of a public officer, after his election and before his term of office begins, obtaining an increase of salary from a board of supervisors or from the Legislature. The only fault I find with this proposed amendment is that it does not go far enough. The principle is a salutary one. The enactment of this constitutional provision would be a great advantage to the people of this State. It would go far to do away with a flagrant and growing evil, and, I hope, the Convention will favorably consider the amendment and make it a part of our fundamental law, if ratified by the people, as it surely would be.

Mr. Holls — Mr. Chairman, I have listened with a great deal of attention to the arguments presented on this amendment, and there is no doubt that the evil which its advocates wish to remedy is a very serious one. It is an indecency of the highest character to have salaries increased by the Legislature, especially against the protest even of the localities and counties and cities which have to pay the money. I need not at all enlarge upon that view of this question, for it has been very ably and eloquently presented; but it seems to me that the remedy proposed is, with all due respect, very much like the case described by Charles Lamb, when the house was set on fire in order to have roast pig. I do not think it is necessary, and I do not believe that it is in accordance with sound constitutional principles that, in order to remedy the hasty, ill-considered and, perhaps, corrupt tendencies of local boards of supervisors, or councils, or even of some Legislatures, we should put into the fundamental law a prohibition which would make it impossible in many cases to do simple justice to public officers. If the principle of local self-government, upon which our government is based, and of which a modification talked much about in this Convention and called home rule has been very much discussed, if that principle is to be maintained in our new Constitution, as I sincerely hope and think it will be, then this amendment constitutes an undue interference. Is it right and proper that the common councils of cities and the boards of supervisors of counties should have both the power and also the responsibility of fixing salaries of local employes paid entirely out of the taxes collected in those communities. Moreover, I have no sympathy whatever with the theory upon which many amendments seem to be offered, namely, that the Legislature neces-

sarily does the wrong thing, or omits to do the right thing. I know that in the past there have been crying evils in our legislation, and in the results coming from them, but the remedy is not to take away the power to do both good and evil in the Constitution. The remedy is with the people to elect legislators who will do their duty. Now, until there is some argument advanced which will show that the reasons opposed to this amendment can be overcome, I sincerely hope that it will be voted down. As to the theory of contracts between the public and an officer elected, as has been well said by some gentleman this morning, the obligation of that contract is reciprocal; and, if the duties of the office are increased after the election, it is right and proper, and it ought to be possible for the proper authority also to increase the pay. I think, as a matter of simple justice, and without in any way wishing to defend the scandals with which the raising of salaries hitherto by the Legislatures and local bodies has been attended — and as a matter of simple justice — I think this amendment ought not to prevail.

Mr. Mulqueen — Mr. Chairman, it is generally conceded that this is a very important amendment; yet a number of amendments have been proposed here to-day. It is the fashion in this Convention to proclaim that we should place some prohibition upon the Legislature to amending bills on their final passage. What are we doing to-day? We have before us three or four amendments now, and there is hardly a member of the Convention that knows anything about them. I understand one or two more are to be proposed, and we will be asked to-day to vote upon those amendments. I think it is only due to us, as members of this Convention, as we are asked to vote upon a matter that when adopted will be beyond our control, that all those proposed amendments should be printed, to the end that we might think over them at least for an hour before voting upon them. I, therefore, move, Mr. Chairman, that this committee now rise, report progress and ask leave to sit again; and when we reach the Convention, if we do, I shall move that those amendments be printed. If it is a good rule, Mr. Chairman, for the Legislature that they should be prohibited from amending bills on their final passage, what reason can be given against it here? We ought to know just what we are called upon to vote for, and not run through an amendment in the eleventh hour.

Mr. Veeder — Mr. Chairman, I think if that motion is to prevail, Mr. Mulqueen should withdraw it until other substitutes which have been prepared may be offered.

Mr. Nicoll — I hope that motion will not prevail.

The Chairman — Does Mr. Mulqueen insist upon the motion?

Mr. Mulqueen — I regret to say, Mr. Chairman, that I did not hear Mr. Veeder.

Mr. Veeder — There was a proposition substantially agreed upon, which covers the ground, we think, prohibiting any department or any Legislature, or any board of supervisors or common council from increasing or decreasing salaries.

The Chairman — The question is not debatable. If Mr. Mulqueen insists upon the motion, the Chair will put it.

Mr. Mulqueen — Yes, sir; I insist upon the motion.

The Chairman put the question on Mr. Mulqueen's motion, that the committee rise, report progress and ask leave to sit again, and it was determined in the negative.

Mr. Veeder— Mr. Nicoll has a proposition that is substantially agreed upon, and, if we can get it before the committee, I think it will be satisfactory.

Mr. Nicoll — Mr. Chairman, this proposition which has been suggested by Mr. Marshall and handed to me, seems to express the principle which it is desired to extend to officers in the civil divisions of the State not mentioned in the Constitution in appropriate constitutional language. It reads as follows:

"No extra compensation shall be granted to any public officer, servant or agent of, or contractor with, the State, or any civil division thereof."

That is all of it, but that portion of it continues the article 3, section 24, but not in the exact language, although very much of the language is followed. The other portion is:

"Nor shall the salary or compensation of any public officer be increased or diminished during the term for which he was elected or appointed."

That is nothing more than an extension to officers in the cities, towns, counties and villages of the constitutional provisions found in section 9, article 10, in substantially the same language; so that the whole amendment reads:

"No extra compensation shall be granted to any public officer, servant or agent of, or contractor with, the State, or any civil division thereof. Nor shall the salary or compensation of any public officer be increased or diminished, during the term for which he was elected or appointed."

Mr. Moore — May I be allowed to ask Mr. Nicoll a question for information?

Mr. Nicoll — Certainly.

Mr. Moore — I would like to ask the gentleman how this measure, if passed, would affect a case like this; in a county where the office of the county judge and the surrogate is one, the supervisors suddenly declare that the surrogate's office is vacant, and that the county judge shall perform the duties of that office in connection with his own. Would the county judge be obliged to continue to perform the duties of the office of the surrogate at the same salary which he received as county judge, particularly where, as in my county, the county judge receives only $100 a month, and the surrogate receives $150 a month?

Mr. Nicoll — I suppose, Mr. Chairman, there is nothing here preventing the proper power from abolishing the office.

Mr. Moore — What I ask is, would the county judge be obliged to perform those extra duties for the same compensation that he had received as county judge only?

Mr. Nicoll — He probably would have to do it.

Mr. Moore — That is what I supposed. Well, then I am against it.

Mr. Spencer — Mr. Chairman, I am in hearty sympathy with the substitute offered by Mr. Nicoll, and, as it covers the amendment proposed by me, when this proposition was —

The Chairman — The Chair will inform Mr. Spencer that the substitute offered by Mr. Nicoll cannot be entertained, as there are two amendments and a previous substitute before the committee.

Mr. Spencer — I am aware of that, if the Chairman please, and that was what I was coming to ——

Mr. Veeder — I will save your point of order. Mr. Nicoll's substitute is satisfactory and I withdraw mine.

Mr. Spencer — I was about to withdraw my proposed amendment for the purpose of allowing that to be offered as an amendment not in conflict with the theory of home rule. I do not understand that anybody is in favor of home rule, without proper restrictions and limitations, restrictions that will prevent abuses, and the abuses spoken of here constitute one of the many evils that exist in municipalities that should be guarded by the fundamental law; and I think my friend, Mr. Holls, is mistaken when he opposes this proposition as being in conflict with the proposition of home rule.

Mr. Lincoln — Mr. Chairman, I think nearly every delegate who has spoken upon this question has spoken from personal experience; at least there is a diversity of views expressed, based, I can

see very clearly, upon the experience of the members. Now, from my own experience, I am able to say that I am entitrely opposed to this amendment and to all of these substitutes. I think that the boards of supervisors and the local boards which have power to fix salaries of local officers ought to have the power to increase those salaries according to their discretion. Circumstances very often arise, as already indicated here, in which such an increase is not only necessary and advisable, but just. I have had the honor to be a member of the board of supervisors of the county that I represent here, and I know that during that time instances did arise where public officers asked to have their salaries increased, and where it was entirely proper that they should be increased. There is no implied understanding that the duties of an office shall remain the same during the term. I never understood it that way. There is no moral obligation that the officer who assumes the duties of a public office shall work for two, or three, or six, or ten, or fourteen years for the salary which the Legislature or the board of supervisors or the common council has seen fit to fix. A salary is presumed to be compensation for the duties performed according to the light which the board has at the time the salary is fixed. They cannot presume any more than the head of a commercial establishment can presume, or the directors of a corporation, that the duties of the office will remain precisely the same for all time to come. The duties of the office are prescribed by the statute, if you please, but they are flexible, uncertain, indefinite, depending upon the amount of public business which may come to that particular office. Now, the board of supervisors, or the local board, whatever it is, with the light which it has, says that the services connected with that office are worth so much. That is not any sort of guarantee or indication that the duties of the office will remain the same, or that the services will remain precisely the same, or that the value is to be the same, during the term of office. Now, a vital distinction is overlooked, it seems to me, in the substitute which has been offered, and in all the discussion which has been had so far upon this amendment. The Constitution provides that judges of the higher courts shall receive fixed compensation, but that that compensation shall not be diminished during their term of office. They are prohibited from practicing law, and are practically debarred from doing any other business. Now, I suppose the salary of that class of officers is fixed upon the theory that they are to give their entire time and attention to their official duties. That is not the case with local officers, like the district attorney, or the superintendent of the poor, or the county treasurer. Those duties, of course, depend upon the

provisions of the statute and the various services which they may be called upon to perform during their term of office; but in nearly all those cases the incumbents of the office may have private business. Their entire time is not presumed to be taken in the performance of their public services. And that is taken into consideration when the salary is fixed. And the distinction which I wanted to call attention to is this, that in a certain class of offices the incumbent is presumed by the Constitution to give his entire time to it, while in the other class of offices he is not presumed to give his entire time. Now, the substitute offered here, and which, as I understand it, is now pending, would prohibit even the increase of the compensation of a constable of a village, or a street commissioner in a village, or any officer in a town, where the salary or the compensation is within the discretion of some local board. Now, the duties of those officers are frequently incidental, and not of a general character. Citizens holding these offices perform their private duties; they carry on their private business; they spend a little time, perhaps, each day, or each year, in the performance of these other official duties. Now, I say it would be wrong in principle to put into our Constitution a prohibition against any increase in the salaries of those officers, if the board having the power to fix those salaries sees, as a matter of justice, that the services are worth more next year than they are worth this year. The Constitution, as it now stands, prohibits the Legislature, or the common council of a city, or the board of supervisors of a county from granting any extra compensation to public officers. That, I believe, is as far as it ought to go. That is, I suppose, aimed at the practice which did once exist, and which might exist again, that in addition to the salary extra compensation might be granted, instead of increasing the salary, which would be the regular way to accomplish the result. Now, I am in favor of retaining that provision, and I think, Mr. Chairman, that the Constitution, as it now stands, is sufficient upon this question, and section 24, as it now stands and which is sought to be amended, is all that we need upon this subject, because that already provides that the Legislature shall not, nor shall the common council of any city, or any board of supervisors, grant any extra compensation to any public officer, servant, agent or contractor; and a subdivision of section 18 of the same article provides that " no special or local law shall be passed creating, increasing or decreasing the fees, percentages or allowances of public officers during the term for which said officers are elected or appointed." Now, I think all the safeguards that the people need already exist in the Constitution as it stands. The common council of Rochester,

it seems to me, ought to have power, under the provisions as they now are, to restrain themselves from granting extra compensation to officers. I think it is a matter of common understanding and knowledge that there is no more economical body of men ever gathered together in the State of New York than the boards of supervisors of the various counties of the State. They do not waste the public money, and there is not very much danger, as an ordinary proposition, of any officer's salary being increased; but, as I already stated, in the county that I represent, some officers' salaries have been increased, and they ought to have been increased. I voted for the increase, and there was not any lobbying about it, either; it was a matter of simple justice, because the duties of the office had been largely augmented during the term of the officer. I say, then that in view of the fact that these local boards are presumed to know and ought to know the duties of the office and the necessities of the situation, they ought to have entire control over the salaries and compensation of the subordinate officers which are within their jurisdiction.

Mr. Durfee — Mr. President, I concur with the views expressed by the gentleman who has last spoken, in regard to the compensation and salaries of local officers, and they have been so well expressed that I shall not attempt to add anything to what he has said in that direction, except this: I believe in the education of responsibility, and it does not seem to me to be safe or wise to undertake to provide, in the Constitution, which we are endeavoring to frame, for the subjection of the people of this State to any tutelage. I think they ought to be left in such condition that their interests require them to take part in public affairs and to take notice of the conduct of their servants in public station. We have before us propositions which look to requiring them to go to the polls to vote. Whatever may become of those propositions, we ought not to take away, at least, that incentive to going to the polls to vote which their interests lend and give. And, if their interests require them to be active and influential in the choice of their local officers, they may be depended upon to look after their interests. That is the experience, I think, of the gentlemen upon this floor who come from the rural parts of this State. The farmer who hitches up his team and drives five or six miles through the mud and the snowdrifts to town meeting to vote for supervisor, and assessor, and justice of the peace, knows that in doing so he is looking after his own interests; and when the tax levy is laid and his taxes come to be paid he scrutinizes the conduct of the officers that he has participated in choosing; and that is a healthy condi-

tion, as it seems to me, of the public service in that regard. In respect of the increase of salaries by the Legislature it is true, it has been true, and under the present methods of legislation will continue to be true, probably, that a local measure recommended by the representative of a given locality goes through almost as a matter of course; but with the salutary provisions which are embodied in an amendment before us, which will soon come up for consideration that before local measures shall be passed the communities interested shall have an opportunity of knowing what those measures are; and, with that safeguard added, as I trust it may be added, there will, I believe, be no ground for apprehension as to the action of the Legislature in unduly increasing the compensation of local officers. For these reasons, Mr. Chairman, it seems to me that the wise and prudent course is not to extend the restrictions which already exist, and which, as Mr. Lincoln has pointed out, very properly exist in the present Constitution.

Mr. McIntyre — Mr. President, from the reading of section 24, article 3, the intention was evident that the Legislature should not, or the common council of any city, or any board of supervisors, grant any extra compensation to any public officer. Now, it strikes me, from reading that, that the common-sense view of it is that they did not intend they should have any compensation or increase in salary, but the courts have held that that did not apply to the increase of salary. Now, I cannot understand what the framers of the Constitution meant, unless they meant just what an ordinary person would mean by that, and it seems to me that it is best for this Constitutional Convention to put such language into the section that there will be no mistaking or doubting it whatever, and I think that the man who is elected to an office, with the salary already fixed, should be satisfied with the same while in office. Let them increase the salary before he goes in, if the salary is not large enough, but let us not leave that open so that all of the officers can be importuned in such a way to increase the salaries. I think we should be derelict in our duty if we did not pass just such an amendment as this. Why, it strikes me that we ought not to spend so much time over this, that it is a plain, common-sense view; and I cannot understand why any officer of a village, or any officer of a town, should have his salary increased any more than the officer in any other department; and I think this is a very commendable amendment and ought to pass without any question. No supervisor ought to oppose this amendment. The salaries are fixed, and I do not know why the supervisors should want to me importuned, because, forsooth, some man that may do a little more work than

he expected he was going to do desires an increase of compensation. Let us fix it so that there will be no question or doubt about it, and let every man work through the period for which he is elected at the salary for which he took office.

Mr. Baker — Mr. Chairman, I have listened with some attention to this debate. I have been surprised to hear some gentlemen representing rural counties oppose this proposed amendment. I am sorry to disagree with my friend, Lincoln, and with the gentleman from Wayne, but I must. I believe the spirit of this amendment is proper. I have not kept track of the numerous amendments and the substitutes that have been offered, but the spirit of this proposed amendment I agree with. Now, there is a remedy if a gentleman gets an office the duties of which he cannot afford to discharge for the salary fixed. He has one great remedy, and he holds it in his own hands. He can resign. I have a notable instance of that kind in my own mind that occurred in years gone by. A gentleman who had been county judge thought it would be pleasant to hold the office of district attorney, an office that I was then holding. He sought and obtained the nomination, and, as he belonged to the party that always prevails in that county, he was elected. He held it three months, and wrote me that if I would be an applicant for the appointment, he would resign, and when I called on him, "why," he said, "the salary is not adequate." Well, now, sir, he exercised one of his inalienable rights and he resigned. Now, gentlemen of the Convention, there has been more said about the raising of salaries in this State through the public press than about almost any other thing, and, if we can fix it — I do not know that we can fix anything that cannot be got around by some legerdemain in legislation — perhaps my friend from Cattaraugus could tell me better about that — but, if we can fix it in the organic law of this State so that when gentlemen seek office they shall seek it with a distinct understanding that their salaries cannot be raised, then we will have done one good thing in this Constitutional Convention. It has surprised me the cheek that some gentlemen assume after they get into office. Knowing the salary, the very first business afterwards is to go to work to see if they cannot get the salary increased. Now, Mr. Chairman, suppose a candidate were to advertise that he not only wanted the office, but proposed to have the salary increased, I would like to know, at various periods during the campaign, what he thought his chances were? Mr. Chairman, I believe the principle of this proposed amendment is right. Let us put the bars up, and, if we do this, we will receive the commendation of pretty much all the people in this State, no

matter what their politics are. I think I have said enough on this subject to show where I stand. (Applause.)

Mr. Choate — Mr. Chairman, I would like to ask Mr. Mereness, who, I believe, is the father of this measure, a question.

Mr. Mereness — The stepfather now. (Laughter.)

Mr. Choate — The grandfather. (Renewed laughter.) I did not appreciate, when I made the remarks that I did this morning that the office holders throughout the State were such a bad set of men. What I wish to ask is, in how many instances Mr. Mereness has known any local board to be false to its trust and to increase the salary of an office holder during his term of office, unless for some just cause?

Mr. Mereness — I have known of a number of instances where they have done that, and I have never known of any case where they had any cause to do it.

Mr. Acker — Mr. Chairman, I have just been taking a poll of this committee, and I am satisfied that every man is ready to vote and ready to vote right. Now, Mr. Chairman, I ask unanimous consent that the Chairman put these propositions in their order, and that we vote on them as he puts them, and see how nicely this committee can dispose of this question, and dispose of it correctly and go on with other business.

Mr. Mereness — May I inquire what there is before the committee?

The Chairman — The Secretary informs the Chair that the question before the House is the amendment of Mr. Green and the substitute of Mr. Nicoll.

Mr. Mereness — Mr. Green is not here, and, inasmuch as the substitute offered by Mr. Nicoll covers the precise point sought to be covered by Mr. Green, I think that his amendment would probably have to be voted upon; but it seems to me that the safe way is to vote that down, and then, if the committee is in favor of the principle, it can adopt the substitute.

Mr. Nicoll — Mr. Chairman, the substitute proposed by me was an amendment to the amendment proposed by Mr. Green, Mr. Spencer having withdrawn his amendment in order to enable me to propose my substitute, so is the motion now not open to amendment.

The Chairman — If that is the form of the amendment, it is proper to vote upon the substitute or the amendment to the amendment of Mr. Green in the first instance.

Mr. Vedder — I would ask to have it read.

The Secretary read the amendment.

Mr. Vedder — Clearly Mr. Nicoll's substitute covers that.

Mr. Nicoll — It includes it, of course.

Mr. Mereness — Mr. Nicoll offers his as an amendment, inasmuch as Mr. Spencer withdrew his.

The Chairman — The Chair has so stated.

Mr. Mulqueen — Mr. Chairman, we are now in the position that we have proclaimed so much against the Legislature's occupying, of being asked to vote upon a bill, as we are asked to vote upon this. I believe that this matter ought to be printed, and that we can hold a session to-morrow morning and vote upon it. I, therefore, move that the committee rise, report progress and ask leave to sit again. I do not care whether I stand alone on that, Mr. Chairman, I make that motion.

Mr. Mereness — Mr. Chairman, let me call the attention of the committee to the fact ——

The Chairman — The Chair holds that this question is not debatable.

The Chairman then put the question on the motion of Mr. Mulqueen, that the committee rise, report progress and ask leave to sit again, and it was determined in the negative.

The Chairman — The question is upon the amendment to Mr. Green's amendment offered by Mr. Nicoll.

The Secretary again read the proposed amendment.

Mr. Vedder — I hope that amendment will be adopted.

The Chairman then put the question on the amendment, and it was determined in the affirmative.

Mr. Mereness — Mr. Chairman, I move that the committee rise and report to the Convention, with a recommendation that this proposed amendment, as amended, be adopted by the Convention.

Mr. Dean — Mr. Chairman, I rise to a point of order ——

Mr. Vedder — Mr. Chairman, I hope the gentlemen will withdraw his point of order. I do not understand that the amendment is perfected yet, so that it may go to the Convention. We have another amendment to vote upon, as amended by Mr. Nicoll's motion.

The Chairman — Mr. Vedder's point of order is well taken, and the question is upon the amendment, as perfected, which will be Mr. Green's amendment, as amended by Mr. Nicoll. It perfects the

amendment and a vote of aye will recommend it to the Convention; a vote of no will be the reverse.

Mr. Vedder — I understand now, Mr. Chairman, that a vote of aye means that Mr. Green's amendment is amended so as to come entirely and absolutely within the provisions of the amendment of Mr. Nicoll, and that the amendment will stand so amended by voting aye.

The Chairman — That is the understanding of the Chair.

The Chairman then put the question on Mr. Green's amendment, as amended by the proposition of Mr. Nicoll, and it was determined in the affirmative.

Mr. Crosby — I attempted to get recognition of the Chair to know what the proposition was that we were voting upon. It is absolutely impossible to hear a single word read by the Secretary, and may I hear it read now?

The Chairman — The Secretary will again read the amendment that has been voted upon.

Mr. Mereness — Mr. Chairman, I make the point of order that it is of no consequence to have it read after it has been adopted in the committee.

Mr. Crosby — I call for the reading of the proposition as amended, then, asking for information.

The Secretary again read the amendment as follows:

"No extra compensation shall be granted to any public officer, servant or agent of, or contractor with, the State or any civil division thereof, nor shall the salary or compensation of any public officer be increased or diminished during the term for which he was elected or appointed."

Mr. A. B. Steele — Mr. Chairman, I desire to vote upon this intelligently, and for that reason I want to ask a question of either the proposer of the amendment or of the bill. Is the scope of this such that even a village or a town is prohibited from voting extra compensation to an officer?

Mr. Nicoll — That is in the Constitution now, is it not?

Mr. Steele — No, sir. In other words, if, by any act of a municipality, an officer who is acting, has his duties doubled, the amount of work that he is to perform doubled, and they vote to compensate him according to his extra work, that is, vote to give him extra compensation, that would be illegal, and under the Code ——

Mr. Mereness — Mr. Chairman, I rise to a point of order. There is no question before the House.

The Chairman — The point of order is well taken.

Mr. Steele — Is not the question before the House of debating this?

Mr. Acker — I move you, sir, that the committee do now rise and report this proposition and recommend its passage.

Mr. Peck — Mr. Chairman, I rise to a point of order. We have adopted two amendments. Now, we have not adopted the proposed constitutional amendment, as amended.

Mr. Steele — Is not the question of adoption of this proposed amendment debatable?

The Chairman — It is.

Mr. Steele — That is what I supposed. I was addressing myself to that. It seems to me, Mr. Chairman and gentlemen, that while we are attempting to accomplish a good thing, we are going a great way to tie the Legislature, to tie the people, so that they cannot grant extra compensation to an employe, to an officer, although that officer has extra work to do. Will the people, Mr. Chairman, approve of action of that kind?

Mr. McKinstry — Mr. Chairman, I was very glad to hear the President of this Convention protest against this violation of the principle of home rule, in saying that the trustees of every little village, in Chautauqua county, for instance, cannot do as they choose with their little local officers there, living right among the taxpayers and responsible to them. They have a right, a moral right, to do as they choose with their local officers. It is a ridiculous interference with every little branch of the State, and, I would say also, our boards of supervisors, so far as they fix their salaries, are responsible to the taxpayers of the county and they are apt to do the right thing. Now, the root of this evil, gentlemen, is in having the salaries of county officers fixed here at Albany. That is where the trouble is, and that is what the people of Chautauqua county complain of. If the board of supervisors fixes the salaries of officers that are paid by the county, there will be no difficulty in this matter. What we complain of is that county officers come here to Albany, surreptitiously sometimes, having a "pull" with members or Senators, and getting salaries raised against our wishes. What would suit me far better would be to amend section 18 of this article, where it forbids the Legislature creating, increasing or decreasing fees, percentages or allowances of public officers

during the term for which said officers are elected or appointed. Simply put in the word "salaries" there, so as to cut off this running down to Albany and getting the county judge's and surrogate's salaries increased, which would suit me a great deal better.

Mr. Crosby — As I understand the question, Mr. Chairman, there was an amendment to the main proposition, and that main proposition is now before the committee and open for discussion. I am opposed to this proposition: First, because it is in conflict with the principle of home rule of the local municipalities. This Convention has been struggling for days, and the committee for weeks, to submit a proposition to the people which will give home rule to cities, and we should not put ourselves in the inconsistent position of granting what we call home rule to cities, which I favor, and prohibiting municipalities from regulating their own affairs. I am opposed to it upon another ground. That is, the increase of the business of the State and of localities, the multiplication of the responsibilities which are placed upon public officers, and especially upon the judiciary, during a long term of office, increasing their labors, gives a just and equitable demand for fair compensation for such increased duties. I am opposed to it upon another ground, and that is that it is not the province of any particular body of men to assume that they possess all the honesty, virtue and judgment that exists in the land. A tendency on the part of this Convention has plainly manifested itself to so treat the Legislature that it must go to the people of the State that this Convention does not regard the Legislature of the State of New York as an intelligent, responsible or honest body to take charge of the questions which naturally go to the Legislature from the people. I am opposed to it on a still further ground. I have in my mind an instance of an ambitious young man who went to the Legislature and procured a decrease, a diminution of the salary of an office, two-thirds of what was being paid at a reasonable compensation, for the purpose of enabling him to become a candidate for that office, and virtually, by offering a bribe in that manner, secured the votes of the people to elect him to that office. And, if we are not to permit the Legislature to correct such a wrong act, then I say the Constitution should be amended to prohibit the Legislature from decreasing the salary of any office, and leave it, as fixed by this Constitution, and the law, is it now stands. It was the province of the Legislature of the State of New York, at its last session, to raise the salary of the county judge of the county in which I reside back to what it had been fixed by a former Legislature, and now he is not compensated a

dollar more than he should receive for his services; and that there may be no mistake about the position I occupy here as an individual, independent of the propositions I have stated, I want it clearly understood that I say the Legislature did right in that act.

Mr. Burr — I offer the following amendment, if it is in order, Mr. Chairman, to substitute ——

Mr. Acker — I rise to a point of order. A motion has been made to report to the Convention, and amendments are now out of order.

Mr. Burr — The Chair has already ruled that debate is in order, and I assume that while debate is in order, an amendment is proper.

The Chairman — The Chair holds, according to the rules, that although debate is in order, amendments are not in order.

Mr. Burr — Then, Mr. Chairman, while I am on my feet, I desire to call the attention of the Convention to this fact, that, in my opinion, this is not a fair amendment. It is not a just amendment. The Legislature still has the power, I believe, to abolish offices. The Legislature still has the power to increase the duties of existing officers, and, if we wanted to be fair, we should have an amendment which would read that the salary, compensation and duties of public officers was not to be increased or diminished during their term of office. It means one thing, apparently; it really means another. It stands in the way of the very object which those who vote in its favor seek to accomplish. Suppose the Legislature, desirous of economizing the public funds, abolishes one office and says that the duties of that office shall thereafter be performed by another officer then in existence, and who may have six years to run. Is it fair to say that the Legislature may impose and place upon that officer this extra duty, this great duty which he never had foreseen when he took the office, and yet refuse to the Legislature the power to increase his salary or his compensation? And, I think, as I have said, gentlemen, that if you want to be fair, and, if this amendment is desired to be logical, the duties of the office should remain the same after a man has assumed them.

Mr. Choate — Mr. Chairman, I would like to say one word more, before the committee commits itself to this amendment in its present form, which seems to me to be fraught with mischief and will be likely to excite great hostility among the people. I differ entirely from the gentlemen near me who have said that there could not be a more popular amendment introduced into the Constitution. So far as I have heard in the discussion thus far, it is apparent that the local authorities, who up to this time have had charge of

the matter, have, in the main, been faithful to their trusts. If there has been all this clamor on the part of every office holder in the rural districts, as soon as he got into office, to have his pay increased, it is very remarkable that none of the advocates of this measure can point to any specific instance where a board of supervisors, or other local board having the matter in charge, has unjustly advanced his salary during his term of office. And that emphasizes the point I made this morning, that it is an unwarrantable invasion of the authority of local communities, to take care of their own affairs in relation to the details of domestic economy.

Another point. Every city, every village and every town are constantly making contracts, the exact operation of which, as to fairness, upon the one side or the other, cannot be predetermined. Now, this is a prohibition against fair dealing by any such community with any such contractor, and might enable such a small community to get ten times the value out of a contractor, as it may, in the case instanced by Mr. Steele, enable the Legislature to double, quadruple or multiply ten times the duty of a local officer, and yet not permit the community which is to have the benefit of those services to make adequate compensation to the officer. I hope gentlemen will hesitate, consider carefully, before they commit themselves finally to this amendment.

Mr. Jacobs — Mr. Chairman, I do not think that Mr. Choate has ever filled the office of local legislator. If he had, he would not challenge quite so freely. Being challenged to give instances in which salaries have been unduly increased, I can say — I do not speak with any pride in the matter — that for four years I have had an experience in trying to prevent just that sort of thing. Men who did not do anything but open and shut a door one hour in a day had their salaries, just on the eve of an important local election, increased, and the suspicion always was that it was for the benefit of certain local election funds; and that has been going on, year after year, in our city; and I apprehend in other towns and in other cities. I won't say there was the same motive. And, if the city of Brooklyn or the city of New York is still a part of the State of New York, I think our rural friends, however honest they may be, ought to come to our assistance; and, while I have sat here silently through all these weeks and wearisome months, it has occurred to me that there is a distinct sentiment among our friends that they do not seem to care particularly what does happen or does not happen in the city of New York or Brooklyn, and that if we have ills down there, or evils, we better be allowed to stew in our own juice. Now, I appeal to them that we also are a part of the

State of New York. We have abuses and evils down there that we cannot contend with, and while there may be a healthy, and I have no doubt is, a healthy sentiment in the towns, because everybody knows everybody, and a majority of the voters there are more or less directly interested in taxation, the cities of New York and Brooklyn are widely different. Very few of the people in Brooklyn are taxpayers. I think out of a million inhabitants that are there, there are only seventy-five thousand people who actually and directly pay taxes, and the great mass have no idea of what the taxation is, and they do not care. Their landlord pays the taxes, and that is quite a great deal of satisfaction to them. Now, I want to come back to the main subject. If we are entitled in this Convention to the consideration of our rural friends, we ask them to pay the same attention to our affairs that we have been paying to their affairs. We have, year after year, and for the purpose of enlarging political campaign funds, salaries increased — why, I have seen in one day salaries jump $25,000 for men who performed only the service of one hour a week — one man who simply — well, he didn't open the door even; everybody opened the door for himself; he shut it when they went out; and he was jumped from $1,000 to $1,800 a year; and I do not believe the poor little fellow got one cent of that increase.

Mr. Choate — Mr. Chairman, I would like to ask the gentleman whether that was in Brooklyn?

Mr. Jacobs — That was in Brooklyn.

Mr. Choate — I should have excepted Brooklyn.

Mr. Jacobs — You should, sir. And now as to contracts. We all know how contracts are made up, and they are always made up with two views. That is, I am speaking now of the cities. I know nothing about the rural towns. As I said, contracts are made with two views. If the right man gets the contract, there are always extras, and the contracts are drawn so that the engineer or those in charge can order extra work. But, if the wrong man gets the contract, his work is always found to be incorrect. Now, I appeal to our country friends to come to our rescue. We are down there, not in a community of taxpayers and people who know one another, but in a great congregation of a million of people, where the resident in the block hardly knows his next-door neighbor, and we cannot have that healthy public supervision of our local affairs such as they have in the towns. We want this amendment, and I think every man in Brooklyn, from Kings county, ought to vote for it, because we know what the evil is; I take the testimony of the

gentlemen from the interior — they are all honest; I am glad to hear it.

Mr. McDonough — Mr. Chairman, I would like to give the President an example. A few years ago the city of Albany had a corporation counsel who was a very bright man. His salary was $3,000 a year. He conceived the idea of forming a partnership with another eminent lawyer, and he resigned his office as corporation counsel. The gentleman that attends to such matters for us here sent up and had the salary increased to $6,000 a year, and appointed the other man to the office, and the two lawyers formed a partnership and got their $6,000 a year.

Mr. Moore — Is he dead?

Mr. McDonough — They are both living and holding office yet. Now, our experience is that political debts are paid by sending up here to the local members of the Legislature and having salaries increased. They say that the people ought to come up here and stop it. Why, we cannot stop it. The winter before last we had our board of education abolished. We elected our board by popular vote. They abolished the board in spite of the people of Albany, and had a board appointed by one man. We elected our police commissioners, and one man sent up here and had that board abolished, and we elect them no more. One man appointed every one of them. It is ridiculous for us here in Albany to come to the Legislature and oppose measures that certain men want, when they have the representatives here. We can do nothing with them; and the reason is, that these local bills are passed as a matter of courtesy. They simply say: "Why, Albany wants this; Syracuse, Buffalo, Rochester"— it is not any one city —" we will give it to Albany. It is all right; those men want it." That is the way these measures go through and we cannot stop them. There are many examples of it. The coroners here had their salaries increased within two or three years, men that get a large salary for doing nothing. Yet they come up here and have their salaries increased because the political boss says it is a proper thing to do.

Mr. Tekulsky — Mr. Chairman, in answer to the gentleman from Brooklyn, or Kings county, I desire to say that I am a resident of New York city, and I think that New York city is in this State; and I suppose if he tries very hard, he will find that Kings county is also in this State. The evils of Kings county I know nothing about, but the evils that he speaks of, and in relation to which he continually connects New York with Kings county, I have never heard of them, there is no such things as he pictures here in New York city,

about the increase of salaries for the purpose of making political capital. (Laughter.)

Mr. Moore — How about the perquisites to contractors which he speaks of in New York city?

Mr. Tekulsky — I have not got to that yet. I will get to that by and by. Now, Mr. Chairman, I am a great believer in home rule, and, as long as I am a believer in home rule, and where local authorities have not taken undue advantages of the people I believe in letting it remain there, and giving them as much home rule as we can. (Applause.) As to the abuses of raising salaries, I have not heard of any abuses of that kind in New York county. There have been salaries raised in New York county because of increase of labor. New York city has grown since I have lived there, for twenty-four years — has grown in the neighborhood of a million in population, and you cannot expect that men who were elected to office for the term of ten or fourteen years, as some of the judges have been elected there, will not have more labors to perform now than they did then; and why should this amendment prevail to-day, when it is unnecessary, when the local authorities can attend to that matter when it is necessary, and can come to the Legislature, if it is necessary. The local authorities will always have something to say, especially if Mr. Jesse Johnson's home rule measure passes here.

Mr. Vedder — Mr. Chairman, in answering the President, who denounces this bill, I desire to say that he denounces with it the Constitution, as it is now, with the exception of the insertion of the word "salary." I understand him to say in denouncing this measure that he denounced substantially what is in the Constitution now, by saying that we ought not to pass any constitutional amendment here that would prevent local authorities from giving compensation, and extra compensation, and so forth, for extra work.

Mr. Choate — On the contrary, I am entirely satisfied with the Constitutional provision as it now is, and think that it goes far enough, although the Convention of 1867 thought it went altogether too far and struck out a good deal.

Mr. Vedder — This amendment to-day, as I understand it, only goes a step further, and includes what was intended by the present provisions, to wit, that it should include a prohibition against increasing salaries during the term of office for which a person was elected. It may have seemed strange to gentlemen that the President should not have known of all these things that Mr. Nicoll, who lives in the city of New York, has spoken of, the abuses in

that city; and living just across the river from that other great city of Brooklyn, that he should not have known of the abuses which have existed there for years. The trouble, I think, with the President, is that in the city of New York he occupies a unique position. He is a good lawyer and attends to his business there; pays very little attention to politics, and for years has been sleeping in a storm and dreaming of a calm, politically speaking. (Laughter.) I move that this committee do not rise, report this proposition to the Convention, and ask leave to sit again.

Mr. Mulqueen — My attention has been called to the fact, Mr. Chairman, that we have not a quorum.

Mr. Vedder — This is the same motion that was already pending and declared to be debatable.

The Chairman — The Chair misunderstood the motion. It is debatable, and the Chair recognizes Mr. Putnam.

Mr. Putnam — Mr. Chairman, from what I have heard on this floor I judge that only the evil that men do or legislative bodies do lives after them. Apparently there is no good thing in any of our boards of supervisors, in any of our Legislatures, in any of our common councils, or in any of those bodies who have the right to fix salaries. Now, Mr. Chairman, I believe that it would be unwise in the extreme to insert any provision in the Constitution which would prevent, if the city of Buffalo desires to do so, that city from increasing the salaries of those who are in its fire department. I will say: suppose that the patrolmen on the police force, who to-day work eight hours, should, by rules and regulations, be required to work ten or eleven hours a day, would there not be good reason with that increase of work imposed upon them to raise the salaries? Should you go on in all the different branches of civic government, in clerkships; take the medical department of the city; suppose there should come an epidemic of some kind or character; suppose that for months the city physician should be required to do extra and hard work. As it is to-day in the city of Buffalo, the city physicians receive salaries amounting to about $600 a year. They do comparatively little, but they may be called upon to do a great deal; and, if they did, it would be no more than justice to compensate them for that extra work. Now, Mr. Chairman, I think that if we are opposed to imposing responsibility and the duty of citizenship and of legislative responsibilities upon those whom we elect to our different boards and bodies of legislation, that then, logically, it becomes our duty, as delegates to this Convention, to do away with all these different bodies; have no Legisla-

ture of the State of New York; make a provision that the Governor of the State shall appoint half a dozen men to attend to all the duties now performed by the Legislature. I cannot conceive, I cannot believe, that any man who thinks of this matter in a reasonable way, can come to any other conclusion than that this question should not now be reported to the Convention for its action. I think that a few hours more of rest, and a few hours more of thought upon the proposition, will lead members to feel that they do not wish to carry out the logical conclusion of this proposition, and do away with all that has been enacted that must be done away with.

Mr. Mulqueen — Will the gentleman permit a question?

Mr. Putnam — Certainly; I will be very pleased to have the gentleman from New York put to me some questions.

Mr. Mulqueen — May I ask the gentleman if he thinks we will understand this question better this evening or to-morrow than we do now?

Mr. Putnam — I think we will understand it much better to-morrow, Mr. Mulqueen. I believe that we will understand it better to-morrow.

Mr. Mulqueen — Why do you think so?

Mr. Putnam — Because our brains are now tired, and we have had the committee work to do. (Laughter.) It has been said by one of the great philosophers that one man can do successfully no more than three hours of intellectual labor in one day (laughter), and I commenced early this morning. I attended a committee meeting at nine o'clock. I have been on the *qui vive* ever since.

President Choate resumed the chair.

The President — Mr. Putnam will continue his remarks after the recess.

The President announced that the Committee on Education would meet at half-past nine o'clock to-morrow (Saturday) morning, and the hour of five o'clock having arrived, the Convention stood in recess until eight o'clock P. M.

EVENING SESSION,

Friday Evening, August 17, 1894.

The Convention resumed its session at eight o'clock, the pending business being the consideration by the Committee of the Whole of the proposed amendment, 378, introduced by Mr. Mereness. Mr. Cookinham in the chair.

The Chairman — Mr. Putnam has the floor.

Mr. Putnam — Again, Mr. Chairman, I feel that we should be satisfied to incorporate into the Constitution such amendments as seem to us only necessary, because of changed conditions which a half century has wrought. I feel that there are many proposed amendments which may or may not be of themselves wise, that it would not be well to incorporate into the Constitution now, and I feel that this is one of them. I feel that the evil is not so great, if it exists at all, as complained of, that makes it necessary for us now to act on this matter. I, therefore, move that the committee rise and report progress and ask leave to sit again.

Mr. Hedges — Mr. Chairman, I rise to a point of order.

The Chairman — The gentleman will state his point of order.

Mr. Hedges — My point is that there is not a quorum present.

The Chairman — The Clerk informs the Chair that there are only sixty-five present, and that is not a quorum.

Mr. Acker — I ask that the Clerk count again, Mr. Chairman, as there were a number of members in the smoking-room who have come in, and I think there is now a quorum present.

The President resumed the chair.

Mr. Dean — Mr. President, I move that the bar of this Convention be closed.

Mr. Cookinham — Mr. President, the Committee of the Whole reports that there is not a quorum present.

The President — The President hears the report of the Committee of the Whole, and the Clerk will call the roll of members.

Pending the roll-call, Mr. Dean moved that the further calling of the roll be dispensed with, as a quorum was present.

The President — As a quorum have already answered to their names, Mr. Cookinham will again take the chair.

Mr. Cookinham took the chair.

Mr. Putnam — Mr. Chairman, I ask leave to withdraw my

motion, and move that the Committee of the Whole report progress and ask leave to sit again.

The Chairman — The Chair recognizes Mr. Fuller.

Mr. O. A. Fuller — Mr. Chairman, I am opposed to this motion, because I believe in home rule, and I supposed that the delegates from our great cities believed in home rule until this afternoon. They came here wanting this Convention to give them an amendment which would provide home rule for them, and this afternoon they came in here and asked us to vote for an amendment which would take home rule from our great cities. I, for one, believe this amendment would work great injury to our rural districts. We have some 340 odd incorporated villages in our State. They all have their village government, and, I believe, they should have a right to say what salaries they shall pay their officials, and when to increase or diminish them. I know that in our own county ten years ago, if this amendment had prevailed, it would have worked great injury. That was when oil was first discovered in our county. At that time crime increased ten-fold. The district attorney of the county had to perform ten times the amount of duty that he had before. That was the first year of his election. The board of supervisors that convened in the fall raised the district attorney's salary, as they had a right to do, and as it was their duty to raise it. Now, I believe that the board of supervisors of our county know better than this Convention when to increase or diminish the salaries of the county officers. I would say to the city delegates that before they come here and ask this Convention to give them home rule they had better go back to their cities and turn the corrupt officers who are thus burdening the taxpayers out of office. Therefore, Mr. President, for these reasons I am opposed to this amendment, because I believe it would work an injury to the rural districts.

Mr. Dean — Mr. Chairman, as a member of the Committee on Legislative Powers and Duties, which reported favorably upon this proposition, I am opposed to it. My recollection now is that I voted in support of the proposition in the committee, because I believed it to be necessary to give effect to the provision already in the Constitution. I am, however, a believer in the largest possible responsibility upon the part of legislative officers. I believe in home rule within well-defined limits. I believe that the salary of officers should be fixed by the legislative body having jurisdiction of the office. I am willing to have the common council fix the salaries of municipal offices. I think the board of supervisors should have control of the salaries of county officials, and that the Legislatures

should be in control of the salaries of all offices within its own creation. If there are abuses of these powers, the people have the power to correct them, and, if they are negligent, they deserve to be taxed until they have arrived at a point where they will discharge their duties by the community. The present provision of the Constitution, forbidding the payment of extra compensation to any officer, agent or contractor, is disregarded, and it is unwise and inexpedient to introduce into the fundamental law of the State provisions which public sentiment will not sustain. As a public journalist, I have always insisted upon all officials living up to the letter and the spirit of the law, and in many instances I have laid myself open to severe criticism upon this point, public sentiment being strongly against me. A case in point I will mention. Some years ago the board of supervisors of Chautauqua county voted two hundred dollars each to two of the women employed in the county-house. They had been very diligent in the discharge of their duties; they had performed services not required of them by the perfunctory discharge of a public trust, and in equity and in justice they were fairly entitled to the money. It was, however, a violation of the express provision of the Constitution, and I felt it my duty to call the attention of the people of the county to the fact. The only result of that action was to call down upon myself the ill-will of the people interested in the transaction, and of many people who, not appreciating the motive, supposed that I had taken the action out of pure maliciousness. I believe that it is unwise to have a law which public sentiment will not enforce. It is certainly against public policy to have a provision in the Constitution which operates so unjustly, which public sentiment will not sustain in its rigid enforcement. And for this reason I shall, when opportunity affords, vote against this proposition.

I believe, Mr. Chairman, that representative government cannot be a success so long as we persist in the assumption that the people, through their responsible representatives, cannot be trusted in matters of detail. In dealing with questions of principle, it is unwise, no doubt, to trust entirely to the public sentiment of the day; popular clamor may, for the moment, lead the masses astray, but we must rely upon the ultimate patriotism and good judgment of the people, and any restriction which takes it out of a power of a representative body to do justice, can have no other effect than to weaken popular respect for the law, and in this way lay the foundation for trouble. It is, therefore, not only the duty of this Convention to repudiate this action, but to annul the sections which seek to take away from

the people, through their representatives, the power to do that which is right and just.

Mr. Cochran — Mr. Chairman, just prior to the recess, the President of this Convention asked if any delegate would cite any instance in which the raising of salaries had been an abuse, and one of the gentlemen from Kings stated on the floor of this Convention that he knew of a number of instances in the city of Brooklyn in which salaries to the aggregate amount of $25,000 had been raised just prior to an election, and that he thought they had been contributed to election funds; that he had been in the board for four years, and that he believed that had been done for several years during his term of office. That, sir, was such a startling statement to me that I have, since the adjournment of this Convention, taken pains to inquire into what is actually the fact, and I find that during the time the gentleman was a member of the board of supervisors of the county of Kings the only raises in salaries were as follows: That the counsel to the board was raised $2,000; that the chief clerk was raised $1,000; that the assistants, two in number, were raised $500 each; the clerk to the surrogate, $1,500; the superintendent of construction, $2,000, and a lot of messengers combined were raised $1,000. That makes a total of about $8,500. There may have been, however, here and there, I am frank to admit, some small raises of possibly $100 or $200. Now, sir, that comprises only the salaries which were raised, and the total amount of raise during the period to which the gentleman referred, and I am sure he is mistaken and has confounded the total amount of the salaries paid and has stated that as being the amount of the raise. Now, so far as the raising of those salaries is concerned, it may be fair also to state that they were not raised by the board of supervisors, but that the board of supervisors recommended that the salaries be raised the amounts which I have mentioned and that the board of estimate, which was made up of the several county officials, then saw fit, after inquiry as to the necessity of the raise, to authorize the proper appropriation to be made. I, for one, sir, although I may not be as old as my friend from Kings, have never yet, with possibly one exception, heard of an increase in salary which was not properly and justifiably made. It seems to me that this amendment should not prevail, and for this reason, that the only abuse which it seems to me this Convention is desirous of remedying is that of the undue and unjust interference by the Legislature with the salaries of city and county officials. Now, we have pending before this committee what is known as a home rule for cities, and one of the specific provisions of that proposed amendment is that the

Legislature shall not have any right to interfere either by raising or diminishing the amount of salaries of any of those officials, and if that amendment passes, the evil which it is so desirous to have remedied will be removed. As to the cities raising or diminishing the salaries of their officials, I do not think there should be any prohibition in the Constitution against that. If any city sees fit to raise or diminish the salaries of their officials, it should be allowed to do so, and it would be an unjust amendment for us to adopt which would prohibit a city or any other division of our State government from doing with the salaries of its officials what it deems best to do. It seems to me, for that reason, that we should not at this time adopt this amendment. If, later on, when we reject the cities amendment, if it is rejected, why it may then become advisable to adopt something which will prohibit the Legislature from interfering with the salaries of the officials, but until that time arrives, I submit that this amendment should not prevail.

Mr. Jacobs — Mr. Chairman, I made no mistake in what I said. I am generally pretty careful to be accurate in what I say, and I do not know where the gentleman (Mr. Cochran) got his information, nor do I particularly care. I know I speak from memory. The gentleman has enumerated some instances which I well remember. Those raises in salaries amounted to $8,500, according to his own statement; but the omissions that he failed to supply I recall perfectly. The salaries of the clerks in the district attorney's office were raised; the salaries of the clerks in the county treasury office were raised; the salaries of the clerks in the office of the commissioner of jurors were raised; the salaries of the officials in the County Court and in other courts were raised; and then there were in one day some eighteen attaches of the board of supervisors, comprising keepers, assistants, custodians, engineers, firemen, scrub women, and all the way down the line, were raised, and, while I may in round figures have said $25,000, the amount may have been a little more or a little less, but it was about substantially as I have stated. When you come to foot up the total, taking the $8,500, which the gentleman has admitted, and putting the rest in, you will see it comes very close to $25,000. The last thing they did — and, I think, it was the last time I had the pleasure of voting against one of those schemes — was to raise the salaries of those eighteen employes in one day.

Mr. C. B. McLaughlin — I would like to ask Mr. Nicoll for information, simply that I may vote right upon this question, whether or not his amendment will apply to policemen and firemen?

Mr. Nicoll — I consider policemen and firemen as public officers, and I do not think their compensation should be increased during their terms of office.

Mr. C. B. McLaughlin — Do you intend this amendment to apply to them?

Mr. Nicoll — Yes, sir; and there is no trouble whatever in keeping their ranks filled at the salaries paid, and if we want any policemen or firemen we can get them at the same price. There are a thousand applicants at the present time for every vacancy in the police and fire department.

Mr. Tekulsky — Mr. Chairman, I wish to state here that from the record of the civil service commission of New York county, it appears that every applicant for appointment in the New York fire department who can pass the civil service examination is generally appointed, no matter who he is or what he is, so long as he has passed that examination. Now, when it is said that the city can get anybody and everybody to become firemen in New York county, I say that it is not so, and I know it is not so. I know that people have tried to pass the civil service examination and have failed, and they could not be appointed. But those who can pass are as a rule appointed. And why? Because that is one of the positions where a man takes his life in his hands and risks it at almost any moment; he is the protector of lives and property. When it is said that this amendment will cover firemen, I claim that this amendment ought to be voted on at once above all other things. When it is said that they can get all the people they want to fill positions as firemen in New York, I claim that is not so, because the civil service records of New York county will show that no man who has ever passed a civil service examination has failed to be appointed, who desires to be sworn in as a fireman.

Mr. Marshall — Mr. Chairman, this question is a very important one, and I am somewhat surprised to hear Mr. Nicoll claim that he understands the words "public officer," as contained in this proposed amendment, to include policemen and firemen. We should have no misunderstanding upon this subject.

Mr. Choate — I would like to ask Mr. Marshall a question, with his permission.

Mr. Marshall — Certainly, sir.

Mr. Choate — I would ask what classes he believes to be embraced in the words "servants or agents?"

Mr. Marshall — I consider that a policeman or a fireman is included in the word "agent."

Mr. Choate — They are there in your amendment.

Mr. Marshall — They are in the present Constitution.

Mr. Choate — Not as applied to this.

Mr. Marshall — Oh, yes. The present Constitution, section 24, article 3, reads as follows:

"The Legislature shall not, nor shall the common council of any city, or any board of supervisors grant any extra compensation to any public officer, servant, agent or contractor."

The proposed amendment introduced by Mr. Nicoll merely changes the language so that it reads:

"No extra compensation shall be granted to any public officer, servant, agent, or contractor with the State or any civil division thereof."

Now, so far as that provision is concerned, there is no change except in phraseology in the proposed amendment now before us for consideration. The additional words which have been inserted in this proposed amendment are: "nor shall the salary or compensation of any public officer be increased or diminished during the term of office for which he was elected or appointed."

Now, the question which was asked was whether the words "public officer," as used in the last clause, having relation merely to the subject of the increase or diminution of compensation, in any way includes firemen and policemen. I claim they do not. It has been adjudged that they do not. I desire to call attention to the case of the trustees of the Firemen's Exempt Fund v. Roome (93 N. Y., 113), in which case, I believe, the President of this Convention was counsel, in which Judge Finch says, speaking of the firemen of the city of New York:

"The precise relation of these firemen to the municipality and the State is not easy to describe. They were not civil or public officers within the constitutional meaning, and yet must be regarded as the agents of the municipal corporation. Their duties were public duties; the service they rendered was a public service; their appointment came from the common council and was evidenced by the certificate of the city officers; they were liable to removal by the authorities which appointed them; and were intrusted with the care and management of the apparatus owned by the city. They were, at least, a public body, and, perhaps, are best described as a subordinate government agency."

Again, I desire to call attention to a number of cases which are

collated in Throop on Public Officers, in section 12 of that work, in which the author says, citing various authorities:

" In the following cases it has been held that the particular person, whose status was in question in each case, was not a public officer, either generally or within the meaning of particular statutory or constitutional provisions, to wit, a sheriff's special deputy, a member of a board of commissioners to fund the floating debt of a city," etc. He cites, People v. Pinckney (32 N. Y., 377), and the cases which I have already referred to, in which the opinion was written by Judge Finch; N. Y. Fire Department v. Atlas Steamship Company (106 N. Y., 566); Shanley v. Brooklyn (30 Hun, 396), and Mangan v. Brooklyn (30 Hun, 396), and I have thought it important to have this question set right, because if this provision should be passed, there ought to be no question in the minds of any of us as to what we are voting upon. The fact that in the first clause we speak of " public officers, servants and agents," and in the latter clause, we speak of " public officers," and not of servants or agents, is to me conclusive upon the interpretation of " public officers," and certainly indicates that policemen and firemen are not included.

Mr. Mulqueen — Mr. Chairman——

Mr. Mereness — Mr. Chairman——

The Chairman — Mr. Mulqueen has the floor.

Mr. Mereness — I was about to make a motion, which I think will facilitate this matter.

The Chairman — The Chair recognized Mr. Mulqueen first.

Mr. Mulqueen — If I thought this Convention intended to refuse to cities home rule and the right to govern themselves, I should favor this amendment. The evil which I think Mr. Nicoll had in mind was to prevent, if possible, the Legislature from increasing salaries against the direct protest of the municipal authorities. It is a sad state of affairs that a Legislature should impose a burden upon a municipality against the protest of the local authorities. But, sir, I believe that this Convention intends to give home rule to cities, and, that being so, we ought not to interfere with or impair that self-government by cities with any such provision as this. If the Convention refuses to give home rule to cities and absolute control to cities over their local affairs in the matter of salaries of officials, then I will be prepared to vote for this amendment, but at present I think it unwise, and I do not think it ought to be adopted in advance of our action on the report of the Cities Committee.

Mr. Mereness — I have no desire, Mr. Chairman, to have anything put into the Constitution or submitted to the people that is not entirely proper. It seems to me, sir, that this matter is very far-reaching. It has been thoroughly discussed, so far as the merits of it are concerned, and, inasmuch as the Committee of the Whole has adopted a substitute, I would like to have the matter go back to the Convention and the substitute printed, and then, upon reflection, I think a very few moments will suffice to enable us to dispose of the matter finally, and for that purpose I ask that the committee rise and ask leave of the Convention to sit again.

Mr. Nicoll — Will you withdraw your motion for a moment?

Mr. Mereness — I will withdraw it, simply to allow Mr. Nicoll to speak.

Mr. Nicoll — Mr. Chairman, if this body of men, who are willing to forsake their private, personal and professional engagements to come and sit in this Convention, are not able to dispose of this question, why we might as well banish it from the deliberations of this Convention forever. We have with us, to-night at least, the men who have made a sacrifice of their personal and public engagements for the purpose of disposing of the work of this Convention. For my part, sir, I propose to sit here until the labors of this Convention are at an end for the purpose of disposing of its business. We ought not to abandon the consideration of any proposed amendment simply because a number of our friends think differently from ourselves and for private reasons have forsaken our deliberations for the purpose of performing private obligations or gratifying domestic instincts.

Mr. Mulqueen — Will the gentleman permit a question?

The Chairman — Mr. Nicoll has the floor. Will he give way for a question?

Mr. Nicoll — Oh, I will give way for any question from anybody.

Mr. Mulqueen — If the motion to rise and report progress on this matter be adopted, I would ask the gentleman whether we have not other amendments which may well occupy the attention of the Convention for the remainder of the evening?

Mr. Nicoll — Undoubtedly there is enough business to do, but we have taken this matter up and have been discussing it for four hours to-day, and we might as well get through with it. We have been here since three o'clock this afternoon talking on this one subject. Let us get through with something so that we may pass on to other matters.

Mr. Mulqueen — Will the gentleman permit another question?

Mr. Nicoll — Yes.

Mr. Mulqueen — Do you want this Convention to adopt a resolution which you say will cover policemen and firemen when the Court of Appeals has decided otherwise?

Mr. Nicoll — Of course I do, and I will tell you why in a moment. What is the use of postponing this until next week and then taking it up after we have all forgotten the debate of this afternoon?

Here is a very simple proposition before this body of intelligent men, ninety-one in number. Are we not able to dispose of it to-night. If we are not, let us put it over indefinitely, or until the last week of the Convention. I have sat here for weeks waiting to get something disposed of, and I have taken up a very small share of the time of this Convention, and now that we have come on the final heat, I would like to get something through with. The President himself has said that we have only a very few days left in which to dispose of any of our business. Are we obliged to dispense with conducting business simply because sixty-three members have got excuses? If they want to participate in the deliberations of this Convention let them remain here and forsake — the duty of selling land at the fee of $50. Now, I want to say that I have not the slightest interest *pro* or *con* in the result of this amendment. I care nothing what happens to it in this Convention. If you choose to say that salaries shall be increased indefinitely, it is no interest or business of mine. I took it up and advocated it simply because I thought there was a principle involved, but if the members of this Convention do not think there is any principle involved, why, decide against it. All I ask you to do for me is to listen to me while in a few brief moments I state the principle which I think is involved in the debate. So far as the city of New York is concerned, I take no further interest in it except as any taxpayer or citizen. I have held all the offices I ever expect to hold in the city of New York. I have got through holding office in that city, either legislative, executive or judicial. I have held all the offices and been tendered all the nominations that I ever expect to be tendered, and I assure you that I have no personal interest whatever in the question of holding office in the city of New York, and I beg my fellow-delegates in this Convention to at least accord to me, when I infrequently speak to this body, that amount of independence. I have no axe to grind, no interest to subserve, no man to please, and I care not whether I offend any man. I speak simply in the interest of the municipality which I represent. There has been a lot of talk

by a number of gentlemen on the floor of this Convention about home rule in the city of New York and in the city of Brooklyn, and in other parts of the State. Before the Convention concludes its debates it will be found that there is no more sincere and earnest advocate of home rule for cities than I am. But, sir, the question of home rule for cities is not concerned in this amendment. The question of home rule for villages and towns and counties is not concerned in this amendment. This proposed amendment leaves to every town, to every village, to every county and to every municipality in the State the right to choose its officers, to prescribe their duties, to make appropriations for their labor, and to fix their salaries. That is the full measure of home rule. But, after you have done that, we say to the men who are candidates for office: "Under the laws which you have established, when you accept an office, you shall receive its salary and nothing else during your incumbency." It makes no difference whether a man holds an office under the State, under the county, under the town, or under the village, when he accepts the office and assumes its obligations, and undertakes to discharge its duties, he shall receive the salary and nothing else.

What question of home rule, pray, is involved in that amendment? What do we take away from towns, cities, villages or counties? Nothing whatever. They have all the power and all the liberty to divide the duties, to prescribe them, and to fix salaries. When a candidate appears and undertakes to accept the contract which is offered him by the State, then the Constitution says to him: "You shall not receive any other salary than that which either the Legislature, or the common council, or the board of estimate, or the board of supervisors has prescribed as your compensation." Another objection that has been made to this amendment is, that the Legislature, or the common council, or the board of supervisors may prescribe extra duties, and may impose upon an official who has accepted the obligation of his office something extra to do. That was the objection urged by my friend, Mr. Burr. Now, sir, I have had some experience in that respect. I occupied the office of district attorney in the city and county of New York, and the Legislature of this State said, that in addition to the duty of prosecuting criminals, I should undertake the business of collecting the delinquent obligations of those who ought to pay collateral inheritance taxes, and during the three years that I was in office I had to perform that extra and unexpected duty. I did not ask, nor could I, for any increase of salary on that account; but I went to the Legislature and asked them to give me

an extra clerk for the purpose of performing the merely executive part of that duty, I, of course, assuming the obligations. When a board of supervisors of a town undertakes to impose additional duties, it is to be expected that they will give the official some extra aid and provide for the assistant an additional salary. There is nothing whatever in that objection. It is the merest bugbear conjured up for the purpose of defeating this wholesome amendment. Then it is said that the Constitution of 1867 emasculated the article of 1846. So it did. The Constitution of 1846 said that the Legislature shall not, nor shall the common council of any city, nor any board of supervisors, grant any extra compensation, to any public officer, servant, agent or contractor. And this is what the Constitution of 1867 said: "The Legislature shall not grant any extra compensation to any public officer, servant, agent or contractor, nor increase or diminish any compensation, except that of judicial officers, during the term of service." They not only emasculated the provisions of the article of 1846, but they included an exception in the way of judicial officers, and, I believe, that was one of the causes, distributed through the localities of the State, which helped to defeat the Constitution of 1867. What reason was there, as we look at it nowadays, for that exception? None whatever. Suppose any man should rise on this floor and propose to insert that exception now; how would he be received? Would not the common sense of this day and generation resent such a proposition? The people resented it in 1867. Something has been said in regard to firemen and policemen in the city of New York and in other cities. Mr. Marshall says that firemen and policemen are not included within the provisions of my amendment. I do not care whether they are included or not. It is all nonsense to talk about it. I tell you that during the last ten years of my life I have been importuned at least once a week to advocate the appointment of some man on the police force, or in the fire department of the city of New York, and I assure you that there are a hundred applications for every vacancy in those departments, and it requires the greatest effort and the largest amount of influence to secure such an appointment, and all the influence which I have been able to exert has only resulted in the appointment of a comparatively few men on the police force or in the fire department in New York city.

Mr. Burr — Will the gentleman permit a question?

Mr. Nicoll — Yes, sir.

Mr. Burr — Has the gentleman read from the Constitution of 1867 all that part pertaining to this matter?

Mr. Nicoll — I hope so.

Mr. Burr — Have you read section 8 of article 7, which says that the restrictions on the power of the Legislature contained in section 17, article 3 of the Constitution shall apply to common councils of cities and to board of supervisors of counties?

Mr. Nicoll — Yes, sir.

Mr. Burr — Then, sir, that could have played no part in defeating the Constitution of 1867.

Mr. Nicoll — Mr. Chairman, I am not afraid of gentlemen with political aspirations in the city of New York or gentlemen who are interested in the matter of increasing or diminishing the compensation of officials in New York.

Mr. Mulqueen — Mr. Chairman, I rise to a point of order.

The Chairman — The gentleman will state his point of order.

Mr. Mulqueen — My point of order is, that the gentleman has no right to glorify himself at the expense of another member of this Convention, and say that the member takes a position because he has political aspirations.

The Chairman — The Chair decides that the point of order is not well taken, and Mr. Nicoll will proceed.

Mr. Nicoll — I want to say to the gentlemen present that the mayor of the city of New York has told me, time and again, while I have been associated with him in discharging the duties of government in that city, that there was no more serious evil in the city of New York than the importunity by men holding office applying to the constituted authorities from time to time for an increase of their compensation. I have been by the side of the present mayor when, time after time, he has denied such improper applications of officials for an increase of the salary which the board of estimate and apportionment had provided for them.

Mr. Mulqueen — I would ask the gentleman whether what the mayor complained of was not the interference by the Legislature in the matter of salaries?

Mr. Nicoll — No, sir.

Mr. Mulqueen — Did the gentleman ever hear the mayor of the city of New York say that the authorities of the city had unfairly granted an increase of salary? Was not his protest directed against the Legislature's interfering against the direct protest of the municipal authorities?

Mr. Nicoll — That is not all, sir. The mayor has time after time, in my presence, denied the applications of officials whose salaries

were fixed by the board of estimate and apportionment for an increase. What I mean to say is this: Whatever other gentlemen in this Convention have experienced, my long personal and political association with the present mayor of the city of New York has inculcated in me an admiration for his power of resistance against the hungry horde of office holders who come up every season, for political reasons, to demand an increase in salary. He is entitled to the respect of this Convention and of the community of the city of New York, I say, for his powers of resistance in this regard. Now, sir, one of the reasons why I advocate this amendment is because there may come a time, in the near future, when a less resolute executive may hold the power of increasing salaries in the city of New York. This is a proposition which appeals to the personal experience of every delegate in this Convention. There are men here, I am aware, who have had, fortunately for themselves, comparatively little experience with these public affairs. It is certainly no discredit to any member of this Convention that he has not held an active public office in a great municipality. It is a misfortune, probably, for any man in this Convention if he has had that experience. But, speaking from the depths of a long experience and an extended observation, and a personal acquaintance with a variety of schemes, I beg to assure you that there is no one evil now existing more serious or more dangerous than that involved in the proposition which we are now considering. Nor do I discuss it purely from a municipal standpoint, for long before I came to the city of New York I was an active participant in the government of one of the counties of this State, and in one of its villages. I lived in the county of Queens, Long Island, and in the village of Flushing, and Mr. Storm will agree with me ——

Mr. Storm — We hope to get you back again.

Mr. Nicoll — Mr. Storm, who was my associate there, will agree with me that the same evil exists in the villages of this State, and it is quite as salutary for us, who used to live in the villages, to insist upon this amendment, as it is for us who now live in the larger communities of the State. There is no possible objection to be urged against this amendment. So far as the supervisors are concerned, or the common council of cities, or the board of trustees of villages, they have all the power that they ever had. They can appoint their officers, prescribe their duties, limit their powers and fix their compensation. Nothing is taken away from them. The only mandate that ought to go forth from this Convention is, that when a man under those circumstances has accepted an office he shall not be allowed to receive anything except that which the

law that he studies before he accepts the nomination and election provides, and that it shall not be changed for his benefit during his incumbency of the office.

Mr. Countryman — Mr. Chairman, I desire to emphasize the remarks of the last speaker upon this subject. This amendment is not involved to any extent with the question of home rule in the various cities and villages of the State. Now, what is home rule? As I understand it, it is the right of the people of the State to regulate their own affairs, subject to the restraints of the Constitution, and with reference to the various subdivisions or municipalities and other civil divisions of the State; it is their right to regulate their domestic affairs, subject to the laws which have conferred those powers and privileges upon them, the statutory laws of the State. Now, it is absurd, to my mind, to say that it is perfectly proper to impose restraints in the Constitution upon the Legislature, but improper to impose those same restraints upon the civil divisions of the State, the villages and the cities, the towns and the counties. All of the rights which these various civil divisions hold and have with respect to legislation or local affairs, and the right to regulate their own domestic concerns, are given them by the Legislature of the State. If some of the amendments proposed to be incorporated in the Constitution by this Convention are adopted, they will be conferred by the fundamental law, instead of by the Legislature. But certainly the people as a whole, represented in this body as a sovereign, the deputies of the sovereign will, have a right to impose such limitations and such restraints upon the Legislature, or boards of supervisors, or municipal common councils, or village boards of trustees, as under all circumstances we deem proper, and are justified by the interests of the people at large, and that is all that is proposed to be done here.

Now, I have listened with close attention to this discussion. It has been going on the entire day, and I have been surprised at some of the criticisms that have been made by some of the gentlemen from different portions of the State of those proposed amendments. I found, upon looking at the existing Constitution (the section proposed by this amendment to be changed was read in your presence here to-night by Mr. Marshall), that those criticisms, if they are entitled to any weight, were made and were pointed at the existing constitutional provision and not at the provisions contained in the proposed amendment. All that we have heard to-day from several gentlemen touching the right to interfere with or to grant extra compensation to public officers, servants, agents or contractors, is embodied in the present Constitution, and is not

affected by the proposed amendment which is now the subject of discussion here. So far as the general public officers are concerned, and so far as local officers are concerned, this amendment only proposes to add and to include salaries as well as compensation. That was undoubtedly the intention of the framers of the present Constitution, as appears by the debates of the Convention which formulated the existing provision. But the courts, by the stringent application of an artificial rule of statutory construction, limited that provision to compensation strictly, so-called, and excluded the salaries of public officers. We now propose to supply that defect by including in terms what was supposed to be included in the original provision (and certainly it comes within the principle of the restriction which is included in the Constitution), and, unless this proposed amendment is adopted, the existing provision should be repealed, for there is no reason in prohibiting extra compensation and allowing an unlimited increase in public officers, local and general, throughout the State.

Now, sir, as my name indicates, I was born and bred, and lived the most of my life in the country, and if I should be favored with a limited extension of life, I propose to live again and to die there. I am quite as familiar with the proceedings in the villages of the State (particularly in the central portion of the State), with the proceedings of boards of supervisors, as I am with that of the larger municipality, this capital city in which we are now assembled, and I assert, in view of my experience there, that the same evils exist (on a lesser scale, of course) in all of these local boards that we all recognize in the larger municipalities and in the legislative hall, and the same reason, that has prompted the adoption of this restraint upon the exercise of legislative will, applies in full force to those local bodies. Is there any reason, sir, why we should adopt provisions of this character restraining the action of the Legislature, and not extend these restraints to these lesser municipal bodies that are created by the Legislature? The one necessarily involves the other, and when we have adopted the provision as to one, we have adopted a principle which should be extended as far legislative hall, and the same reason, that has prompted the adoption as the evil exists. I submit, Mr. Chairman, that the amendment is right in principle and should be extended, without any further discussion on the subject.

Mr. Barhite — Mr. Chairman, I am in favor of this amendment, but it seems to me that there has arisen in the minds of some of the members of this committee a doubt as to just how far this amendment extends, and as to just what classes of officers it may apply. I

do not believe that any member of this committee desires to vote upon a question that he does not thoroughly understand; and, while I am as anxious as anyone to finish the business of the Convention and not delay matters, yet, I think, it would be the part of wisdom to take more time to consider this amendment. I therefore move that this committee do now rise and report progress, and ask leave to sit again.

Mr. Maybee — Mr. Chairman, I rise to a point of order. I do not know whether I am correct or not, as I do not claim to be much of a parliamentarian, but there is a motion now pending to report this amendment favorably to the Convention, and recommend its passage. I desire to inquire whether, the motion being before the Convention, this motion is now in order?

The Chairman — The Chair holds that a motion to rise and report progress is always in order.

The Chair put the question on the motion of Mr. Barhite, that the committee rise and report progress, and ask leave to sit again, and it was lost.

Mr. H. A. Clark — Mr. Chairman, previous to the sitting of this Convention, the New York "World" sent out to each delegate elected to this body a printed letter in which it asked several questions, among which was one as to whether the Convention would make a new Constitution, or propose amendments to the old one. Another question was, how long the Convention would sit. One member of the Convention — and I do not recollect who it was — in his answer, which was printed in the "World," said that after proposing certain amendments, he thought the rest of the Constitution would not need amendment, but it would need thorough discussion. Now, Mr. Chairman, unless we are careful, the Constitution will get the thorough discussion and no amendments. It seems to me that this question should be determined and decided to-night, and, while I do not wish to go into a discussion of the merits, I do say that I am in favor of the amendment. Certain delegates have spoken here in opposition to the amendment, and have stated as their only reason that it interferes with home rule in cities. I am a member of the Committee on Cities, and I wish to say to those members who oppose this amendment on that account, that in my opinion the term "home rule in cities" is a sham and a delusion, and if they insist on the amendments to the proposition of the Cities Committee as to home rule, they will get from this Convention, in my opinion, no bill for home rule in cities, and,

therefore, they do not need to oppose this amendment on that account.

The Chairman — The question before the committee is on the motion of Mr. Acker, that the committee do now rise and report this amendment to the Convention, and recommend its passage.

The Chair put the question on this motion, and it was determined in the affirmative by a vote of fifty-four ayes to fifty-two noes.

The President resumed the chair.

Mr. Cookinham — Mr. President, the Committee of the Whole has had under consideration proposed amendment No. 378, to amend section 3 of the Constitution, relative to public officers, and have gone through with the same, and made some amendments thereto, and have instructed their chairman to recommend its passage.

The President — The question is upon agreeing with the report of the committee.

Mr. Lincoln — Mr. President, I call for the ayes and noes.

The President put the question, and the call for the ayes and noes was sustained.

The President — Delegates, as their names are called, who are in favor of agreeing to the report of the committee, favorable to this amendment, will say aye, and those opposed, no. By rule 6, every gentleman is obliged to respond to the call and vote upon this question.

Mr. Blake — Mr. President, I beg to be excused from voting, and will briefly state my reasons. There has been some discussion as to whether this amendment conflicts with the principle of home rule or not. It seems to me that it violates the very essence of home rule, and it aims a blow at the very heart of home rule. There have been several definitions of home rule, and I desire to give my definition of it, which is this: Let the people of each locality manage their own affairs without interference from outside quarters, or, at least, let there be a minimum of interference. Yet the State invades the domain of home rule and undertakes to say to villages, towns and cities, how much salary they shall pay their officials, servants and agents. In the city of New York, if the authorities see fit to increase the salaries of any of their officials, why should they not be allowed to do so? It seems to me that gentlemen have misconceived this question entirely. Mr. Marshall stated in his very interesting remarks that it was a question of phraseology. Why have we

wasted half a day here in the question of phraseology, and not in the consideration of a question of principle? It seems to me that we had better be doing some more important business. For these reasons, Mr. President, I withdraw my request to be excused from voting, and vote no.

Mr. Powell — Mr. President, I asked to be excused from voting, and will occupy a moment in stating my reasons. I have not participated in the debate on this subject, although I have watched it with great interest. At first I was inclined to vote in opposition to the amendment, and afterwards saw reasons to change my views. Then my mind again became disturbed as to whether or not this might affect the status of policemen and firemen. I can very readily conceive of circumstances where it might be just and proper that their salaries should be raised during their terms of office. But after a careful examination of the Constitution as it now is, and of this proposed amendment, and after consultation with gentlemen on the floor of this Convention, in whose legal judgment I have great confidence, I have come to the conclusion that it would be impossible to apply this amendment to that class of public servants, believing that they are public servants and not public officers. My mind having been set at rest on that score, that the status of policemen and firemen will not be affected, I am of the opinion that the proposed amendment is a step on the highway toward reform, that it will remedy great abuses which have existed in the past, and which are liable to increase in the future. I, therefore, withdraw my request to be excused from voting, and vote aye.

Mr. Putnam — Mr. President, I move that the names of absentees be called.

The President — The rule requires every gentleman in the House to vote, unless excused. The Secretary will call the names of absentees.

Mr. T. A. Sullivan — Mr. President, I ask to be excused from voting for the reason that I do not understand the scope of the proposed amendment, and I, therefore, cannot conscientiously vote either for or against it.

The President put the question on the request of Mr. Sullivan that he be excused from voting for the reason stated, and the request was granted.

The President — Mr. T. A. Sullivan is excused from voting by the grace of the Convention.

Mr. Tekulsky — Mr. President, I would like to know how Mr. Speer is recorded on this vote?

Mr. Speer — I vote no.

Mr. Cochran — I would like to know how Mr. Woodward is recorded?

Mr. Woodward — I vote no.

Mr. Deterling — Mr. President, I desire to change my vote from "aye" to "no."

The report of the committee was disagreed to by the following vote:

Ayes — Messrs. Abbott, Acker, Ackerly, Baker, Barhite, Barrow, Brown, Cassidy, Clark, G. W., Clark, H. A., Countryman, Davis, Dickey, Emmet, Floyd, Francis, Fuller, C. A., Galinger, Hamlin, Hecker, Hedges, Hill, Jacobs, Johnson, J., Kerwin, Kinkel, Lewis, C. H., Lyon, Mantanye, Maybee, McDonough, McIntyre, Mereness, Morton, Nicoll, Nostrand, O'Brien, Parker, Pashley, Phipps, Powell, Pratt, Redman, Rogers, Schumaker, Steele, W. H., Storm, Sullivan, W., Tucker, Turner, Vedder, Veeder, Vogt, Wellington, Whitmyer — 55.

Noes — Messrs. Alvord, Barnum, Blake, Burr, Cady, Campbell, Chipp, Jr., Church, Cochran, Cookinham, Crosby, Davenport, Davies, Dean, Deterling, Doty, Durfee, Frank, Augustus, Fraser, Fuller, O. A., Giegerich, Gilleran, Goeller, Green, J. I., Hawley, Hirschberg, Holcomb, Holls, Lincoln, Manley, Marks, Marshall, McArthur, McCurdy, McKinstry, McLaughlin, C. B., McLaughlin, J. W., McMillan, Meyenborg, Moore, Mulqueen, Nichols, Osborn, Parkhurst, Peabody, Peck, Platzek, Putnam, Root, Sandford, Smith, Speer, Steele, A. B., Tekulsky, Titus, Williams, Woodward, President — 58.

The President — The report is disagreed to, and the amendment defeated, by a vote of fifty-five ayes to fifty-eight noes.

Mr. G. W. Clark — Mr. President, I ask to be excused for to-morrow, owing to pressing business at home.

The President put the question on the request of Mr. Clark, and it was granted.

Mr. Nostrand — Mr. President, I ask to be excused for to-morrow.

The President put the question on the request of Mr. Nostrand, and it was granted.

Mr. Kinkel — Mr. President, I desire to be excused from attendance on Monday.

The President put the question on the request of Mr. Kinkel, and the request was granted.

Mr. J. I. Green — Mr. President, I rise for information. I would like to know how many members are excused from attendance to-morrow and also on Monday?

The President — Forty-four have been excused from attendance to-morrow, and thirty-five for Monday. The Convention will now proceed with the call of general orders.

The Secretary called general order No. 8, introduced by Mr. Lauterbach.

General order No. 8 was not moved.

The Secretary called general order No. 19 (printed No. 386), introduced by Mr. Roche, to amend section 18 of article 3 of the Constitution, relating to special or local laws.

General order No. 19 was not moved.

The Secretary called general order No. 20 (printed No. 308), introduced by Mr. McKinstry, to amend article 3, in regard to taking saloons out of politics.

Mr. McKinstry — Mr. President, it is so late that I dislike to move that, although I am ready, and I would like to have it made a special order for to-morrow morning.

Mr. Tekulsky — Oh, no; let us dispose of it now.

Mr. McKinstry — Very well; I will move it now.

The President — Mr. Hawley will take the chair.

The Convention then went into Committee of the Whole on general order No. 20, Mr. Hawley in the chair.

The Chairman — The Convention is in Committee of the Whole on general order No. 20.

Mr. McKinstry — Mr. Chairman, for the purpose of debate I will move to strike out the enacting clause. The committee has changed this amendment somewhat from the form in which I drew it by inserting a proposed uniform tax, but I do not know that I object to it particularly on that ground. I can explain the amendment to the Convention in a few minutes. The objects of this proposed constitutional amendment are three-fold: First, to do away with the disgraceful condition of the State recognizing a business as an evil, and then allowing it to continue by payment of a certain fee, expressly providing that the consent is given in consideration of that fee. The second object is, a measure of justice to the liquor dealers. If their businss is right and proper, why

should it not be treated like the business of other citizens? When a community votes that it is desirable to have liquor sold in its midst, wherein is the consistency of saying that one man may sell, and another may not, and leave to some political board the decision as to who may sell and who may not? A special tax is not a license, nor a condemnation of the business. There are already special taxes in this State; for instance, the tax upon the organization of corporations, the tax upon their profits, the tax upon inheritances, collateral and direct. All these special taxes are imposed with a view to aiding the general taxpayers of the State, but never on the ground of permitting an evil. The third object is to do away with one of the greatest sources of corruption in our politics, a corruption that must, by the very constitution of human nature, become more and more dangerous and oppressive. Pause and consider the enormous power of excise boards in this State. There is no other body in all the State endowed with such stupendous, arbitrary power, limited solely by their own discretion or caprice. There was a law allowing appeals from their decisions to the Supreme Court, but that court by no less than half a dozen decisions, on appeals brought in different parts of the State, decided only last year that the duty of reviewing the action of excise boards, in matters left to the discretion of such boards, could not be imposed upon judges, according to the Constitution, and the decisions of those judges being uniform in conclusion and unanimous throughout the State, there is no question but that they are correct. Hence the excise board of every town and city remains absolutely supreme and final in its power, having in its control franchises which in the larger cities may be worth millions of dollars in the aggregate, and the men who seek the favors of such boards must be prepared to submit to any exactions the board may desire to impose. I claim that it is un-American to give any body of men such power over the means of livelihood of a large number of citizens.

"All that a man hath will he give for his life," and the name is true of his means of life. I claim that human nature should never be put to the test of exercising such power under a government alleged to have regard for the rights of the individual. The revelations of investigations in our large cities, the struggles of political parties and factions to get control of excise boards, and the efforts of individuals to be elected to the office of excise commissioner all point to one fact, that human nature is not equal to such a test of unrestrained power. To put it plainly, the man who has the "pull" gets the license, and he can only keep it by surrendering his political rights and submitting to whatever political and personal exactions

the party in power may demand. No party, either Republican or Democratic, should ever be vested with such power. The next step from political exactions is personal exactions, and I am told that even in small towns, when the excise commissioner comes into a place which does business by his permission, the cigar case is open to him, and whatever he chooses to order is "hung up," to be paid for at his august convenience. The whole of code license is intrinsically wrong. I have heard this argument from hundreds of pulpits, and I have never heard it answered. If liquor selling is morally wrong, no payment of a license or indulgence fee can make it right. If it is right, all men have an equal right to engage in it upon equal conditions. Thousands of conscientious, Christian voters have joined the Prohibition party upon this statement of the case, because they could not justify the license system, or uphold any party that favored either high or low license. Of the two, high license is far the more obnoxious to them. On the other hand, thousands of other voters have been controlled in the interest of political parties by such parties having the control of excise boards in large cities, giving them power, not only to demand the utmost political efforts of certain dealers, but also to raise vast sums of money for political purposes. This condition is liable to be true of one party in one city and of another party in another city, or of different parties in the same city at different times. Therefore, I do not propose this measure as a partisan scheme, but simply for the advancement of public morality and purer politics. While the tax authorized by this amendment would, no doubt, be higher than the present license fees in most places, I believe most liquor dealers would prefer to pay it and be relieved of all other assessments. It is simply a question of turning their present contributions to political committees and political strikers into the public treasury.

Regulation of the traffic as to hours of sale, general conduct of the business, also its location, with reference to school-houses and churches and residence blocks, would be as feasible as now. The laws would be general and bear upon all alike.

Mr. Chairman, I should not have the assurance to propose so radical a revolution as I have indicated, upon mere theory. It was suggested to me by interviews with citizens of another State. Those citizens of Ohio, strong temperance men, have praised their system to me in earnest terms, and yet I understand that the liquor dealers of that State are now satisfied with it for the reasons I have mentioned.

I will present a little testimony from Ohio. I read extracts from correspondence of the New York Evening Post. "It is almost needless to say that this measure (the Dow law) was fought in the courts with great bitterness. The saloon-keepers of the State were solidly organized, contributions were made by all for a litigation fund, and every phase of the law was tested in the Supreme Court. That body had a Republican majority, however, which steadfastly upheld the view championed by the party that a tax law was not a license within the meaning of the Constitution. Within a year and a half the agitation died down, and then the Legislature amended the Dow law by making the tax uniform and fixing the amount at $250 a year. It also changed the manner of distributing the tax so that two-tenths of it now go to the general revenue fund of the State, three-tenths to the municipal police fund, three-tenths to the general fund of the city, and the remaining two-tenths to the poor fund of the county. The aim of the divisions is, as far as possible, to apply this tax toward paying the expenses which the liquor business entails upon the community and commonwealth. The public generally very strongly approve the plan, and no law now on the statute books has a firmer hold upon public favor than this tax law. No general assembly would dare repeal it."

Besides the amendment of the Dow law, the General Assembly, on March 3, 1888, enacted a local-option measure by which townships and villages, outside of any municipal corporation, can prohibit, by popular vote, the sale of liquor within their limits. One-fourth of the electors must petition the trustees of the township or council of the village for the privilege of a ballot on the local prohibition of the traffic, and in the event of a majority of the electors voting for such prohibition proper record is made which is *prima facie* evidence that the sale of liquors in the township or village is unlawful. A ratable proportion of the Dow tax is returned to a saloon-keeper whose place is closed by local option. The penalties for violating local-option ordinances range from $50 to $500 fine, and imprisonment in the county jail not to exceed six months. The councils of the smaller cities also have power to pass a local-option ordinance and close all saloons. In several cities, such as Alliance and Painesville, this has been done, though the results have not been satisfactory in either case named. Township prohibition through local option has resulted in giving the State several hundred "dry" townships, and has, undoubtedly, reduced the amount of liquor consumed and been a benefit to the localities in question.

The constitutional barrier has prevented an account being taken of the character of the liquor dealer. Any man can sell liquor in

Ohio who can pay the tax, or can induce some brewer or distiller to make him his agent and to pay the tax for him. Notwithstanding the failure of the law to require good character in the dealer, it cannot be doubted that the general result of the tax has been to improve somewhat the character of the men in the business. It has not closed all the groggeries of the slums, but it has driven out a few of them. The smaller number of saloons has lessened the temptation to drink, and proved of practical value from a strict temperance standpoint. This is the general opinion of the public. It goes far towards proving the "character" clause of license laws in other States of no great value.

One great advantage of the Ohio tax system over the license laws of other States is that all excise boards are abolished. In the forty years the present Constitution has been in operation, Ohio has not known what a licensing board was, with its train of political effects. All the tax enactments, the Pond, Scott and Dow laws, contemplated the same simple but effective arrangement of putting the fee upon the basis of all other taxation. Or, rather, it is freer from all suspicion of political influence than the other subjects from which revenue is raised, because there is not even a board of equalization to be influenced or a change of valuation to be striven for. The assessor returns the number of saloons and their proprietors, as he does the number of horses or any other item of taxation. The auditor is under heavy bonds to report these to the treasurer in the same manner as property, and the liquor dealer has no appeal or alternative but to step up and pay the fee regularly every six months. Any man who can pay the tax can sell liquor, but there is very little chance for liquor dealers to escape the tax, except, possibly, a few drug stores, and those even for no great length of time. The granting of licenses cannot possibly be the source of any political influence, for the good reason that the receipt for the tax, without which liquor cannot be sold, is, in the usual sense of the word, not a license. There is, accordingly, nothing in the law which permits a groggery to be closed, providing its proprietor has paid the tax. But, if he sells to minors, to intoxicated persons, or opens on Sunday, he can be heavily fined, and for the latter offense imprisoned also."

This is the editorial comment of the "Post" of June 3, 1893: "For some time past we have been impressed by the conviction that Ohio was having less trouble with the liquor problem than any other large State, and that its experience must be worthy of more general attention from the country than it has hitherto received. We have, therefore, secured from an intelligent correspondent in

Cleveland a history of the struggle which culminated in the adoption of the existing Dow Tax Law, and a statement of its operation. The letter in question is published on another page, and should be read by everyone who is interested in the subject of liquor legislation.

"The prohibition wave that swept over the country a generation ago resulted, among other things, in the incorporation in the Ohio Constitution, in 1851, of a provision that 'no license to traffic in intoxicating liquor, shall hereafter be granted in the State.' The consequence of this was 'free rum throughout Ohio.' A dozen years ago it was estimated that there were more than 16,000 places where liquor was sold in a State which forbade, by its fundamental law, any license to such traffic.

"Popular sentiment gradually rose in protest against this disgraceful state of things, and, in 1882, an attempt was made to put some restriction upon the traffic by a tax, as a license fee was forbidden by the Constitution. The Supreme Court, however, declared the measure unconstitutional, on the ground that the 'constitutionality of a statute depends upon its operation and effect, and not upon the form it may take,' and, as the tax law was, in effect, a license, it contravened the Constitution and was invalid. A second law of the same nature was also annulled by the courts. But public sentiment steadily crystallized in favor of the tax system, and in 1886 a measure, known as the 'Dow Law' was passed, which the Supreme Court allowed to stand, the judges arguing this time that a tax was not a license within the meaning of the Constitution. The law now seems to be firmly entrenched upon the statute book and nothing short of a revolution in popular sentiment will lead a Legislature to repeal it or a court to declare it unconstitutional.

"The law imposed a tax of $250 a year upon every saloon-keeper, and any man can sell liquor who can pay the tax, or who can induce some brewer or distiller to make him his agent and pay the tax for him, which is a very common practice. The number of saloons paying the tax is now about 11,000 — a much smaller number than the common estimate of unlicensed saloons in the free-rum era — and the total revenue last year was $2,683,939. The amount of tax, which was at first $100 for wine and beer saloons, and $200 for places where 'hard drinks' were sold, was increased, in 1888, to a uniform figure of $250. One immense advantage of a tax law over the license system is the elimination of political influence and pecuniary corruption."

You probably noticed, Mr. Chairman, that the income derived from the operation of the Dow law in Ohio was nearly $3,000,000 in

one year, and it may be quite that sum now — one-fifth going to the State treasury, the rest to the uses of the locality where it was paid. In this State the same tax rate on liquor dealers would produce at least $5,000,000, and many of the liquor dealers then be burdened less than they are now. Could any legislation be authorized that would be more acceptable to the vast body of taxpayers in this State?

This is a great subject, Mr. Chairman, and I do not wish any vote to be taken upon it at this time. I shall give way to Mr. Tekulsky, who wishes to be heard. After he has concluded, unless some other member desires to speak, I shall submit an amendment to my proposition, guaranteeing local option, and will then move that the committee rise and report in favor of recommitting the proposition and that amendment to the Committee on Legislative Powers, without instructions, so that they may report it again, with the additional amendment or not, as they see fit. Meanwhile I commend the subject to the thoughtful consideration of the delegates, and I trust it may lead finally to some such business-like adjustment of the relations of the State to the liquor traffic as I have suggested — some measure for the relief of the taxpayers of the State, for the purification of our politics, and still more important, that will banish the word "license" from our Code — a word that is exceedingly obnoxious to a large number of conscientious, Christian people.

Mr. Tekulsky — Mr. Chairman, owing to the fact that there are only four minutes left of our time in which to answer Mr. McKinstry and go into Convention again, and as long as we are here now, we can dispose of this matter in another half hour, can we not dispose of it to-night?

The Chairman — That cannot be done without a motion.

Mr. Tekulsky — Then, sir, I move that we do now rise and report that we desire an extension of time for this evening.

Mr. McKinstry — Could we not have this subject come up as unfinished business to-morrow morning?

The Chairman — I do not think any such motion can be made in Committee of the Whole.

Mr. Tekulsky — Mr. Chairman, I wish to change my motion, and I desire to move that the committee do now rise and report progress and ask leave to sit again.

The Chairman put the question on this motion, and it was determined in the affirmative.

The President resumed the chair.

Mr. Hawley — Mr. President, the Committee of the Whole have had in consideration proposed constitutional amendment No. 387, entitled "To amend article 3 of the Constitution in regard to taking saloons out of politics," and have made some progress with the same, but not having gone through therewith, have instructed me to state that fact to the Convention, and ask leave to sit again.

The President put the question on agreeing to the report of the Committee of the Whole, and it was agreed to.

The President — Gentlemen, the report is agreed to, and the Convention stands adjourned until to-morrow morning at ten o'clock.

Adjourned to Saturday, August 18, 1894, at 10 A. M.

Saturday Morning, August 18, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, at the Capitol, Albany, N. Y., Saturday morning, August 18, 1894.

President Choate called the Convention to order.

The Rev. John G. Henry offered prayer.

Mr. Acker moved that the reading of the Journal of Friday, August seventeenth, be dispensed with, and that it stand approved.

The President put the question on Mr. Acker's motion, and it was determined in the affirmative.

Mr. Hedges — Mr. President, I have attended the Convention at every session, except one. I have sat here this week feeling that in justice to my health I should not have done so, and I ask, in order to be placed under a physician's care, to be excused this afternoon and on Monday.

The President put the question on the request of Mr. Hedges to be excused from attendance, and he was so excused.

Mr. Vedder — Mr. President, I would like to ask a question, upon the answer to which I would like to predicate a motion, and that is this: I would like to ask the President what is the status of the amendment which was under consideration in Committee of the Whole last evening, general order No. 14, printed No. 378, in regard to extra compensation to public officers?

The President — It was defeated after being reported favorably by the Committee of the Whole, by a vote of fifty-four to fifty-two.

Mr. Vedder — That is, the report of the Committee of the Whole

recommending its passage was not adopted. Now, in what condition does that leave the proposition?

The President — It was declared by the Chair to mean the defeat of the proposition. The Chair came to that conclusion upon the examination of the rules.

Mr. Vedder — Now, Mr. President, I make this motion, to reconsider the vote by which the report of the Committee of the Whole was defeated, for the purpose, if carried, of having the proposition referred back to the Committee on Legislative Powers and Duties, which reported it, and I will state my reasons. I think the proposition is still on general orders. This seems to be the condition of it: It was reported favorably, the favorable report agreed to, and it went into the Committee of the Whole. That is the regular order which such propositions always take. It was thus traveling on its course along this vale of life somewhat tumultuously, it is true, and finally upon its progress it received a blow, which, in the language of the ring, "put it to sleep." It is not, however, "out of the ring," in my opinion; it is simply in a sort of parliamentary trance, it is inactive. But I am not disposed to contend with the President upon his ruling, and will take the other course, which is certainly open, and that is to move a reconsideration of the vote by which the report of the committee was disagreed to, for the purpose, which I believe the Convention will say is courteous, that if it is to be finally buried, it should be done by the friends of the bill, to wit, the committee which reported the bill favorably to the Convention. Another consideration, Mr. President, which I desire to urge, is this that it might be amended in the Committee on Legislative Powers in a way which will be entirely satisfactory to a very large majority of the Convention. It certainly would not come back in the condition in which it now is. There are many things about it that the Convention did not seem to understand. There were many questions asked which could not be immediately answered, but I believe that it has the germ of a principle in it which is of importance, and that the committee ought to be permitted to try again, to see if they cannot get something which will be satisfactory to the Convention. This is a courtesy, I believe, which, in legislative bodies, has never been denied. I believe that this Convention will not deny it, when asked for in the way it is by the Committee on Legislative Powers.

Mr. McKinstry — Mr. President, I rise to a point of order. I think Mr. Vedder, having voted with the minority, cannot make that motion. At the same time I would say that I would be glad to see the matter reconsidered, and, if the measure can be made a

great deal less sweeping, so as simply to prohibit the Legislature from interfering with our local matters, I would be glad to see the bill brought in again in a different shape, and I will make the motion, which he has no right to make.

The President — Mr. McKinstry voted with the majority?

Mr. McKinstry — With the majority.

The President — There is no doubt about the propriety of the motion. The ruling of the Chair as to the effect of the vote by which the favorable report of the Committee of the Whole was held to be a defeat of the amendment, is not provided for by the rules, and, of course, is subject to the consideration of the Convention in the future. If the Chair is wrong, it can be corrected. Mr. McKinstry moves that the vote by which the report of the committee on the amendment referred to was disagreed to be reconsidered. That question is now open for consideration.

The President put the question on the motion, and, by a rising vote, it was determined in the affirmative. Ayes, 55; noes, 38.

The President — The matter is now before the Convention.

Mr. Vedder — I move that the proposition be referred to the Committee on Legislative Powers.

The President — For a further report?

Mr. Vedder — For a further report.

Mr. Cochran — Mr. President, I do not understand that that is properly before the Convention yet. We have only moved to reconsider the vote. I think now we will have to take a vote on the report of the committee, on what we shall do with the report.

The President — I think Mr. Cochran's point of order is well taken. The question is now upon agreeing to the report of the committee.

Mr. Vedder — Mr. President, it was perfectly competent, when the Committee of the Whole made its report to the Convention last night recommending the passage of the amendment, to make a motion at that time that it be referred back to the committee to strike out the enacting clause to amend it in a certain way, or any other motion. That was perfectly competent, and is now to send it back to the committee or make any other disposition in regard to it.

The President — The rule always acted upon thus far has been that when the report of the Committee of the Whole came in the only question is on agreeing or disagreeing to that report, after which the matter is in the hands of the Convention. The question

is on agreeing to the report of the Committee of the Whole favorable to the passage of this amendment. Is the Convention ready for the question?

Mr. Dean — Mr. President, on that I call for the ayes and noes.

The ayes and noes were ordered.

Mr. Doty — Mr. President, I rise to a point of inquiry. I understood that the matter was to be presented to the Convention, to the end that the report should be recommitted; and I think that the Convention has acted thus far on an entire misapprehension. It is not intended to review its action of last night, by which the report of the Committee of the Whole was disagreed to. We find ourselves now in a predicament which was not anticipated. I apprehend, when this motion to reconsider was made. I would ask the Chair to state the situation of this matter.

The President — The situation is this: Yesterday the Convention disagreed to the report of the Committee of the Whole, which the Chair held defeated the amendment. That was by a vote of fifty-five ayes and fifty-eight noes. Mr. Vedder moves this morning to reconsider that vote. He stated that he intended afterwards to make a motion to recommit it to the committee of which he is chairman, the Committee on Legislative Powers and Duties. The only vote taken thus far was to reconsider the vote of yesterday, whether or not to agree to the report of the Committee of the Whole. The Chair holds that the question necessarily before the House is, as yesterday, whether we will agree to the report of the Committee of the Whole?

Mr. Vedder — Now, Mr. President, I desire to amend that report of the Committee of the Whole that the proposition be referred to the Committee on Legislative Powers. I think that is a competent amendment to make, and that it supersedes the other motion absolutely, a motion that is always made or always can be made in any parliamentary body in which I ever sat.

The President — The Chair is of the opinion that when a report of the Committee of the Whole is before the House the question is first to agree or disagree.

Mr. Alvord — Mr. President, I desire to say that my friend from Cattaraugus is wrong. We have not yet reconsidered the vote. That must first be done before it is in the possession of the Convention.

Mr. McMillan — We have done that already.

Mr. Vedder — Mr. President, I believe we have reconsidered the vote.

The President — We have only voted to reconsider it.

Mr. Alvord — I am informed it has been reconsidered. If it has been reconsidered, then the gentleman from Cattaraugus is right. There is no question in regard to the matter. It is now before the Convention, and can be done with as the Convention sees fit to do by its vote.

Mr. Vedder — That is just exactly, Mr. President, what I claim.

The President — The difficulty is, Mr. Vedder, that it has not yet been reconsidered. The Convention has only voted to reconsider it.

Mr. Vedder — Mr. President, I submit that was a vote on reconsideration and that the matter is now before the Convention. Now, the proposition before the Convention is: Shall we agree with the report of the Committee of the Whole or not?

The President — That is exactly what the Chair holds.

Mr. Veeder — The Chair, in effect, holds, if he holds the motion of the gentleman from Cattaraugus (Mr. Vedder) out of order, that at this stage of the proceedings no other motion is in order, except the one to agree or disagree to the report of the Committee of the Whole.

The President — The Chair does so hold. The report of the Committee of the Whole is received. The only business before the Convention is the question whether that report shall be agreed to or not.

Mr. Veeder — Does the Chair hold that the motion to amend that motion is not in order?

The President — I do.

Mr. Veeder — Now, Mr. President, I desire to ask, proceeding under the decision of the Chair, if this motion to disagree with the report of the committee is adopted, what position are we in then? We are in the same position that we were in before the motion to reconsider was made. There we are, and we can make a motion again to reconsider.

The President — You can recommit afterwards.

Mr. Veeder — How can we recommit after we have disposed of it? While the matter is open we can recommit or do anything else we like with it, but if it is an open question, after we have refused to accept the report and reject it, then the only procedure is to do as we have just done, reconsider the vote by which it is

rejected; and so we do not accomplish anything. We are going right in a circle.

The President — We dispose of the report of the Committee of the Whole first.

Mr. W. H. Steele — Mr. President, if I might be heard for a moment on this question, I think the Chair is right, and the Chair is also laboring under a misapprehension, in reference to this question. We are now, as I suppose, under the rules as adopted by the Convention, but where those rules are not broad enough, as is the custom of all legislative bodies of this State, reference is had to Croswell's Manual. It is done in the Legislature, both in the Assembly and the Senate. If the Convention will be good enough to look at the bottom of page 197 and the top of page 198, it reads as follows, if the Convention will allow me to read it: "If they report progress, and ask leave to sit again, the usual form of such a report, *the question of granting leave, may be superseded by a motion to discharge the Committee of the Whole and to order the bill to a third reading, or to discharge and commit, or to lay on the table, or to postpone, or to grant leave to sit again, and make the bill a special order.*" Now, my understanding of the situation is this, that this vote having been reconsidered the proposition remains in precisely the form under which it came from the Committee of the Whole. Before any further motion can be put, any gentleman has a right to move to supersede the ordinary motion of granting leave to sit again, or disagreeing with the committee, by a motion to refer to a committee. Otherwise he would be deprived of his rights. If the motion prevails that they should have leave to sit again, he is out in the cold; if it is to disagree with the committee, he is certainly out in the cold, unless we reconsider.

Mr. Dean — I rise to a point of order, that a discussion of the ruling of the Chair without appealing from the ruling, is out of order.

The President — The point of order is well taken. A report is received from the Committee of the Whole favorable to the passage of the bill. The question is on agreeing or disagreeing to that report. That, I believe, is the only question. Agreeing to the report does not take it out of the hands of the Convention. Agreeing to the report will place it in the position in which, if no further action is taken, it will, as a matter of course, go to the Committee on Revision; but it can be intercepted at that point, as bills have heretofore been intercepted and laid upon the table. There is no difficulty in a motion, after the report has been agreed to, to recom-

mit the bill, and, if the Convention so pleases, to recommit it to the committee from which it originated, or to any other committee.

Mr. Veeder — Suppose, Mr. President, the motion is not agreed to. Suppose it is rejected?

The President — Then that defeats the amendment.

Mr. Veeder — Well, but then we move to reconsider the vote again, and so we go in the same circle.

Mr. Mulqueen — May I ask, Mr. President, if it is in order to move to postpone this matter until action has been taken on the report of the Committee on Cities?

The President — That will be in order.

Mr. Mulqueen — I make that motion.

Mr. Vedder — Mr. President, I rise to a question of privilege, simply to answer Mr. Doty, and to keep good faith with this Convention. However much I might have any proposition in the world at heart, I never would break faith with this Convention or with any man. My only object in making the motion to reconsider was to send it back to the Committee on Legislative Powers. I say now that if this Convention will do the courtesy to that committee to report in favor of the report of the Committee of the Whole, sending it to a third reading, I will immediately move the Convention to have it sent to the Committee on Legislative Powers.

The President — The question is on Mr. Mulqueen's motion to postpone the consideration of the question before the House, which is the motion to agree to the report of the Committee of the Whole, until after the action of the Convention on the report of the Committee on Cities.

The President put the question on Mr. Mulqueen's motion to postpone, and it was determined in the negative.

The President — The motion is lost, and the question is on agreeing with the report of the Committee of the Whole.

Mr. Cochran called for the ayes and noes, which were ordered.

The Secretary proceeded to call the roll.

Mr. Osborn — Mr. President, there is great misunderstanding in this part of the Convention as to what a vote in the affirmative or in the negative upon this subject would mean. I desire to know what the report of the Committee of the Whole was.

The President — The report of the committee, by a vote of fifty-four to fifty-two, recommended the passage of the amendment prohibiting extra compensation or increase of salary to public officers.

Mr. Osborn — If, therefore, we vote aye on this measure upon this roll-call, we vote in favor of the measure?

The President — Yes.

Mr. Osborn — And if we vote no, we vote in opposition to the measure?

The President — Yes; and, as the Chair has ruled, subject to correction by the House, a negative vote on this finally defeats the amendment.

Mr. Vedder — Mr. President, there seems to be a misunderstanding among the delegates. Let me ask this question. If this motion is carried, agreeing to the report of the Committee of the Whole and sending it to a third reading, I can then make a motion, can I not, to refer it to the committee?

The President — The Chair so holds.

Mr. Vedder — But, if the vote is in the negative, I cannot?

The President — You cannot. It defeats the amendment.

Mr. Mulqueen — Mr. President, may I ask for information? The gentleman might make a motion to recommit, but the Convention might vote it down, and, if it voted it down, that would be passing the amendment?

The President — We will consider difficulties as they arise.

Mr. Alvord — Mr. President, I rise to a point of order. My point of order is that this undertaking to catechise the Chair is all wrong and should be ruled out of order. The only way, after the Chair has once stated his decision, is to ask that the decision be overturned by the House by an appeal; but this is entirely out of order.

The President — Well, the Chair can stand it if the Convention can.

Mr. Alvord — I think it is entirely unauthorized and an unparliamentary procedure.

The Secretary proceeded with the roll-call.

Mr. Ackerly — Mr. President, yesterday I voted both on the rising vote and on a call of the ayes and noes in favor of this amendment, but after the discussion that we had yesterday upon this proposition, I say when we settle a thing, let us settle it. (Applause.) I vote no.

Mr. Crosby — Mr. President, I desire to be excused from voting, and state my reasons therefor. Last night I recorded my vote against the proposition. Now, believing that amendments can be made that will make it entirely satisfactory, if referred back

to the committee, and that the disposition is to make that amendment, I shall change my vote. I desire to be recorded as voting aye.

Mr. Marshall — Mr. President, I am called out, and am obliged to leave the Convention, and I ask to be recorded in the negative.

Mr. McKinstry — I ask to be excused from voting, and will state my reasons. I voted against this amendment yesterday, and I am just as much opposed to it to-day as I was then, but there is a principle in it of affecting legislation, and not interfering with every local board of supervisors and board of trustees, which I think is desirable. It seems to me only a matter of courtesy to let the Committee on Legislative Powers remodel it and make it acceptable, if they can. I, therefore, withdraw my request to be excused from ing, and I vote aye.

Mr. McMillan — Mr. President, I ask to be excused from voting, and will state my reasons. I am in favor of the principle involved in this proposed amendment. In its present form I regard it as dangerous. I cannot, therefore, consent, by my vote, to order this bill to a third reading. I, therefore, withdraw my request to be excused from voting, and vote no.

Mr. Nichols — Mr. President, I ask to be excused from voting, and will briefly state my reasons. I believe, sir, that the principle involved in this bill is right. I do not think that it ought to be possible, in very many instances, to increase salaries after officers are inducted into office. I did not agree, however, with the bill as it was introduced. It seems to me that it can be sent back to the committee and modifications made that will recognize the principle, and at the same time do no violence to the rights of smaller municipalities or departments of government, and for that reason I desire to withdraw my application to be excused from voting, and vote aye.

Mr. Platzek — Mr. President, I ask to be excused from voting for these reasons: I believe that the amendment, as framed, would affect numerous people — hidden beneath or between the lines of the amendment. I believe, further, that very community is capable of taking care of its own affairs to the extent of fixing the compensation of its officers and servants, and that no community, common council or Legislature, or other body having the right to fix compensation, ought to be bound down by constitutional declaration. I withdraw my request to be excused from voting, and vote no.

Mr. T. A. Sullivan — Mr. President, I ask to be excused from voting, and briefly state my reasons. Last night I was unable to vote upon this measure, because I was uncertain as to its scope and

effect in its present form. I ask to be excused for that reason, because I did not wish to go upon the record here opposed to the principle of it, as I must necessarily have been, had I been forced to a vote last night. The courts of our State have put such a construction upon the plain intent of this provision in our Constitution that it practically obviated a great portion of it, so that in my own city, within the past two years, we have had the Legislature pass an act to increase the pay of our police commissioners, and our city had no redress. We went into the courts, and the extra compensation was given to those commissioners without any added duties. By reason of the construction of the present Constitution the Legislature was able, in direct contravention to the provisions of our charter, in reference to raising the salary of our officers. I desire that this bill shall go back, and, if possible, be so corrected as to obviate the constructions and get away from the decisions which the courts have made. For that reason, I withdraw my present application to be excused from voting, and vote aye.

Mr. Cassidy — Mr. President, I refrain from speaking upon this amendment, because there are parts of it which I approve of, and parts of it that I do not approve of. The only idea of home rule which I can subscribe to is a uniform home rule for all parts of the State alike, and that kind of home rule can only be obtained by shearing the Legislature of certain of its powers, so as not to interfere with local matters. In so far as this amendment seeks to shear the Legislature of its powers from interfering with local matters, I approve of it. In so far as it seeks to obstruct and defeat the wishes of the local authorities, I am opposed to it. One part of the amendment is at war with the other part. I believe, however, in the principle of restricting the Legislature from interference in local matters. I, therefore, vote aye, that this matter may be sent to the committee and properly revised.

Mr. Davies — I ask to be excused from voting, and will briefly state my reasons. I am opposed to this amendment as it stands now. Still, I am willing, upon the understanding of its friends, to have it sent back to the committee for amendment. It may come before us in less objectionable form. I, therefore, withdraw my request to be excused from voting, and vote aye.

Mr. Moore — Mr. President, I ask to be excused from voting, and will briefly state my reasons. I voted no last night upon the proposition as it then stood, because I was not quite satisfied as to how far this amendment might reach. But, as I understand this proposition, it is a motion to send the whole matter back to the committee, the chairman of which thinks that there may be some

amendments made to the matter which will suit the Convention and be of some service to the people of the State. I, therefore, on this question, will withdraw my request to be excused from voting, and will vote aye.

The report of the committee was agreed to by the following vote:

Ayes — Messrs. Abbott, Acker, Allaben, Baker, Barhite, Brown, E. A., Carter, Cassidy, Church, Clark, H. A., Countryman, Crosby, Davies, Davis, Deterling, Emmet, Floyd, Francis, Fuller, C. A., Fuller, O. A., Galinger, Hamlin, Hecker, Hedges, Hill, Jacobs, Johnson, J., Kerwin, Kinkel, Kurth, Lester, Lewis, C. H., Lyon, Mantanye, Maybee, McDonough, McIntyre, McKinstry, Mereness, Moore, Morton, Nichols, Nicoll, O'Brien, Parker, Pashley, Powell, Pratt, Redman, Rogers, Sandford, Schumaker, Steele, W. H., Storm, Sullivan, T. A., Sullivan, W., Turner, Vedder, Veeder, Vogt, Wellington, Whitmyer, Woodward — 63.

Noes — Messrs. Ackerly, Alvord, Barnum, Barrow, Blake, Burr, Cady, Campbell, Chipp, Jr., Cochran, Cookinham, Davenport, Dean, Doty, Durfee, Frank, Augustus, Fraser, Giegerich, Gilleran, Goeller, Green, J. I., Hawley, Hirschberg, Holcomb, Holls, Lincoln, Marks, Marshall, McArthur, McLaughlin, C. B., McLaughlin, J. W., McMillan, Meyenborg, Mulqueen, Ohmeis, Osborn, Parkhurst, Peabody, Platzek, Putnam, Root, Smith, Steele, A. B., Tekulsky, Titus, Truax, C. H., Tucker, Williams, President — 49.

The President — The report of the Committee of the Whole is agreed to. In the ordinary course, this would now go to the Committee on Revision for their action. It will take that course, unless the House makes some other disposition.

Mr. Vedder — Mr. President, I move that this proposition be referred back to the Committee on Legislative Powers, retaining its place on general orders.

Mr. Veeder — It is not on general orders. Let it retain its place on the calendar for amendments to go to the Committee on Revision. We do not object to that.

The President — It will retain its place on the calendar. The Secretary will take care of that.

The President put the question on Mr. Vedder's motion, and it was determined in the affirmative.

Mr. Goeller — Mr. President, I desire to be excused from attendance next Monday, and desire to say that since the opening of this Convention my attendance has been permanent, with but three exceptions, four days' time. I beg the indulgence of the Convention for this one day.

The President put the question on Mr. Goeller's request to be excused from attendance, and he was so excused.

Mr. Lyon — Mr. President, the Document Clerk tells me that only 1,000 copies of the proposed amendment of the judiciary article have been printed or ordered printed, while 5,000 copies of both reports have been ordered printed. It seems to me that there should be 4,000 copies more of the judiciary amendment.

The President — Five thousand copies have been ordered by the Convention.

Mr. Lyon — There seems to be a misunderstanding, as the Document Clerk says only 1,000 copies have been ordered.

The President — Memorials and petitions are in order.

Mr. Holcomb — Mr. President, I am called by business to the western part of the State, and I would like to be excused, if I may, from attendance upon the session this afternoon. The matter is very pressing and I must go.

The President put the question on Mr. Holcomb's request to be excused from attendance, and he was so excused.

Mr. Fraser — Mr. President, I desire to be excused next Monday, for the purpose of performing a public duty in my county.

The President put the question on Mr. Fraser's request to be excused from attendance, and he was so excused.

Mr. Peabody — I would like to be excused from this afternoon's session.

The President put the question on Mr. Peabody's request to be excused from attendance, and he was so excused.

Mr. Veeder — I ask to be excused from this afternoon's session.

The President put the question on Mr. Veeder's request to be excused from attendance, and he was so excused.

Mr. Powell — Mr. President, I have received word from Mr. Johnston that he is detained from to-day's session by unexpected and very important business of a professional character. I ask the Convention to excuse him from to-day's session.

The President put the question on the request of Mr. Johnston to be excused from attendance and he was so excused.

Mr. Nichols — Mr. President, I desire to be excused from attendance during the afternoon.

The President put the question on Mr. Nichols's request to be excused from attendance, and he was so excused.

The President — The Convention will bear in mind that they are responsible for holding a quorum here this afternoon.

Mr. Osborn — Mr. President, I should like to inquire whether there is any means of knowing whether there will be a quorum here this afternoon. Has the Secretary kept a list of the members who are excused?

The President — Forty-eight members have been excused. If all the rest attend there will be a quorum.

Mr. Osborn — Mr. President, I desire to make a statement. In view of the remarks of the President yesterday, with regard to the propriety of not being excused and saving our ten dollars, in which I concur, I have concluded that it would be impolite for me to absent myself without stating to the Chair that such is my intention. On the other hand, as the physical test which we have been put to this week has been more than my health will stand, I propose to absent myself from the Convention this afternoon. I say this by way of excusing myself from absence.

The President — Gentlemen will take note of Mr. Osborn's statement.

Mr. H. A. Clark — I move that the gentleman be excused for this afternoon.

The President put the question on the request of Mr. Osborn, and he was so excused.

Mr. C. B. McLaughlin — Mr. President, I offer the following resolution:

Resolved, That the Committee on Rules be instructed to report a rule, on or before Tuesday next, to the effect that a disagreement with the report of the Committee of the Whole shall be final.

Mr. President, I desire to say just one word on this resolution.

Mr. Barhite — Mr. President, is the resolution debatable at this time?

The President — It is, by general consent.

Mr. Dean — I object.

The President — Do you wish to debate it?

Mr. Barhite — I do.

The President — It stands over until Monday.

Mr. C. B. McLaughlin — Mr. President, is that resolution referred to the Committee on Rules? Do I understand the Chair to rule that it is not debatable now?

Mr. Dean — I call the Chair's attention to rule 56.

Mr. C. B. McLaughlin — It calls for action on the part of the Convention as to the business of the day. It seems to me it is open for discussion.

The President — The Chair is of the opinion, that under rule 56, that this is not debatable, but goes, as of course, to the Committee on Rules for immediate action.

Mr. Cookinham offered the following resolution, which was read by the Secretary:

R. 177.— Resolved, That the Committee on Rules be directed to report a rule allotting time for debate on each of the proposed constitutional amendments.

The President — The resolution goes to the Committee on Rules, as of course. If there are no further notices, motions or resolutions, reports of committees are in order. The Secretary will call the roll of committees.

Mr. Alvord — Mr. President, in order to expedite business at this sitting, I move that the call be general for any reports of committees.

The President put the question on Mr. Alvord's motion, and it was determined in the affirmative.

Mr. J. Johnson presented a report from the Committee on Cities.

Mr. Woodward — Mr. President, I have a minority report from the Committee on Preamble and Bill of Rights.

The President — If you will hand it up it will take its course under the rule.

Mr. J. Johnson, from the Committee on Cities, to which was referred the proposed constitutional amendment, introduced by Mr. Banks (introductory No. 148), entitled, "Proposed constitutional amendment to amend the Constitution, relative to debt limitation of cities," reports in favor of the passage of the same, with some amendments.

The President — It goes to the Committee of the Whole.

Mr. Holls — Mr. President, I have a report from the Committee on Education.

Mr. Veeder — If Mr. Holls will give way for a moment. Preceding that, I understand, is a minority report from the Committee on Preamble. We would like to have it read, if the President please.

Mr. Holls — If it preceded mine in order of time, I give way.

The President — The minority report can be read.

The Secretary read the report as follows:

The report of the minority of the Committee on Preamble and Bill of Rights, proposing to amend the preamble of the Constitution and also to add several sections to the bill of rights. It is asked of the Convention to substitute the preamble hereto annexed in place of the preamble reported by the majority of the committee, and that the several sections hereto annexed be added to the bill of rights proposed by such committee in their final report, and become a part thereof, to be numbered in their proper order. This report is respectfully submitted to the Convention, with the request that it be sent to the Committee of the Whole to be considered with the majority report of the committee.

Mr. Mereness — I would like to inquire whether this will necessarily have to be printed?

The President — Under rule 32, this constitutional amendment proposed by the minority report is to be printed and placed on the files of the members of the Convention.

Mr. Veeder — Does not that go on general orders with the majority report?

The President — The Chair rules not. The minority report amounts to nothing. It is always open for consideration in Committee of the Whole. With the view to that, the rules provide that it shall be printed and placed upon the desks of members, and the question comes up in Committee of the Whole; if anybody desires to move anything from the minority report by way of amendment, he can do so.

Mr. Veeder — Mr. President, the trouble with that is, that then it is only printed as a document, and not printed as a proposition. It is characterized as a proposition by the minority report, but it is only printed as a document.

The President — The minority of the committee has not any power to impose an amendment on the Convention, as a proposed amendment. It is a dissent on their part from what is proposed by the majority.

Mr. Veeder — But, Mr. President, if the majority refuses ——

The President — The Chair has made its ruling, and if every ruling of the Chair is to be criticised and quarreled about, the time of the Convention will be diverted from its present business.

Mr. Veeder — I submit, sir, that I do not desire to have it said that I am quarreling with any ruling. I ask the President to withdraw that.

Mr. Alvord — I rise to a point of order. My point of order is, that there cannot be discussions of this kind going on. It has gone on long enough.

The President — That was the notion of the Chair when he made the point. The point of order is admirably taken.

Mr. Holls — Mr. Chairman, in connection with the report of the Committee on Education, which I have just presented, I beg leave to state that that report contains an article on education complete (overture, introductory No. 388, printed No. 439), but that it reserves to itself the right to supplement it by another matter which has come up, and on which official action has not yet been taken, but which, if adopted, might work as a substitute, as a part of the report presented. I also shall ask that the Committee on Education be permitted to have a little more time in its explanatory report than the twenty-first, which is the date ordered by the Convention.

Mr. Holls's report from the Committee on Education was referred to the Committee of the Whole.

Mr. Holls — I now move that the time of the Committee on Education to make an explanatory report of this article be extended from the twenty-first for the term of one week.

The President put the question on Mr. Holls's motion, and it was determined in the affirmative.

Mr. C. H. Lewis — Mr. President, I have the final report of the Committee on the Relation of the State to the Indians.

The Secretary read the report as follows:

Mr. C. H. Lewis, from the Committee on the Relation of the State to the Indians residing therein, to which was referred proposed amendment (introductory No. 242), and several petitions for constitutional amendment, respectfully reports, that your committee has carefully considered the same, and it is the unanimous judgment of the committee that section 16 of article 1 of the present Constitution, relating to sale of Indian lands, should remain unchanged. Your committee further report on the several petitions for a constitutional provision.

Mr. C. H. Lewis — Mr. President, allow me to state that the proposed amendment, No. 242, the one which the committee reported against the adoption of was finally withdrawn by its introducer, and he is of the same opinion as the committee, that the article of the Constitution in regard to the Indian lands, as it stands to-day in the present Constitutiona, should remain unchanged, and the committee, has, therefore, so reported.

The President put the question on agreeing to the report of the committee as to proposed constitutional amendment No. 242, and it was determined in the affirmative.

The president put the question on agreeing with the report of the committee that no change should be made in the provisions of the Constitution relating to Indian lands, and it was determined in the affirmative.

Mr. E. R. Brown, from the Select Committee on Future Amendments, to which was referred the proposed amendment introduced by Mr. A. H. Green (introductory No. 379), entitled "Proposed constitutional amendment to prohibit the use of lands for cemetery purposes on certain conditions," reports that in the opinion of the committee the same shall not be printed and is referred, under rule 32.

The President — That disposes of that without action.

Mr. Hamlin — Mr. President, yesterday morning the resolution offered by the gentleman from Rensselaer (Mr. Roche) in reference to the printing of the reports, and the delay that had occurred, and that there had been none placed on the files of the members since last Tuesday, was referred to the Committee on Printing, and I desire, after an interview with the printers, to say that their defense to the matter in part is, that members of this Convention go to the printing office, take the proofs of their speeches, which they have delivered here, in order to read and correct them, and there is delay in returning them to the office. If this be true, it would be desirable, certainly, that some suggestion be made to these gentlemen which would be forcible and effective, that the proofs, if they take them from the office, should be returned immediately.

The President — Perhaps Mr. Hamlin can answer the question put by Mr. Lyons a few moments ago, whether there is any doubt about the 5,000 copies of the report of the Judiciary Committee being printed.

Mr. Hamlin — I suppose that those have been ordered, Mr. President, in the ordinary course.

Mr. Hedges — Mr. President, I am directed by the Committee on Militia to ask the Convention to extend our time for the final report until Friday next, as some of the officers of the National Guard wish to appear, and they have not yet been able to do so. Out of courtesy to them we would like to have the time extended.

The President put the question on extending the time of the committee, and it was determined in the affirmative.

The Secretary called general orders Nos. 2, 4 and 5, which were not moved.

The Secretary called general order No. 20.

Mr. Tekulsky — I move we go into Committee of the Whole on that general order.

The motion prevailed, and the Convention resolved itself into Committee of the Whole, with Mr. Hawley in the chair.

The Chairman — The Convention is now in Committee of the Whole on general order No. 20 (overture, introductory No. 90, printed No. 387). Mr. Tekulsky has the floor.

Mr. Tekulsky — Mr. Chairman, this measure was originally drafted and concocted in the State of Ohio by the ultra Prohibitionists who had come to a conclusion that it was absolutely necessary to stop the sale of intoxicating liquors in that State. The Prohibitionists of Ohio got this measure engrafted into the Constitution, and in that Constitution it reads as follows: "No license to traffic in intoxicating liquors shall hereafter be granted in this State." It passed, became a law, and virtually, as Mr. McKinstry said last evening, it was free rum and no taxation of any description. But Mr. McKinstry errs when he says that the liquor dealers fought it, were against the idea of having a tax put upon the business. They certainly were not, because as soon as there was a tax upon the business in the State of Ohio, the liquor dealers there were well pleased that they were living under some law without being molested by the authorities in the different localities. It was a continual wrangle, although the Constitution plainly said that there should be no licenses granted in the State. After the tax law was passed in the State of Ohio, it has been stated that instead of increasing the number of places where intoxicating liquors were sold, it decreased them; that there were 16,000 places in the State of Ohio prior to the tax, and that since the tax has been put upon the traffic, it has reduced the number to 11,000. I cannot account for the statement made by my friend, Mr. McKinstry, last evening. Mr. McKinstry explains to me that he got it from a newspaper, but I must state here that it was a grave error. On the records of the association that I have the honor of representing, we have in the State of Ohio 12,000 members, and if we have 12,000 members there certainly must be five or six or seven thousand that are not in the organization, because our organization, under no circumstances, will take in any person who is not a man of good moral character, not approved of by the board of excise, but approved of by the Liquor Dealers Association, which makes it positive that the man must be

a man of good moral character and keeps a respectable place. The tax has increased the number of places where intoxicating liquors are sold in the State of Ohio, instead of decreasing them. This measure is vicious; it is wrong. It reads well; in practice is bad. It will certainly induce people to go into the liquor business; it certainly will make more places than there are now, and the moment you start in to say that you will apply to the Legislature to pass a law to restrict, you find that you cannot restrict against one man and not another, because your Constitution says that all are on an equal footing; and how can you go to the Legislature and have the article changed after it is once engrafted in your Constitution; how can you provide that one man may sell liquor at such and such a place, while another man may not sell at another place? That, certainly, would be unconstitutional, and the consequence would be that, instead of having in the State of New York 35,000 places that pay taxes, you would have in the State of New York 75,000 places. And, as to saying that we would have an income coming into the State of three million dollars, why, I think that to-day the traffic pays the State over five million dollars, and the tax in itself is collected regularly and it goes to the local authorities, where this tax is now collected through the license system. The only good feature that I can see in this measure is that it takes away the power now held by commissioners of excise. That is one of the grandest features there is in this measure; because men engaged in the liquor business are subject to the whims of the excise boards in the State of New York, and also their paid attorney or some hired person, and those who differ from them, whether on matters of politics or otherwise, do so to their injury. And another reason why it is a good thing that this power should be taken away from the boards of excise; those boards in the State of New York, upon the application of a person for a license to sell intoxicating liquors, pass upon the moral character of that person, and the law requires that the person shall be "approved of by the board." It is very hard on those in the liquor business that have to have boards of excise in the State of New York pass upon their moral character, when the commissioners of excise themselves, in numbers of instances, have no character. Mr. Chairman, I know from experience that in the country towns, men who have no character at all, just for the sake of getting twenty-six dollars a year, run for the office of commissioner of excise. It is said that the traffic should be taken out of politics. There is where the trouble is — the political positions that are to be had in these country towns. They will pick up almost anybody — it is either license or

no license — no matter whether the man is a good man, a man of character, a man of standing, or not; it is merely a question as to whether he will sign a license or whether he will approve of this or that man. His townsman, who makes the application, is a man of good moral character, when the commissioner himself is not. It has also been stated here on the floor that the excise laws, as passed in 1892, had in them a provision giving the right to the writ of certiorari, where the person making an application for a license had been arbitrarily refused. Now, I claim that Mr. McKinstry is wrong in saying it was a unanimous decision of the courts that was rendered on this subject. I claim that that is not so; that in no case have the courts decided that the writ of certiorari was not available to the applicant in the city or village or town where licenses have been granted, unless he was a man of bad character. The reasons that the judges have decided against the applicant in the writ have been that there were no licenses granted in the town; therefore, there was no arbitrary action taken against a particular person; but where a license has been granted and the man was a man of good moral character and conducted a respectable place, or intended so to do, and could satisfy the authorities to that effect, I know of several instances in which the courts allowed the board of excise to grant the license. Some of the good features in this amendment would come to us like a godsend if it were three or four years earlier, just as it came as a godsend to the liquor dealers of Ohio. The liquor dealers of Ohio were willing to accept anything and so would we have been in the State of New York three years ago; but, since 1892, the Legislature of the State of New York has passed an excise bill which is fair; while not entirely just it is fair, and every man in the State who can read the English language can understand what the excise laws of the State of New York are, and I can see no special reason why this matter should go into the Constitution, when it may have to remain there for twenty years and cannot be changed, while probably in certain localities changes ought to be made. It has also been said here that an amendment is to be offered to this measure embodying local option. Local option is a farce as it is carried on in the State of New York at the present time. Let these same gentlemen, who advocate local option, which virtually means home rule in the localities, allowing the people to decide what they desire in their own localities, in this Convention vote to give the cities the same right that they want for their small villages. They tell you, "No; we in the country know more about your cities than you do yourselves. We want to go to the Legislature to pass laws to govern you and your action."

That is the position taken by the gentlemen who come here and advocate local option in the country towns. It is no surprise to me that this measure happens to come from Cattaraugus. I know of no other county in the State, outside of Chautauqua, from which it could ever have come — only from there. Of course everbody knows that Chautauqua and Cattaraugus are two counties that are hotbeds of woman suffrage and of the Woman's Temperance Society, which has been named this year the " Woman's Suffrage," but it was actually the Woman's Temperance Society of Cattaraugus and Chautauqua counties. It does not surprise me at all, because every woman in those two counties — almost every woman — belongs to these societies. They belong to these societies and drive their husbands all to drink. (Laughter.) I will give you an instance that we had here in the Legislature in 1892. The president of the Woman's Christian Temperance Society of the county of Cattaraugus was here in these rooms at the time the excise bill came up, and she had a husband here who was a member of the Legislature, and I was compelled to send in two bottles of whiskey to keep him in the chamber so that he would be here to vote. Now that is just the condition of things. The men there are driven to drink, while the women are all preaching to them not to touch it. Now this measure in itself is certainly a very bad measure. Take it from a high moral standpoint, that the business is a business that must be supervised and restricted, then it certainly ought to be left to the Legislature to pass laws upon these subjects, and so that the Constitution cannot do anything with that matter, so that we, in the different localities could get some kind of a remedy here whereby each could be controlled by its own neighborhood, which knows its own wants. I will agree with the gentlemen for local option if he will do the same thing for the cities of the State of New York. He will not do that; I am positive he will not. I have offered an amendment to the cities bill here — a home rule measure — and I have been frankly told by the chairman of the Cities Committee that if I can get a certain number of gentlemen on his committee that will sign in favor of that amendment, he will bring it into this body in his bill. Well, now, I claim that that was unfair, because the same gentleman will advocate the very measure that I do, while he has not the courage to come into this Convention and tell the people what his opinion is on these subjects, but he will hide it. And another thing, this will take it out of politics; while this amendment now proposed certainly would not take it out of politics in any way. In the first place, the tax would be put on so that it would drive men to do certain things politically or otherwise just to satisfy the assessors or

the tax collectors in the different towns. At the present time I am perfectly satisfied with the situation. I think now that the question of politics has nothing at all to do with the liquor business. The party which has fought the liquor traffic in the State of New York has found the folly of its ways, and has reconsidered its position, and I think, to-day, it recognizes the liquor traffic as an honorable, upright business in this State as well as the other party does. I, therefore, see no reason why we should have this measure passed for the purpose of taking the business out of politics, when I believe, I honestly believe, that it is virtually out of politics at the present time, and the only thing to do is, if possible, to agree upon some measure whereby the Legislature shall pass a law taking away the rights of the boards of excise in towns, which would be a blessing to the towns. I will agree with Mr. McKinstry on that subject, that it would be a good thing if we could do something to remedy the evils in the towns, and that it would be a good thing if we could remedy the evils in connection with the agents of excise boards; but you must go to the Legislature for that amendment; you have to go there, that is the place, and, therefore, I hope this measure will not prevail.

Mr. McKinstry — Mr. Chairman, I would like to offer this amendment.

The Secretary read the amendment offered by Mr. McKinstry, as follows:

"Add these words, 'The Legislature shall also preserve by law the right of each city and town, by majority vote of the electors thereof, to prohibit traffic in intoxicating liquors within the limits of said city or town.'"

Mr. McKinstry — I will not take time to speak at any length in reply to Mr. Tekulsky. I will say that I have come to the conclusion myself, while I believe the principle of the amendment is right, that it better be left to the Legislature. Perhaps it would excite great controversy in the constitutional election; and, therefore, it better be left out. I consumed twenty minutes last night, and Mr. Tekulsky about the same length of time this morning, and I think the Convention will hardly complain that we have wasted a great deal of time. Therefore, I make this motion, that the committee do now rise and report to the Convention, recommending that the proposed constitutional amendment under consideration, and the amendment offered thereto, be recommitted to the Committee on Powers and Duties of the Legislature. As I understand it, Mr. Chairman, if that amendment is recommitted, it will be removed

from the general orders, because I do not provide that it shall retain its place on the general orders.

The Chairman — The Chair is of the opinion that it is not in the power of the Committee of the Whole to entertain such a motion.

Mr. McKinstry — To recommend to the Convention? It says, recommending to the Convention that it be recommitted to the Committee on Powers and Duties of the Legislature.

Mr. Tekulsky — And, Mr. Chairman, I desire to add "and that the committee never report it again."

Mr. Vedder — I suppose that is debatable; all motions except to rise and report progress are debatable?

The Chairman — Yes, sir.

Mr. Vedder — Mr. Chairman, I shall not enter into any discussion with regard to the merits of this proposition. I simply will say a word in reply to the remarks of Mr. Tekulsky in relation to the county of Cattaraugus, which I have in part, the honor to represent upon this floor. I shall not, in the language of another, enter upon any encomium upon Cattaraugus. There she stands, as one of the grand counties of the State, grand in her greatness, and greater still in her modesty. (Applause.) One notable exception that he spoke of proves the rule. It is a Republican county, but the gentleman of whom he spoke happened by accident, to be here as a Democrat. The blood, Mr. Chairman, of her sons and of their fathers has crimsoned the field of every battle where American liberty was won or defended. In every good thing which goes toward making good society, which makes States and makes strong the pillars of State, Cattaraugus stands, where she has always stood, and will stand forever. Without indulging ——

Mr. Storm — Mr. Chairman, we believe all the gentleman says, but he is not talking to the motion. Time is limited, and he is not talking to the motion.

Mr. Vedder — Mr. Chairman, the point is not well taken. I might indulge in the language of the great Rufus Choate, "in glittering and sounding generalities," but I will not, and will close as I began, with my voice and heart strongly in favor of grand old Cattaraugus, and I, therefore, second the motion of the gentleman from our sister county, whose people are of equal virtue, that this committee do now rise and make the recommendation suggested by him.

The Secretary again read the motion as offered by Mr. McKinstry.

Mr. Tekulsky — Mr. Chairman, I amended that by moving to insert: "That the committee do not report it again."

The Chairman put the motion on the amendment of Mr. Tekulsky, and it was determined in the negative.

The Chairman then put the question on the motion of Mr. McKinstry, and it was determined in the affirmative.

President Choate resumed the chair.

The Chairman — Mr. President, the Committee of the Whole have had under consideration proposed constitutional amendment (printed No. 387), entitled "Proposed constitutional amendment to amend article 3 of the Constitution, in regard to taking saloons out of politics," have made some progress therein and have instructed the chairman to report, recommending that the proposed constitutional amendment under consideration, and an amendment offered thereto, be recommitted to the Committee on Powers and Duties of the Legislature.

The President put the question on agreeing with the report of the committee, and it was determined in the affirmative.

The President — The Secretary will call the general orders.

The Secretary called general order No. 8, introduced by Mr. Lauterbach, to amend article 2, relative to suffrage.

Mr. Titus — Mr. President, I move, in the absence of Mr. Lauterbach, that that go over.

The President — It goes over.

The Secretary called the general order to which was assigned the proposed amendment, printed No. 47, introduced by Mr. E. R. Brown, relating to public officers riding on passes.

Mr. E. R. Brown — Mr. President, I hastened to return to the Convention, but it required my riding all night, and I would like to be excused from presenting this subject this morning.

The Secretary called general order No. 28 (printed No. 396), introduced by Mr. McDonough, relating to the passage of laws.

Mr. McDonough — That is moved, Mr. President.

The President put the question on going into the Committee of the Whole, on general order No. 28, and it was determined in the affirmative.

Mr. E. R. Brown in the chair.

The Chairman — The house is in Committee of the Whole on general order No. 28 (introductory No. 286), introduced by Mr. McDonough. The Secretary will read the proposed amendment.

The Secretary read the amendment relating to the initiative and referendum in passage of laws.

Mr. McDonough was recognized by the Chair.

Mr. Hawley — Mr. Chairman, before Mr. McDonough enters upon the explanation of his proposed amendment, I think it is well enough that the attention of the committee should be called to the fact that this section has already been amended and is now upon the order of third reading. The amendment which has been thus far progressed by the Convention is to that part of the section which Mr. McDonough does not propose to amend, and the action of the committee ought ultimately to take such form as that the amendment of Mr. McDonough if it shall meet with the favor of the committee, should be to the section which is now on the order of third reading, or some action ought to be taken so as to prevent confusion in that regard.

The Chairman — What is the general order to which you have reference?

Mr. Hawley — General order No. 1, and it is No. 2 upon the order of third reading, and has already passed the Revision Committee and been reported, and is now ready for its passage.

Mr. McDonough — Mr. Chairman, of course, if the committee should adopt this amendment it would have to correspond with the other, and we could make those changes. The Revision Committee, I think, will have that power. I want to say, Mr. Chairman, that this is not a pet scheme of mine, and I do not want any gentleman to vote for it out of any regard he may have for me. The great labor bodies of the State appeared here and made strong arguments and presented petitions containing thousands of names in favor of a scheme called the initiative and the referendum. A great many gentlemen of this Convention were of the opinion, I think, those that I talked with especially, that we were too busy a people to spend much of our time with these complicated systems; but it was thought by many that there ought to be a provision for referring certain laws to a vote of the people, if it was thought proper by the Legislature.

There is no power now in the Constitution which permits the reference to the people of a proposed measure with the effect that in case it is voted for by a majority of the people it shall become law, except one. There is one case in which that may be done under our Constitution, and only one; and that one provision is contained in article 7, section 12 of the Constitution, which provides for the creation of a State debt, and there is a provision that a

debt of a million dollars may be created; but except the debts specified in the tenth and eleventh sections of this article, no debt shall be hereafter contracted by or on behalf of this State, unless such debt shall be authorized by law, for some single work or object, to be distinctly specified therein; and such law shall impose and provide for the collection of a direct annual tax to pay, and sufficient to pay, the interest on such debt, as it falls due, and also to pay and discharge the principal of such debt within eighteen years of the time of the contracting thereof. No such law shall take effect until it shall, at a general election, have been submitted to the people, and have received a majority of all the votes cast concerning it at such election. That is the only provision in the Constitution by which the Legislature may submit a proposition to the people that shall not become a law until ratified. The Legislature may pass laws giving powers to certain boards to act, provided the people vote in favor of the act. But such an act is a law the moment it is signed by the Governor. The proposition we have here is, that a proposition — I will not call it a law — an act, may be submitted to the people to be voted upon, and unless a majority of the people favor it, it is not a law. If a majority favor it, then it becomes a law. Now, there are certain measures that ought to be submitted to the people. The Legislature may be in doubt as to how the people feel. I may come forward and say that the people of my county want a given measure; another gentleman, who represents the same county, may say that the people are opposed to it. How shall we know? Now, this enables the Legislature — it is not mandatory, it is permissive; we simply permit the Legislature to frame an act, put it in the proper language, and to say that when the people of Albany county, for instance, shall vote in favor of the measure, it shall then be a law; or the people of New York or of Brooklyn, or of any other county, or the people of the whole State. This question first arose thirty or more years ago, I do not know but forty years ago, under a free school law. A free school law was passed by the Legislature and submitted to the people to be voted upon, with a proviso that it should not become a law unless it received the support of a majority of the people voting; and the Court of Appeals held that that could not be done. That is the Barto case, in the 8th N. Y. They held that the legislative body was the law-making power, and those bodies could not delegate that power to any other body; and it is to give an opportunity to the Legislature, if it sees fit, to submit to the people measures, that this proposition is suggested. We have had a great deal of talk about home rule here and many of us are in favor of home rule. I am in favor of home rule for Ireland;

but for the cities and towns of this State, I think as to them, New York State is the political unit; and it should never put it beyond its power to take action in a given case. The State initiates the action on this matter; it refers questions to the people and ascertains the voice of the people; and if the people are opposed, it does not become a law. I think it is a measure that is entirely proper. I wish to say further, that if the wishes of the labor people, who came here and asked for a measure much broader than this, are to be considered by this Convention, and a desire exists to do something for the people, the labor people have expressed their willingness to the gentlemen who came here in favor of their measure to accept this and be satisfied. They say it is not much, but it is a step in the right direction; and in twenty, thirty or forty years from now it may lead to the other.

Mr. Cochran — Mr. Chairman, may I ask the gentleman a question?

Mr. McDonough — Yes, sir.

Mr. Cochran — I understand that the bill which you have reference to as having been recommended by the labor organizations is the bill which was introduced by Mr. Tucker and providing for the initative and the referendum?

Mr. McDonough — Yes, sir.

Mr. Cochran — Do I understand that the committe is going to report that adversely?

Mr. McDonough — I do not know; I cannot tell.

Mr. Cochran — Should we not know that before we act on this?

Mr. Nicoll — What number is it, Mr. Cochran?

Mr. Cochran — No. 114.

Mr. McDonough — Who is the chairman of that committee, Mr. Cochran?

Mr. Cochran — Mr. Vedder, I understand.

Mr. McDonough — They have failed to report it. Mr. Rogers is a member of that committee; perhaps he could inform you.

Mr. Cochran — I think it is important that the Convention should know.

Mr. Rogers — The committee acting on this bill voted to report the first one. The other they voted against reporting. If it was to be reported at all it would be an adverse report.

Mr. McDonough — Now, this is all that is left; and if you desire to give this power to the Legislature, you may favor this. If it is

not in just the language the gentlemen would like to have, I have no choice about it. I simply present it as I think it is my duty to do, and leave it to you to discuss and consider.

Mr. Alvord — Mr. Chairman, I think that the best way to settle this is to abolish the Legislature and make the people the Legislature of the State. This seems to be simply a proposition to make it an appellate court. There is too much machinery about it, it seems to me, in that regard, and the people had better settle all the laws of the State to begin with. They are now contending with the idea of their voting as often as they are called upon to do, but this will give them an abundance of business. They will be all the year occupied in passing upon bills that the Legislature has passed, because there will hardly be a case in which there will not be a difference of opinion and a doubt, and the consequences are that the parties who are in favor of the proposition will desire, if possible, to keep it before the people until they shall finally make it a law. Now, my idea as a legislator, and as a member of this Constitutional Convention is, that if I am in doubt in regard to the propriety of a measure put before me for my vote, that the best way is to vote against it without any hesitation whatever. Therefore, there is no reason why there should be given to the people the opportunity, because legislators shirk their duty, to vote upon the question whether or no a measure should become a law. I hope, therefore, sir, that a crude measure like this will not obtain the votes of this Convention.

Mr. Dean — Mr. Chairman, it seems to me that the title of this measure should be "an act to encourage cowardice on the part of the representatives of the people." That will be the logical effect of the measure. When the people of a given community, in their wisdom, have chosen members of the Assembly or members of the State Senate, they have delegated to those representatives the powers of the people. Now, if you bring a body together, made up upon that plan, bring them together in a legislative body, then permit them to shirk all their responsibilities by referring everything back to the people to be passed upon, you have completely destroyed representative government. It is simply an effort to avoid the responsibility of representatives, and is entirely vicious, antagonistic to every proposition of a republican form of government — indeed, I think it goes so far as that it would call upon the United States courts to pass upon what constitutes a republican form of government. That question, I believe, has never been passed upon, but this certainly would bring it before the courts.

Mr. Hill — Mr. Chairman, this proposed amendment appears to contemplate the operation of a modified form of the so-called principle of the referendum, and as has been said, it seems to be at war with the principle of representative government. The principle of the referendum has been adopted with some degree of success by municipalities or local divisions of government in relation to their business affairs, but no State of the Union has as yet adopted such a principle in relation to the great questions of State sovereignty, and it is questionable as to whether or not the experience of foreign countries is such as to warrant the State of New York, at this time in attempting to apply such a principle in reference to the general laws of the State. The operation of the referendum in Switzerland has not been wholly successful. Many important measures submitted by the federal and cantonal councils of that republic for ratification, have been rejected by the people. Legislative bodies in Switzerland have sometimes appeared to dodge the responsibility incumbent upon them, of presenting only those laws which were regarded as wise and in the interests of all the people, and instead thereof have submitted many ill-advised propositions that have been disapproved by their constituencies. It has been said that even in the industrial canton of Zurich, "The people have rejected cantonal laws reducing the hours of work in factories, protecting women and children employed in them, and voted against the federal factory law and also against the law giving daughters an equal inheritance with sons in the estates of their parents." The proposed amendment now before us leaves it optional with the Legislature to present any act to the people that it may not feel disposed to assume the responsibility of, and thereby compel the people to pass upon its merits. The people are not ready for such a constitutional provision. As far as general legislation is concerned, we are prepared, as delegates in this Convention, to say that such opportunity for avoiding legislative responsibility is unwarrantable. There may be local measures, however, affecting only municipalities and the business affairs of municipalities which very properly may be intrusted to the municipalities themselves. They can be intrusted with the responsibility of acting in accordance with their own interests on such local measures. But as to the adoption of the general laws of the State, affecting the State at large, the Legislature, which represents the people, should not be relieved from its responsibility to the people. If such a policy were pursued, the people themselves would be required to pass upon every law before the same became operative. This would be impracticable and expensive. If this principle were carried out, we would

have here a pure democracy, and such a system of government is not advisable in a State as large as the State of New York. We cannot apply in this State the principles of pure democracy with any expectation of that degree of success which was experienced in some of the Grecian States. Ours is a representative system of government, and as such, it should ever be preserved. Any departure therefrom would not be in keeping with the genius of our institutions. But, Mr. Chairman, if it were possible to limit the operations of the proposed amendment to the business affairs of municipalities, it would be far less objectionable. I am opposed to the amendment in its present form.

Mr. Cochran — Mr. Chairman, I would just like to ask for information of Mr. McDonough, if the authority which is intended to be granted by this proposed amendment does not now exist in the Legislature, and if it does not, how is it that bills, or proposed laws, have been submitted to the people for their approval?

Mr. McDonough — Mr. Chairman, if I may be permitted, I will answer the gentleman. Section 1 of article 3 of the Constitution provides: "The legislative power of this State shall be vested in the Senate and Assembly." There is where the legislative power is, and nowhere else. In the case of Barto v. Himrod (8th N. Y.) the court decided, in 1853, that an act which established free schools throughout the State was unconstitutional and void, for the reason that the fact of its becoming a law was made to depend upon the result of a popular election. Section 10 of that act required that the electors should determine by ballot, at the annual election to be held in November, whether that act should or should not be a law. The legislative power, the court held, is vested in this State, by the Constitution, article 3, section 1, which I have just read to you, in the Senate and Assembly. The power to pass general statutes exists exclusively in the legislative bodies. In one instance only is it limited or qualified, and that is article 7, section 12, which requires that no law for contracting certain debts shall take effect until it shall be submitted to the people. In the case of Gloversville v. Howell (70 N. Y., 287), the principle of the Barto case was sustained, but it was held that it did not preclude the Legislature from providing for local option, so that the trustees of a village should grant licenses or not, depending on a vote of the electors of the village. In the case of the Gilbert Elevated Railway Company (70 N. Y., 374) the Barto case is also cited and approved. It was held, however, that the rapid transit act was not subject to the objection that it delegated legislative powers to the commissioners, as the manner of exercising a franchise by a street railroad is not an essential element

of the franchise, and the Legislature may authorize it to be controlled by the people or officers of a locality. In the People v. Fire Association (92 N. Y., 315), which is a recent case, the Barto case is cited, and Judge French said of it: "What was there denominated the school law, came from the hands of the Legislature, not as a law, but as a proposition. Whether it should be a law or not was precisely the question submitted to popular vote. The Legislature proposed the law, but left to the people to enact. * * * As to the school law, the people were made the Legislature, and left to decide whether the bill proposed should or should not become a law; but nothing in that decision denied to the Legislature the right to pass a law whose operation depended upon, or would be affected by, a future contingency. It was not denied that a valid statute may be passed to take effect on the happening of a future event, certain or uncertain."

This distinction is pointed out in Bank of Rome v. Village of Rome (18 N. Y., 39), where the constitutionality of an act was sustained, which act conferred power on a board of trustees to issue bonds, but not until the approval of two-thirds of the electors was first obtained. The distinction taken in that case was that the law took effect immediately and conferred the necessary power, but did not compel the village to act until the taxpayers consented. That is clearly the distinction. The law was complete, although its operation depended upon a contingency which might or might not happen, that is, the people voting to issue the bonds or not.

The object of the proposed amendment before this committee is to permit the Legislature to do what the Barto case denied them the right to do, namely, to submit a proposed law to a vote of the people, the same to become a law if ratified by a vote of the people. There may be cases where such a power would be desirable, where an expression of the will of the people ought to be obtained; and hence the desire to incorporate this amendment in the Constitution.

Mr. Marshall — Mr. Chairman, I regard this proposed amendment as introducing into the Constitution of this State, should it be adopted, a most vicious principle. It would deal the death blow to representative government in this State. It would allow a legislative body which is now charged with high duties, with the obligation of determining questions of policy and questions of State, which are presented to it for consideration, to shirk the responsibility which the people have put upon it, and to submit to possibly a very small fraction of the people who might be interested in the passage of a particular bill, the determination as to whether or not a certain measure should or should not become a law. It is a proposition

which is entirely unsuited to a State or country like ours. It might, perhaps, be entirely proper to submit a measure of this sort to a small community, a town, a village, even a small city. But when we apply this principle to general legislation affecting a community like the State of New York, it would be impossible to know what the consequences might be, impossible to foretell them. If this principle should be applicable to a State it could be made applicable to the nation, and let us suppose, for an instant, that Congress should enact a tariff law and then submit it to a referendum, submit it to a vote of the people to determine whether or not a proposed law should become an actual law or not by a vote of the people, it would be impossible ever to get legislation upon a subject of that character. My idea is, that a principle which possibly might be applicable to a community like the old Greek republics, consisting of a single city, or of a very limited territory, or a principle which might be applicable to a town, is certainly not applicable to a State containing nearly seven million people. Nothing can better illustrate the folly of a proposed measure, such as that which is now before us for consideration, than the very case which the gentleman from Albany cited, the case of Barto v. Himrod, in the eighth New York, and which he seeks to have overruled by this Convention and by the people of the State of New York at the polls. That was a case in which the question came before the Legislature as to the enactment of a law relative to the free-school system. The members of the Legislature were afraid of the consequences which might result from taking definite action upon the passage or the non-passage of that act, and, therefore, they sought to shirk their responsibility by putting into the act a section which read: "The electors shall determine by ballot, at the annual election to be held in November next, whether this act shall or shall not become a law;" practically the same language which my friend now seeks to have introduced into the Constitution of this State. The Court of Appeals held that under our system of government, a representative system of government, it was the duty of the Legislature to make laws, that the people have delegated those duties to the Legislature, and that the Legislature could not absolve itself from the performance of those duties which had been imposed by the sovereign, and that the sovereign itself, the people themselves, could not revest themselves, in this method, with the power of legislation. Now, nothing has ever been said upon this subject by anybody, by any publicist, by any law writer, which so clearly points out the danger of this proposed constitutional amendment as the language which was uttered in that case by Chief Judge

Ruggles and by Judge Willard. Chief Judge Ruggles, citing from the opinion of Mr. Justice Johnson, in the case of Johnson v. Rich, in 9 Barb., 686, uses this significant language: "I regard it as an unwise and unsound policy, calculated to lead to loose and improvident legislation, and to take away from the legislator all just sense of his high and enduring responsibility to his constituents and to posterity, by shifting that responsibility upon others. Experience has also shown that laws passed in this manner are seldom permanent, but are changed the moment the instrument under which they are ratified has abated or reversed its current; of all the evils which afflict the State, that of unstable and capricious legislation is among the greatest."

And Judge Willard said: "The popular feeling is expressed through their representatives; and the latter are enlightened and influenced more or less by the discussions of the public press. A complicated system can only be perfected by a body composed of a limited number, with power to make amendments and to enjoy the benefit of free discussion and consultation. This can never be accomplished, with reference to such a system, when submitted to a vote of the people. They must take the system proposed or nothing. They can adopt no amendments, however obvious may be their necessity. With respect to the single case where the Constitution requires a submission of the law to the people, the inconvenience is less felt, because only a single proposition is submitted, with respect to which no other answer can be given than yes or no. The law under consideration is in conflict with the Constitution in various respects. Instead of becoming a law by the action of the organs appointed by the Constitution for that purpose, it claims to become a law by the vote of the electors; and it claims that the popular vote may make it void and restore the former law. All the safeguards which the Constitution has provided are broken down, and the members of the Legislature are allowed to evade the responsibility which belong to their office."

And, finally, Judge Willard says: "If this mode of legislation is permitted and becomes general, it will soon bring to a close the whole system of representative government which has been so justly our pride. The Legislature will become an irresponsible cabal, too timid to assume the responsibility of law-givers, and with just wisdom enough to devise subtle schemes of imposture to mislead the people. All the checks against improvident legislation will be swept away, and the character of the Constitution will be radically changed."

Now, I cannot add anything which will point out the dangers of

such a proposition as that more emphatically than has been done in this case, which has been adopted in almost every State of the Union as a principle not to be departed from, one which, if departed from, would endanger our whole system of government. Why it is proposed to leave any possible measure which may be devised, no matter how dangerous it may be, an anarchistic measure, a measure which might affect the religious sentiment of an entire community, to a vote of the people at the polls to determine whether it shall or shall not become a law. We know how difficult it is to get a vote upon a constitutional amendment. Why would not the same difficulty exist with respect to the passage or the non-passage of a law? A few people may come out, interested in the passage of a particular measure, and by the concentration of their voices and votes may cast, perhaps, 100,000 votes in favor of a proposed measure. The rest of the people may be ignorant of the principle which is under consideration; they may be careless upon the subject; they may not see the effect of such legislation, so that a very small percentage of the people may make that a law which would never become a law, if the representatives of all the people from all the sections of the State, here in a legislative body, passed upon the propriety or the impropriety of legislation. Now, the fact has been adverted to in the remarks of my friend from Erie (Mr. Hill) that it might be well to permit a constitutional amendment of this sort to be adopted, which would refer to a small community or to a city. So far as that is concerned, I claim that the interpretation of our present Constitution has been such, that it is not necessary to put such a clause as that into the Constitution. The very cases which have been cited by my friend from Albany (Mr. McDonough), particularly the case of the Bank of Rome v. The Village of Rome, show that it is competent for the Legislature to pass an act, the going into effect of which may be made dependent upon the voting of the people. As is said in that case: "An act, which, by its terms, is to take effect immediately, but which confers upon the authorities of a municipality certain powers not to be exercised until such act has been approved by vote of the inhabitants, is constitutional. This is not a delegation of legislative power, within the case of Barto v. Himrod. The submission, by the Legislature, to a local constituency of a question affecting their local interests, is to be distinguished from the submission of a question affecting the whole State to the entire body of the electors."

Thus, for instance, the question came up in Syracuse a few years ago as to whether or not the city should acquire water-works of its own, and should bond itself for the purpose of acquiring such

water-works. The Legislature passed an act enabling the city to do this, and the act went into effect immediately. It was proposed, however, that the powers conferred should not be exercised until the people of that locality had voted whether or not they desired to acquire a pure and wholesome supply of water from Skaneateles lake. And so, in the city of New York, we have already a measure which has been discussed before this Convention several times providing that it shall be left to the vote of the people as to whether or not the powers which are conferred by that act shall be exercised.

Mr. McDonough — May I ask the gentleman a question?

Mr. Marshall — Certainly.

Mr. McDonough — Can you pass an act that will unite New York and Brooklyn as a city, provided the people vote for it under this Constitution?

Mr. Marshall — I do not know and I do not care. So far as that is concerned, the people may go through the harmless amusement of voting upon the question as to whether or not they wish to have a consolidation of the two communities. If they express themselves in favor of it, if the law now passed is insufficient and inadequate to that end, the Legislature will, probably, have regard for the voice of the people, provided it appears that there are enough votes cast upon that proposition to express the popular will; but I do not care to have such a dangerous provision as this inserted in the Constitution for the purpose merely of accomplishing the union of Brooklyn and New York. That is a matter of very little significance; that is a mere matter of sentiment. But what I am contending against here is the injection into the Constitution, into the organic law the State, of a principle, of a rule, which, if carried out to its logical conclusion, will destroy representative government in the State of New York.

Mr. Hamlin — Mr. Chairman, I would like, before I address the Convention with the very few words I have to say on this proposition, to inquire whether this proposed amendment is here by the unanimous report of the committee?

Mr. Dean — I would like to answer the gentleman. It is not. Mr. Vedder and myself dissented.

Mr. Maybee — Mr. Chairman, I also dissented from it.

Mr. Hamlin — Well, Mr. Chairman, if there are other gentlemen who wish to dissent from it, so that it will be a minority report, I have no objection. But, at any rate, I believe this to be revolutionary. It is known as the referendum, which is designed to overthrow our system of government. It is a principle which is

imported from abroad, and which is designed to overthrow representative governments. Now, sir, it is not a new thing, by any means. We would simply go back to the system of 3,000 years ago, adopted in Greece and Athens. It built up Athens and made a great nation, as regards art and literature, but, sir, it destroyed human liberty there. The referendum was also in vogue in the Italian republic and it destroyed human liberty there. Now, in this nineteenth century, we are asked to return to this principle of popular government, a system of pure democracy.

Mr. McDonough — If this be revolutionary, isn't the present system in the Constitution, providing for the submission of amendments to the Constitution to the people, revolutionary?

Mr. Hamlin — An amendment to the Constitution comes once in twenty years, and that involves, or ought to involve, great principles affecting the interests of this great State. But here is a proposition that will enable every Legislature that comes to this city to refer at any time any proposition which comes before it to the popular vote. Now, sir, I am opposed to this thing in principle, independent of any question of law. I agree with my friend from Onondaga that it destroys the whole principle of our government. Why, sir, after this system had been abandoned by nations, representative government has been built up so that every nation in Europe which stands in the forefront of civil liberty has a representative government. Now, sir, it is strange, at the close of this nineteenth century, that men should come to this Constitutional Convention and offer to revolutionize this government. Sir, I am opposed to it. I am opposed to the principle of it. When these gentlemen get up and talk, time after time, about the plain people, I say when the plain people of my district send me down to Albany as a representative, I come here to represent them as I believe to be right, and, if my course does not meet their approval when I return to them, then let them send some other man to represent them in the next Legislature. There is no difficulty about this. Everybody knows that in those ancient republics human life was of no account. Why, Athens, the greatest of these republics based upon this principle banished the greater portion of her great men and poisoned the rest. And yet gentlemen will come into this Convention and apparently accept this principle of government. Why, gentlemen, it seems to me monstrous that there could be found anyone who does not believe in the representative principle, with its checks and balances, the whole foundation of which is to secure human liberty. After we have been struggling for something like 3,000 years to obtain human liberty, do not let us go back to the referendum.

Mr. Dean — Mr. Chairman, I simply desire to call the attention of this Convention to the fact that the effect of the adoption of his provision will be to nullify the constitutional limits of the power of the Legislature. All that would be necessary, as to the power of the Legislature, with respect to any kind of bill, would be to pass that law and submit it to the people, when they would nullify the Constitution itself.

Mr. Holls — Mr. Chairman, I understand that this is one of the measures which has been asked for from this Convention by the representatives of what are styled labor organizations. I think any request coming from any large number of our citizens ought to be most respectfully considered, and none more so than those that come from that source, and it is with great regret that I am compelled to differ most seriously with this petition and this amendment. I indorse everything that my learned friend (Mr. Hamlin) has said, and I wish to say right here that there is no class in this community (if it be right to speak of classes) that has more at stake in the maintenance of a representative government than the laboring class. There is no class which suffers more from hasty and ill-advised legislation. There is no class which feels more rapidly the results of an economic or political mistake in legislation. There is no class which recovers so slowly and with such difficulty from such mistakes. Now, sir, Fielding says somewhere that there is a great deal of human nature in man, and one part of it is that any man who can shirk responsibility in a difficult position finds it most convenient to do so. It is a characteristic which the State of New York, above all others, has shown that the tendency in our representatives, and our public men, is to shirk responsibility; and that there is altogether too much of that cowardice which is the most baneful in its effect upon the State; the cowardice of men who dare not stand up against public clamor. There is nothing that the State can do, I think, which will hurt the State more than to help that downward tendency. There is nothing so valuable that we can do the State as to make it sure and certain that every representative of the State of New York will be held to a strict accountability for everything that he does.

Now, sir, this idea of the referendum was originally introduced from Switzerland, the great and glorious republic of Europe. But, Mr. Chairman, while Switzerland is very great and glorious, it is very small in extent. It is not much more than about half the size of the State of New York, about the size of the three States of Massachusetts, Rhode Island and Connecticut. There we have a small extent of territory. The people, while divided by race and

language into three communities, are still within its boundaries. The French, German and Italian are, among themselves, most homogeneous. Each canton of that country is also homogeneous. In such a country it is perfectly possible to have the referendum, especially as all the cantons have introduced a principle which I have advocated on this floor, and which does not allow any citizen to shirk a responsibility on a popular vote, any more than a representative is allowed in the parliament of the republic to shirk responsibility. But, sir, I ask this Convention how, in all reason, can the experience of such a peculiar community be cited as a precedent for the great State of New York, with seven millions of people, on a territory, which is very much greater than Switzerland, and with a population which is everything else, but certainly not homogeneous? Under such circumstances it would be a dangerous experiment; it would be an absolute danger to our government and our form of government, to give way to this passing fad (as I must surely call it) in favor of this referendum. My friend, Mr. Marshall, has well cited the legal points. The fundamental law should be occasionally amended by the people. As to the vote of the people on an amendment to the Constitution and a vote of the people on a law, there is a wide divergence. Mr. Chairman, I sincerely hope this amendment will not prevail.

Mr. Vedder — Mr. Chairman, I simply rise to make an explanation. The proposition before us is to amend section 15 of article 3. The committee amended the bill in this regard by saying that it should be an amendment to section 1 of that same article, if at all, and it was so amended. Just how it happened to come here in this shape I do not understand, unless it was a clerical error in not correcting it in that regard. I wish to say, however, that it was reported in my absence, and I did not have an opportunity to look it over, as I usually do all amendments before making the report. So that should be corrected now by striking out "section 15," and inserting "section 1." I make that motion so as to correct it in that regard.

Mr. Cady — Mr. Chairman, I dislike to occupy the time of the Convention, even briefly, upon this proposition, after the elaborate and able exposition of the principal views connected with it, which have already been submitted by the opponents of the measure. But I regard the matter involved as of such signal importance, so novel, so foreign to these shores, so far-reaching in its character, that I feel it my duty to put my voice, my words on record against it, as well as my vote, when the time shall come to cast that vote. I do not think that any such provision is to be found in any Constitution of

any State of the United States. I do not believe that it has ever been deliberately and solemnly submitted to any other Constitutional Convention in this nation for its consideration. It is opposed to the whole genius of Anglo-Saxon and Anglo-American government. It is an exotic. It is foreign. It does not belong here. In our sister State of Massachusetts the judges of the Supreme Court have made a deliverance upon the subject within certain qualifications and limitations. The opinion of the justices of the Supreme Court of the State of Massachusetts was required by the Legislature of that State upon constitutional questions relating to the right of the Legislature to submit propositions to the people for their vote in the manner proposed by this amendment. It was required of the justices that they give their opinion to the House of Representatives upon the following important questions of law:

"First. Is it constitutional, in an act granting to women the right to vote in town and city elections, to provide that such act shall take effect throughout the commonwealth upon its acceptance by a majority vote of the voters of the whole commonwealth?

"Second. Is it constitutional to provide such an act that it shall take effect in a city or town upon its acceptance by a majority vote of the voters of such city or town?

"Third. Is it constitutional, in an act granting to women the right to vote in town and city elections, to provide that such an act shall take effect throughout the commonwealth upon its acceptance by a majority vote of the voters of the whole commonwealth, including women specially authorized to register and vote on this question alone?"

And to these three questions a majority of the judges rendered their opinion adversely, giving the answer in the negative, and in the course of it they say, at page 587 of 160 Massachusetts Reports: "The characteristic feature of all the Constitutions of the State is that they establish a government by representatives of the people, and not a government directly by the people. This was the kind of government to which the people were accustomed. All hereditary offices have been abolished, so far as they ever existed in any of the colonies, and appointments to office by the British crown having ceased at the time of the Revolution, the chief executive officers and the members of both branches of the Legislature, where there were two branches, were to be elected by the people. "But there is nothing in any part of the Constitution which tends to show that the people desired that any law should ever be submitted to them for approval or rejection."

There is nothing in the constitutional history of the nation or in the constitutional history of any State of the nation which evinces a similar desire on the part of the people of the State. I think that in this very solemn matter the example of our sister States, the history of our own nation, the solemn deliverance of the judges of our State and of the State of Massachusetts, should be followed, rather than yield to any temporary desire on the part of any foreign element to put any such proposition as is embodied in this proposed amendment into the Constitution of our State, and I trust that it will not receive the approval of the committee or the approval of the Convention.

Mr. McDonough — Mr. Chairman, if there is no one else that wishes to speak, I would like to say a word.

Mr. Mulqueen — Mr. Chairman, my attention has been called to the fact that we have not a quorum.

Mr. McDonough — I hope the gentleman will not raise that point. If the delegates here are opposed to it, I am satisfied it won't pass. I would like to say a few words in answer to the criticisms that have been made. One gentleman characterizes it as dangerous. Another gentleman has declared it revolutionary. Another gentleman says it is contrary to the Constitution of Massachusetts. Now, Mr. Chairman, I deny that it is dangerous. I deny that the rule of the people is dangerous in this country. It has been said over and over again, and so often that it is a household word here, that ours is a government of the people, and for the people, and by the people, and I am amazed at gentlemen here who pretend to be afraid of the people. Not only afraid of the people, but who say the legislators are cowards. I believe that the legislators have in their consciences the obligations of their oaths as much as we have, and I believe they will do their duty as faithfully as we will do ours.

Mr. Marshall — Mr. Chairman, I would like to ask the gentleman a question. At the last session of the Legislature, some 800 laws were passed. Under your proposed amendment it would be competent for the Legislature to refer each and every one of those 800 laws to the people for a vote upon them. Do you consider that to be for the best interests of the people?

Mr. McDonough — Mr. Chairman, I answer that it is competent, but it is not at all likely that the Legislature would do anything of that kind. I think it is likely, if the Legislature had the power when they passed the law uniting the city of New York and Brooklyn, that they would have submitted it and had the people say

whether it would become a law or not. When the Legislature submitted the question whether the people wanted contract labor or not, they voted in favor of abolishing it by a majority of 130,000.

Mr. Dean — Mr. Chairman, I would like to ask the gentleman a question. Suppose the coming Legislature should pass a law that women might vote; that this question should be submitted to the people, and they should ratify it. We have in the present Constitution that only males can vote. I would like to have the gentleman answer what situation we would be in in that event?

Mr. McDonough — Mr. Chairman, I would like to answer that if we should give such power no gentleman would be better pleased than the gentleman from Chautauqua, who is known to be such a champion of the women.

But I tell you what they can do now. Two Legislatures can pass a proposed amendment and then submit it to the people and have it put in the Constitution, after it has been favorably voted on. You refer to the people this fall the question of who shall be Governor and who shall be Lieutenant-Governor. You refer to them the question of who shall be your judges and you refer to them most important acts. If you are afraid of the people, I will say that I am not. I am not afraid of the people of this State. One gentleman says that he is afraid because few people may vote upon it; that it may attract the attention of but a few people, just as our constitutional amendments do; that only the people directly interested in the amendment will pay any attention to it. Then, are you going to submit constitutional amendments for a few people to vote upon? We will vote upon two constitutional amendments this fall that this Convention will not touch at all. They are to be voted upon by acts of the Legislature, two Legislatures having passed upon them. Was the body which put in here a constitutional provision that you shall not bond your State without the approval of the people, a revolutionary body? Now, I have great respect for Greece and Rome, but they are passed away. I have great respect for the dead judges, more respect than for some that are living. Judge Willard was a great judge. I have great respect for him, but Judge Willard so construed this section of the Constitution ——

Mr. Marshall — He so construed the policy.

Mr. McDonough — Why, nobody doubts that under the present Constitution such a thing as referring a proposition to become a law cannot be done. That was the only reason that I introduced the amendment, because I knew it could not be done. I want to say to you that this is not the referendum that is asked for by the

laboring people; it is a modification of theirs. My friend, Holls, speaks for the laboring people, but always votes against them. But if he does this, he is not right. This is not the referendum that they asked for. It was the initiative that they asked for, that all legislation must be initiated by the people and referred to them. I am not as familiar with Switzerland as my friend, Holls. I know more about Ireland. I believe they have home rule in Switzerland, and they should have home rule in Ireland.

Now, Mr. Chairman, no proposition is to be referred, unless it receives a majority vote of the Legislature. Are you afraid of your Legislature? The matter would have to pass the Governor, too. Are you afraid of him? You certainly ought not to be afraid of the pleasant old gentleman that occupies the Governor's chair at the present time. Now, I do not see anything dangerous about this proposed amendment. I do not see anything revolutionary about it. As I said in the beginning, you may vote for it or you may not vote for it. It won't hurt me. Unfortunately, I am not a laborer; I do not toil. I am a mere lawyer. I believe lawyers are so wicked that they are excluded from labor organizations. I tell you, gentlemen, that the laboring people are entitled to and should receive respectful consideration when they come here. This measure is not anything like what they asked for. It is a very simple proposition and is accepted by them.

Now, Mr. Chairman, I think we had better postpone the vote on it this afternoon — the time is so short. However, if there is a quorum present, we might take a vote upon it, but I doubt very much if a quorum is present.

Mr. Kerwin — Mr. Chairman, it seems, as my friend, Mr. McDonough, has stated, that any popular amendment that comes before this Convention, or any measure which is going to alleviate the sufferings of the masses of the people of this State, is termed either an anarchistic or a Populist proposition. Mr. Chairman, this amendment is not compulsory referendum. It is not the referendum that our people asked for, but it is a step in the right direction. The Greater New York bill that passed the Legislature last winter, in order to enable the people to vote upon the proposition whether they want it or not, will come back to the next Legislature. And, if the Legislature is of a different political complexion than that of the last Legislature, they cannot have it.

Mr. Chairman, if this amendment was in the present Constitution, we would not have to appear here with a proposition to abolish the convict labor in our State prisons. The people, by a vote of a hundred and thirty thousand majority, decided against contract

labor in prisons. What happened then? The Legislature ignored the voice of the people. Mr. Chairman, I hope this amendment will prevail.

Mr. Hamlin — Mr. Chairman, I move that the committee do now arise and report this amendment, rejecting it entirely.

Mr. McDonough — Mr. President, I call for a count on that, to see if we have a quorum present.

Mr. Holls — Mr. Chairman, I call for a standing vote on it, and then the count will show whether a quorum is present or not.

Mr. Hamlin — Mr. Chairman, if there is any doubt about a quorum, I move the committee rise, report progress, and ask leave to sit again.

Mr. McDonough — I raise the point that no quorum is present.

Mr. Hamlin — Mr. Chairman, the committee do not seem to understand what the question is before them.

Mr. Moore — Mr. Chairman, is the motion to report progress and ask leave to sit again?

The Chairman — That is the motion. Those who are in favor of reporting progress and asking leave to sit again will rise and stand until they are counted.

The motion was lost by a vote of 37 to 44.

Mr. McDonough — There is not a quorum present, Mr. Chairman, and I raise the point.

Mr. Blake — All may have not voted, Mr. Chairman.

Mr. Kerwin — Mr. Chairman, the vote having shown that there is no quorum present, I move the committee rise and the President take the chair.

The Chairman — The roll will now be called to ascertain if there be a quorum present.

Mr. McDonough — Mr. Chairman, I raise the point of order that if there is no quorum present, the President has to take the chair.

The Chairman — The point of order is not well taken; the Secretary will count the members present.

The Secretary proceeded to count the members present.

The Chairman — The count of the Secretary reveals the fact that there is more than a quorum present.

Mr. Holls — Mr. Chairman, I now renew the motion made by Mr. Hamlin that the committee report this amendment adversely.

Mr. Mulqueen — Mr. Chairman, it seems to me that on a matter like this where the laboring men of the State ——

Mr. Cady — Mr. Chairman, I rise to a point of order. There is no question before the House for discussion.

The Chairman — I think the point of order not well taken, the motion to report adversely being debatable.

Mr. Mulqueen — Mr. Chairman, it is with some hesitation that I rise to debate this question to-day, after listening to the able addresses that have been made by Mr. Hamlin, Mr. Marshall, Mr. Holls and Mr. Cady; but it is a serious matter to tell us that a measure proposed and advocated by every labor organization in the city of New York is revolutionary. It was amusing to me to hear Mr. Holls state that the laboring organizations should be protected from ill-advised legislation, and yet that is all they ask for now. They want to have the right on certain measures passed by the Senate and Assembly to pass upon those measures. Now, sir, the laboring men of the State have asked for more than what the committee have reported. They want the initiative, as well as the veto power. But, sir, the committee reported against that and all we have here to-day ——

The President resumed the chair.

The President — Mr. Mulqueen will complete his address at three o'clock, to which time this Convention stands in recess.

AFTERNOON SESSION.

Saturday Afternoon, August 18, 1894.

President Choate called the Convention to order at three o'clock.

Mr. Hamlin — Mr. President, I would like to move, and do move, that there be printed 4,000 additional copies of the amendment of the Judicary Committee. It seems that the former resolution provided only for the report accompanying the amendment and not for the amendment itself. They being printed separately, it now appears that there are only 5,000 copies of the report being printed and not of the amendment.

The President — Will you send that up in writing, Mr. Hamlin? Is it 4,000 copies of the report or of the amendment?

Mr. Hamlin — Of the amendment.

The President — The gentlemen hear the motion of Mr. Hamlin that 4,000 copies of the judiciary article be printed.

Mr. Cochran — Mr. President, I make the point of order that there is no quorum present.

The President — I trust Mr. Cochran will withdraw the motion.

Mr. Cochran — I withdraw it, sir, for Mr. Hamlin's motion only, and at his request.

The President put the question on the motion of Mr. Hamlin, to print 4,000 extra copies of the judiciary article, as proposed by the Judiciary Committee, and it was determined in the affirmative.

Mr. Gilleran — Mr. President, Mr. McClure has requested me to ask that the Convention excuse him for to-day, because of illness in his family.

The President put the question on granting leave of absence to Mr. McClure, as requested, and it was determined in the affirmative.

Mr. Barrow — Mr. President, I ask to be excused for Monday on account of illness in my family.

The President put the question on excusing Mr. Barrow, as requested, and it was determined in the affirmative.

Mr. Root — Mr. President, a report from the Committee on Rules.

Mr. Cochran — Mr. President, I renew my point of order that a a quorum is not present.

Mr. Root — Mr. President, I think I have the floor.

The President — Mr. Root has the floor.

Mr. Root — Upon the resolution to amend rule 29, the Committee on Rules reports in favor of striking out the last sentence of the rule which reads "if leave be refused, the effect is to bring the subject up immediately before the Convention." The effect will be simply to leave the matter to ordinary parliamentary rules, so that the question will proceed as it does in ordinary legislative bodies. We find that the difficulty which has arisen here arises solely from the fact that this last sentence of the rule is an interference with ordinary parliamentary procedure.

We also report to amend rule 7 by inserting the words, after the word "request," in the fifth line, "or any member may explain his vote for not exceeding three minutes." That is simply to do away with the fiction of asking to be excused from voting and going through all that form. So that any member who wishes to be excused may ask to be excused, and any member who wishes to explain his vote, may explain it, in either case taking three minutes. I will not ask for a consideration of these rules to-day, but will

bring them up, with the consent of the Convention, on Monday morning.

Mr. Marks — Mr. President, may I ask the gentleman a question? What will be the effect and what will be the parliamentary law, if we strike out the last section of rule 7? How will that affect it?

Mr. Root — It will have this effect, that if the Committee of the Whole has reported progress and asked leave to sit again, the Convention may either refuse the request without any modification, refuse it simply, and that kills the bill, or the Convention may refuse it and order the amendment to a third reading; or the Convention may refuse it and recommit the amendment to a committee; or the Convention may grant it, which leaves it in the Committee of the Whole. So that each of those four alternatives remains open for the Convention — to kill it by refusal; to grant it; to refuse and order to a third reading, which is an adoption, just as if the Committee of the Whole had recommended the adoption and the report of the committee had been agreed to; or to refuse and recommit to a committee. That covers the entire range of the procedure possible upon such a report, and puts each of the four alternatives by itself, so that the Convention may determine what course it wishes to follow.

Mr. Barhite — May I ask the acting chairman of the Committee on Rules a question? I would like to ask him if the proposed amendment will be of any assistance when we have the state of affairs which we did this morning, where a committee has recommended the passage of a measure, and it has not been agreed to by the Convention? That was where the difficulty arose over the ruling this morning. I would like to ask how the striking out of the last sentence of rule 29 will help us out in such a state of affairs as that?

Mr. Root — Mr. President, I will answer the gentleman's question by saying that the change that we now report is not designed to apply to that case. It merely relates to the rule which treats of the Committee of the Whole reporting progress and asking leave to sit again. Upon the other subject the committee does not yet report. We thought it advisable not to attempt to report upon that other subject, for the reason that three members of the committee were absent from the Convention to-day, and those three were all members of the committee who represent what is called the minority in this House.

Mr. Blake — Mr. President, I would like to have the report read in its entirety so that we may see what changes are proposed.

Mr. Cochran — We are killing time very well, Mr. President, without a quorum, I think.

The President — Where any action is taken by the Convention, Mr. Cochran's point will be in force.

Mr. Root — In answer to Mr. Blake's request, I will repeat that the first amendment proposed is to strike out the last sentence of rule 29. The second amendment proposed to insert in rule 7, after the word "request," in line five, the words "or any member may explain his vote for not exceeding three minutes."

Mr. Blake — Those are the only changes?

Mr. Root — That is all.

Mr. Doty — Mr. President, Mr. Davies has gone home ill, and asks me to request that he be excused for the rest of the afternoon and for Monday.

The President put the question on excusing Mr. Davies from this afternoon's session, and it was determined in the affirmative.

The President then put the question on excusing Mr. Davies on Monday, and it was determined in the negative.

Mr. Emmet — Mr. President, on behalf of Mr. Gibney, I ask that he be excused.

The President then put the question on granting leave of absence to Mr. Gibney, and it was determined in the affirmative.

Mr. Titus — Mr. President, Mr. Ohmeis left for home this afternoon quite ill, and I ask that he be excused.

The President put the question on granting leave of absence to Mr. Ohmeis, and it was determined in the affirmative.

Mr. Powell — Mr. President, I, unfortunately, find myself in a position where I am compelled by matters which I have tried to the utmost of my ability to adjourn and to have set aside, to ask to be excused on Monday. I have stayed here to-day in the face of great inconvenience, because I was afraid we might not be able to get a quorum.

The President put the question on excusing Mr. Powell, and it was determined in the affirmative.

The President — Does Mr. Cochran now make the point that there is no quorum?

Mr. Cochran — Mr. President, I do not want to have this Convention misunderstand my motives. I believe that when this rule to

hold sessions on Saturday afternoon was adopted, it was intended to apply uniformly to all. I believe that when this rule was adopted there were very many members voted for it that had no idea of coming here on Saturday. I think it is unfair to the members of this Convention who have stayed here and attended conscientiously to their duties, that the members who voted for this Saturday session should stay away. I think it is my duty, as a delegate, to insist that there is no quorum, and, if there are members of this body who are not here, but are attending to other business, I think they should be brought up here.

The President — The Chair thinks there is a quorum. However, the Secretary will call the roll to ascertain if there is a quorum.

Mr. Marshall — I call for a rising vote instead of a roll-call.

Mr. Kerwin — Mr. President, I object to any rising vote. For two days in succession we have had ninety-two only present, barely a quorum. I call for the ayes and noes.

Mr. E. R. Brown — Mr. President, I call the gentleman to order, as not having been recognized by the Chair.

Mr. E. A. Brown — Mr. President, I raise the point of order that nothing is in order after a roll-call was been ordered, and no argument or objection can be made.

Mr. Kerwin — Mr. President, I ask that the rule in force, when there is not a quorum present that the ayes and noes be called to ascertain the same, be enforced. I ask if the rule does not require a roll-call when a quorum is not present?

The President — Will Mr. Kerwin refer to that rule?

Mr. Cochran — Rule 62.

Mr. Titus — Rule 63.

Mr. Kerwin — I ask that question for information.

The President — The Chair is of the opinion that there is no occasion at present for a call of the House under rule 62 or 63.

Mr. Kerwin — That does not answer the question. I raise the question of no quorum. The rules say that when that question is raised the roll shall be called.

The President — Let Mr. Kerwin point that out in the rules. The gentlemen will please rise and stand until they are counted, in order to ascertain if a quorum is present.

The Secretary then proceeded to count the members present.

The President — The gentlemen will be seated. There is ——

Mr. Kerwin — Mr. President, I move that for a want of a quorum we adjourn.

Mr. Cochran — I second the motion.

Mr. Kerwin — I call for my motion, Mr. President, as it is regularly seconded.

The President put the question on the motion of Mr. Kerwin that the Convention do now adjourn, and it was determined in the negative.

Mr. Kerwin — Mr. President, I now move a call of the House.

Mr. Cochran — I now move a call of the House.

Mr. E. R. Brown — Mr. President, is it impossible to enforce that part of our rule which provides that the gentlemen shall not make motions until they have addressed and been recognized by the Chair?

The President — Rule 61 provides that "in all cases of the absence of members during its sessions, the members present may take such measures as they shall deem necessary to secure the presence of absentees."

Mr. Cochran — That is only necessary when a quorum is present, Mr. President, is it not? I suggest that.

Mr. Blake — Mr. President ——

Mr. Hill — I understand the rule, as read by the President, leaves this matter entirely with the Convention as to what action it shall take.

The President — With the House.

Mr. Hill — Now, I think if the gentleman from Albany will be patient for a moment it is very likely that there will be a quorum present this afternoon. There are important matters before this Convention, which, it seems to me, can be disposed of this afternoon. That there should be at present a lack of a quorum does not seem at all strange. We were in session here till one o'clock this afternoon, and it is now quarter past three. I think if the gentleman, in view of the urgency of the business will yield his point, it will be in the interest of us all. The matter under consideration can be discussed and disposed of to-day.

The President — No action is necessary. The House is in Committee of the Whole, and Mr. Brown will take the chair.

Mr. Cochran — Mr. President, I raise the point of order that there is not a quorum. I am content to remain here until five o'clock to raise a quorum, but I do not think this Convention can

do it. We barely had a quorum this morning, and I know, to my own knowledge, of eleven members who have left the city this afternoon.

Mr. McDonough — Mr. President, I do not think it proper for forty-six members of this Convention to beat an amendment or order it to a third reading.

The President — No one has suggested that.

Mr. McDonough — Forty-six members of this Convention this afternoon can smother this.

The President — No they cannot. There cannot be a vote taken without a majority, and I know of no rule that prevents the Committee of the Whole sitting as long as they please.

Mr. McDonough — Just a moment, Mr. President, I misunderstand. I know of no rule by which forty-six members can vote upon a constitutional amendment.

Mr. E. R. Brown took the chair.

Mr. Blake — I desire first to inform the Chair and the committee that Mr. Mulqueen received a telegram which called for his immediate departure for New York, and, therefore, I trust the committee will excuse him on that account. Mr. Chairman, are we in Convention or Committee of the Whole?

The Chairman — Committee of the Whole.

Mr. Blake — I think the question which was raised here that there was no quorum was premature. If I understand the rule properly, when less than a quorum votes on any subject under consideration there has been no vote. I do not know that it is proper for me to raise the question at this time, the President having vacated the chair, and we are now in Committee of the Whole, but I should say there must be a vote to show that no quorum is present before a question can be raised that there is no quorum here. There has been no vote.

Mr. Cochran — I desire to call the attention of the Chair to rule 28 that makes it the duty of the Chair to report to the President the fact that there is no quorum present.

Mr. Choate — That fact has to be ascertained in Committee of the Whole before that is required.

Mr. Cochran — I make the point of order that there is no quorum present in Committee of the Whole.

The Chairman — The point is not sustained.

Mr. Kerwin — I make the point of order that there is no quorum.

The Chairman — The Chair refuses to recognize Mr. Kerwin.

Mr. Blake — Mr. Chairman, I was about to say, although somewhat late, that the motion might be proper, if the vote had been taken and disclosed the fact that there was no quorum present. But there has been no vote upon any question whatever. If you will examine the first line of rule 63, it appears that " when less than a quorum vote on any subject under consideration by the Convention, it shall be in order, on motion, to close the bar of the Convention, whereupon the roll of members shall be called by the Secretary, and, if it is ascertained that a quorum is present, either by answering to their names or by their presence in the Convention, etc." Of course, that may not be proper to raise now, but, as has been suggested by the President, it must be made manifest here by some action before the question can be raised.

Mr. McDonough — Mr. President and gentlemen, I understand that there is no desire to take advantage of the few here, the small attendance, to defeat this measure. It is agreed that it ought to be discussed, and it can be disposed of in a short time, unless we go back to Greece and Rome and all the way down. I hope the question may not be raised of no quorum, but that we can go on with the discussion of this measure this afternoon. I have assurances of members that are opposed to this measure that they are not inclined to force a vote this afternoon.

Mr. Choate — There can be no vote taken without a quorum.

Mr. Alvord — Mr. President, I rise to a point of order.

The Chairman — The gentleman will state his point of order.

Mr. Alvord — Mr. Chairman, my point of order is that there is no quorum here at present. I believe, however, that I am wrong. I think there is. That calls for the determination of the Chair, in reference to the fact. It can only be done in Committee of the Whole by rising. I, therefore, make the point of order that there is no quorum present, and ask the Chair to decide that point.

The Chairman — The Chair rules that the question cannot arise until a vote is taken in Committee of the Whole, on business upon which the committee is then sitting.

Mr. Tekulsky — Mr. President, I believe that if the Chairman will ask the delegates in committee to rise and be counted, we can easily find out if there is a quorum present.

The Chairman — On better advice the Chair so rules. (Laughter.)

Mr. Tekulsky — I make that as a motion.

The Chairman — The gentlemen present will please rise and be counted by the Secretary.

The Secretary proceeded to count the members present.

The Chairman — There is no quorum. The gentlemen will be seated.

Mr. Nicoll — Mr. Chairman, may I ask what the count was?

The Chairman — There are eighty-one present.

The President resumed the chair.

Chairman Brown — The Committee of the Whole have had under consideration the proposed constitutional amendment (printed No. 396), entitled "An act to amend article 3 of the Constitution relating to the passage of laws," have made some progress in the same, but finding no quorum present, have instructed the chairman to report that fact to the Convention.

The President — The gentlemen hear the report of the Committee of the Whole that there is no quorum present. What is the pleasure of the House?

Mr. Moore — I now move a call of the House under rule 63.

Mr. Durfee — Mr. President, I hope, before this motion carries, that the gentlemen will understand what it implies. A call of the House at this time, with members absent from the city in large numbers, I doubt if there are, perhaps, a quorum in the city, means the dispatching of the Sergeant-at-Arms and his assistants in various directions after members of this body. It involves the closing of the doors of this chamber, and the retention of all those that are here until a quorum is obtained, at whatever expense and whatever delay, until the Convention shall order the call suspended. Now, it does seem to me, under the circumstances, after the weeks that we have been engaged here, diligently engaged, it is not advisable for this body to undertake a proceeding of that character, and, if the point that has been made here which is intended, evidently, to delay this body, and prevent discussion, which might go on — although six or seven less than a majority of this body do happen to be present — if that point is to be taken under circumstances of this character, and is followed by a call of the House, it will involve immense hardship upon each member of the Convention present.

The President — The Chair is of the opinion that rule 63 does not require a call of the House at this time, but the matter is governed by rule 61. Rule 63 provides that "when less than a quorum in the Convention vote on any subject under consideration by the Convention it shall be in order to compel members to vote."

Under rule 62 a call of the Convention may be made, for the purpose of securing the attendance of members. Does Mr. Moore make the point under rule 62?

Mr. Moore — Yes, sir, I make it under rule 62.

Mr. Tekulsky — Mr. President, prior to voting upon the call of the House, I would move we have a roll-call, and, if we do not find a quorum present, I am ready to second the motion of Mr. Moore. The roll ought to be called first.

The President — The Secretary will call the roll.

Mr. Kerwin — Mr. President, I rise to a point of order.

The President — State your point of order.

Mr. Kerwin — My point of order is that the chairman of the Committee of the Whole reported no quorum, and it is the duty of the President, on going into his seat, to order the Sergeant-at-Arms to bring every member of the Convention in the building before the Convention.

The President — There is no such rule known to the Chair whatever. The motion is that there shall be a call of the House. That is open for the consideration of the Convention.

Mr. I S. Johnson — Mr. President, I do not understand that it necessarily follows that you have to send after men. A call of the House does not imply that you have to send after men. The call of the House is simply to ascertain who are absent.

Mr. Tekulsky — Mr. President, I rise to a point of order.

The President — Mr. Tekulsky will state his point of order.

Mr. Tekulsky — My point of order is that there is a motion before the Convention for a roll-call, and, if it is found then that there is no quorum present, it is time enough for a call of the House.

The President — The motion is for a call of the House, and that is open for consideration. Mr. I. S. Johnson has the floor.

Mr. I. S. Johnson — Mr. President, I was simply making the suggestion, in answer to one remark that was made here, that it would be necessary to send for all members absent that were outside of the city, that I do not know that the call of the House necessarily requires it. If the call of the House determines that there are not a sufficient number of members present, then the House itself will determine whether the Sergeant-at-Arms shall bring in the members. When he has brought in three or four the call may be suspended. I do not apprehend that it will be necessary to send to New York or anywhere else.

Mr. E. A. Brown — Mr. President, I make the point of order that the motion is not debatable under rule 44.

Mr. Alvord — Mr. President, the rule is perfectly plain. A call of the House can be ordered, but before that is ordered a roll-call should be had to determine whether the report of the Committee of the Whole is correct or not. We can only order a call of the House or adjourn. Those are the only two things we can do.

The President — That is correct and the Secretary will call the roll.

The Secretary called the roll.

The President — There are eighty-one present. Less than a quorum.

Mr. Maybee — Mr. President, I did not notice that my name was called.

Mr. Vedder — Mr. President, I see by rule 63 that when the roll is called, if it be ascertained by it, or by the President, that there is a quorum present — now, here are two already present that were not counted. Not only the roll-call is to govern as an element, but also the eyes of the President to see if there are not delegates present who have not answered to their names.

Mr. Moore — Mr. President, I beg to call attention to the fact that this call is under rule 62, not under rule 63. Rule 63 applies when the Convention is voting upon something. This is simply a call to ascertain how many are present under rule 62.

Mr. Alvord — Mr. President, there are but two questions, and they are not debatable. One is a call of the House and the other is to adjourn. I move that this Convention do now adjourn.

Mr. Kerwin — I second the motion.

The President put the question on Mr. Alvord's motion to adjourn, and it was determined in the negative.

Mr. Kerwin — I now move a call of the House, Mr. President.

The President put the question on the motion of Mr. Kerwin, and it was determined in the negative.

Mr. Kerwin — Both motions now that could be offered having been lost, I call upon the President to adjourn this Convention for the want of a quorum.

The President — The President does not know that he has the power to do it.

Mr. Cookinham — Mr. President, I certainly am willing ——

Mr. Kerwin — I rise to a point of order.

The President — Mr. Cookinham has the floor. You can state your point of order.

Mr. Kerwin — My point of order is that the roll having been called and no quorum being present, there are only two motions left for the Chair to entertain; that of a call of the House and a motion to adjourn. Both of these motions having been defeated, I now call upon the President to adjourn the Convention. I raise this point of order and ask for a ruling of the Chair.

The President — Will Mr. Kerwin point out any ruling that gives the Chair that authority?

Mr. Kerwin — I have not got the rules at the tips of my fingers, but there is a rule that states that only two motions can be entertained, a motion for a call of the House and a motion to adjourn. There is no business that can be proceeded with. I ask for the decision of the Chair.

Mr. Titus — I move we take a recess until Monday morning at ten o'clock.

Mr. Blake — Is that debatable, Mr. President?

The President — The original motion to adjourn is not debatable.

Mr. Blake — It seems to me, Mr. President, that this situation discloses a sad instance of inconsistency on the part of certain gentlemen in this Convention. Now, I do not wish to indulge in any strictures upon the action of the Convention or the action of any gentleman in this Convention, but the President and the members of this Convention remember very well the scene that presented itself a few days since, when the motion prevailed to sit six days, sixteen sessions, in a week. I voted and I worked against the adoption of that rule, as you very well know, Mr. President. I do not mean to claim by that any honor or credit for myself or to indulge in any criticism of the action of any other gentleman, but the great majority of this body enthusiastically voted for the adoption of that measure, and yet many of those gentlemen must have known, and we may assume to judge so, from the action of more than a majority of this Convention, that they would attempt to evade the operation of the very rule for whose adoption they voted at that time. I say, sir, it is not fair or just to the gentlemen in this Convention who are here to-day. I had better reason than most of those gentlemen to absent myself, and I voted and worked against the adoption of that proposition, and these gentlemen who raised their voices loud and enthusiastically for its adoption have fled from this Convention and from the performance of their duty. Now, sir, I think we are justified in indulging in so much of stric-

ture upon these members who have absented themselves from this session. That is all I care to say. Whether the Convention adjourns or not, I care not, but it seems to me that it ought to try to do some business. We who have remained here and could have gone to New York, been down there all afternoon attending to some business, are here. These gentlemen, some of the members of the Committee of Rules, who voted so enthusiastically for the adoption of the rule ——

Mr. Alvord — Mr. President, I rise to a point of order.

The President — The gentleman will state his point of order.

Mr. Alvord — My point of order is, that there is no motion before the Convention.

Mr. Blake — I am endeavoring, sir, to entertain the Convention until such time as we may get a quorum.

The President — Mr. Alvord's point of order is well taken.

Mr. Acker — I move you, sir, that the sergeant-at-arms be authorized to step down and ask the two delegates from Albany to appear and make a quorum, so that we can go on.

The President — That motion is entirely in order under rule 61.

The President put the question on the motion of Mr. Acker, and it was determined in the affirmative.

The President — The sergeant-at-arms will attend to the order of the Convention.

Mr. Alvord — Mr. President, I move that the motion for the call of the House be laid upon the table.

The President — That was voted down, was it not?

Mr. Alvord — Then, sir, I move again that this House do now adjourn.

Mr. Dean — On that motion I call for the ayes and noes.

The call for the ayes and noes was not sustained.

The President put the question upon the motion to adjourn, and declared the motion to be lost.

Mr. Alvord — I call for the count.

A rising vote was then taken, resulting in the defeat of the motion, twenty-one to forty-three.

Mr. Holls — I would like to ask for information, whether the Secretary can inform the House how many delegates that have not been excused for to-day are absent. I believe a list of those excuses has been kept, and a list of those present he has now in his possession.

The President — It is entirely competent for the House to ascertain who have been excused, and how many are absent without excuse.

Mr. W. H. Steele — I move that this Convention do now take a recess ——

Mr. Holls — A point of order. My point of information has not been answered yet.

Mr. Vedder — Do I understand, Mr. President, that under rule 61 the sergeant-at-arms has been directed to bring in what members he may find in Albany, and is now performing that duty?

The President — The Chair understands that the sergeant-at-arms was directed to summon the members residing in Albany who are not present, under rule 61.

Mr. Peck — I would like to ask how the Chair rules as to what constitutes a majority. The statute on the subject is section 9 of the act organizing the Convention, "A majority of the Convention shall constitute a quorum to do business."

The President — The Chair understands by that, that a majority of the actual members of the Convention constitutes a quorum. There were 175 members elected, of whom seven have been marked off either as dead, resigned or never having appeared to take the oath, leaving 168, of which eighty-five is a quorum.

Mr. McDonough — Mr. President, I ask unanimous consent to go on with this amendment in Committee of the Whole.

The President — It does not require unanimous consent; it only requires the consent of Mr. Cochran and Mr. Kerwin.

Mr. Kerwin — Mr. President, on one condition will I withdraw my objection — that the Chair will state now that on the final passage of any amendment, he will hold the same ruling that he holds now to get a quorum.

The President — The Chair unfortunately is bound by the rules of the Convention, that on the final passage of any amendment, a clear majority of all the members elected is necessary.

Mr. Kerwin — Then I hold a clear majority of all the members elected is due to the Committee of the Whole.

The President — Does Mr. Kerwin object to the discussion going on without a vote being taken?

Mr. Kerwin — I object to my vote being taken on any ground.

Mr. Vedder — I make the point of order, Mr. President, that there is nothing before us now to show but that a quorum is present.

So far as this Convention now stands, we have a quorum, and there is nothing to dispute it. We can go on and do business.

Mr. Nicoll — Mr. President, I move that the doors of the Convention be closed while the sergeant-at-arms is engaged in finding additional members, or else we will find ourselves in a few moments without a quorum again.

Mr. Kerwin — If there is no objection, Mr. President, I will withdraw my objection to proceeding with the regular order of business.

The President — Then Mr. Brown will take the chair, and the discussion may go on.

Mr. Cochran — I do not know that Mr. Kerwin has any power to withdraw mine.

Mr. E. R. Brown in the chair.

The Chairman — The House is now in Committee of the Whole on general order No. 28. What is the pleasure of the committee?

Mr. Nicoll called for the question.

Mr. Cochran — I believe the motion was to rise and recommend that the committee reject this in its entirety. I believe that is the pending motion.

The Chairman — The Chair does not understand that that is the motion.

Mr. McDonough — Mr. Chairman, I move that the committee rise, report progress and ask leave to sit again.

The Chairman put the question on the motion of Mr. McDonough, and it was determined in the negative.

The Chairman — What is the further pleasure of the committee?

Mr. Moore — Mr. Chairman, if nobody else seems to desire to say anything on this matter, I want to ask Mr. McDonough a question or two for information. I want to ask him what effect he thinks this act, if it be adopted by the people and become a part of the organic law of the State, would have upon section 18 of the Constitution, relative to the prohibition of the Legislature relative to passing certain private or local bills. I ask for information.

Mr. McDonough — My opinion is it would have no effect at all; that this only gives the Legislature permission to submit such matter to the vote of the people as it may pass upon itself, and if it have not the right to pass upon the bill itself, it has no right to submit it to the people. I am not a judge of the Supreme Court, and have not general jurisdiction, consequently, it is only the opinion of a private citizen, and the gentleman will have to take it for what it is worth.

Mr. Holls — I would like to ask for information, Mr. Chairman. Would it be in order to move that this committee rise and recommend to the Convention to take a vote on this amendment on Monday? Would such a motion be in order? If it were in order, I should consider it a happy solution of the difficulty, because we could then proceed to the consideration of another general order upon which somebody might wish to debate.

Mr. McDonough — If that is in order, it will be perfectly satisfactory to me.

The Chairman — The Chair rules that such a motion cannot now be entertained.

Mr. McDonough — I move, Mr. Chairman, that we now rise and report this favorably, and ask that a vote be taken on it next Monday. That, I am told by the gentleman at my right, is in order.

Mr. Dean — I object to any such complication of the question. I do not think that this committee has the power to direct what the Convention shall do upon the report of a committee.

The Chairman — The point being raised that this committee cannot direct a vote to be taken next Monday, the point is sustained.

Mr. Crosby — Mr. Chairman, I move that this committee do now rise and report this proposition adversely.

Mr. McDonough — If that is to be done, I will raise the question of no quorum.

Mr. Jesse Johnson — Mr. Chairman, I think that no vote should be taken on this proposition unless it be with a clear quorum. I think the consent of not to raise the point of no quorum was given on that understanding. I hope, therefore, that the motion will not be pressed.

Mr. Morton — Mr. Chairman, the object sought to be obtained by the friends of this measure can be obtained in a very easy manner. This motion of Mr. McDonough's may be carried in this committee, and when the committee reports to the Convention, Mr. McDonough's motion that the vote be taken on Monday, or at any other time, would be in order.

Mr. Vedder — Mr. Chairman, I suggest this, which will dispose of the matter, it seems to me. Let leave be granted by this committee to report progress on the bill, and leave be given to sit again, and let that be in good faith carried out. Then, at the next meeting of the Committee of the Whole, when we shall have a quorum, it will take but a few minutes to dispose of it, and that will be keeping faith with the measure and with these parties, and permit us,

when we get through with this, to do our other business in Committee of the Whole, although there will not be technically a quorum.

Mr. Mereness — Mr. Chairman, rule 44 provides that when a question is under consideration, "the following motions only shall be received," one of which is, to postpone to a certain day, and it seems to me that if the Committee of the Whole ——

Mr. Vedder — That, Mr. Chairman, was the motion, that I made, as I understand it, that the committee do now rise and report progress, and ask leave to sit again.

The Chairman — There was a motion already before the House, made by Mr. Crosby.

Mr. Vedder — The same motion?

The Chairman — No; it was the motion to rise and report adversely on the amendment.

Mr. Kerwin — I rise to a point of order. In order to state my point of order correctly, I wish to say that I withdrew my objection on the ground that there should be no vote taken this afternoon. Now, that a vote is trying to be forced, I raise the point of order that there is no quorum present. They are trying to report this bill adversely. A motion has been offered to that effect. I raise the point of order that there is no quorum present.

The Chairman — The gentleman rose to a point of order. I do not understand that to be a point of order.

Mr. Kerwin — I do not propose to take any chances on the vote when there is no quorum.

The Chairman — Does the gentleman from Albany object ——

Mr. Kerwin — I object to any further consideration of this amendment until we get a quorum present.

The Chairman — Does the gentleman from Albany object to entertaining a motion to rise, report progress and ask leave to sit again?

Mr. Kerwin — The minute that vote is taken and defeated, the people who are advancing the theory to report adversely will force their vote. I do not propose to take any chances.

Mr. Holls — Mr. Chairman, the motion was made that this committee rise, report progress and ask leave to sit again. That motion is not debatable, nor is it in order to raise the point of order that there is no quorum when that motion is pending.

Mr. Moore — I rise to a point of order.

Mr. Holls — I ask for a decision of my point of order.

Mr. Moore — I make the point of order, Mr. Chairman, that the only motion before this House now, is the motion of Mr. Crosby, which should be put before any other motion. He did not withdraw it.

The Chairman — The motion now before the committee is the motion of Mr. Crosby, that the committee do rise and report adversely on this amendment.

Mr. Kerwin — I object to any vote being taken, Mr. President. I raise the question of no quorum.

Mr. Holls — Mr. Chairman, do I understand that my point of order is overruled, that Mr. Vedder's motion that this committee now rise, report progress and ask leave to sit again takes precedence over Mr. Crosby's motion, and is not debatable?

The Chairman — What was your point of order?

Mr. Holls — My point of order was, that the motion of Mr. Vedder to rise and report progress takes precedence over Mr. Crosby's motion.

The Chairman — The point of order is well taken. The motion before the House now is that the committee rise, report progress and ask leave to sit again.

The Chairman then put the question on Mr. Vedder's motion that the committee rise, report progress and ask leave to sit again, and it was determined in the affirmative.

President Choate resumed the chair.

Mr. Holls — Mr. President, I now ask for the information which I requested before, as to how many members of this Convention, and who they are, if the Secretary knows, are absent without excuse?

The President — The gentleman will please wait until the Committee of the Whole is disposed of.

Chairman Brown — Mr. President, the Committee of the Whole have had under consideration the proposed constitutional amendment (printed No. 396), entitled, " Proposed constitutional amendment to amend article 3 of the Constitution, relating to the passage of laws," have made some progress in the same, but not having gone through therewith, have instructed the Chairman to report that fact to the Convention, and ask leave to sit again.

The President put the question on agreeing with the report of

the Committee of the Whole, and it was determined in the affirmative.

The President — The Secretary will inform the Convention as to the question asked by Mr. Holls.

The Secretary — The members absent without excuse are Messrs. Abbott, Ackerly, Banks, Campbell, Chipp, Clark, H. A.

Mr. Hamlin — Mr. President, as regards Mr. Chipp, he was called away unexpectedly, and asked me to present his excuse to the Convention.

The President put the question on excusing Mr. Chipp, and he was excused.

The Secretary (resuming) — Messrs. Crimmins, Danforth, Durnin, Faber, Fields, Fitzgerald, Foote, Francis, Fraser, Galinger, Green, J. I., Herzberg, Hirschberg ——

Mr. Holls — Mr. President, with reference to Mr. Hirschberg, he left ill, and went to his home ill. I ask that he be excused.

The President put the question on excusing Mr. Hirschberg, and he was excused.

Mr. Cochran — Mr. President, with reference to Mr. Francis, he asks me, if there was any roll-call, to say that he had been suddenly called home to his family, and I promised to do so.

The President put the question on excusing Mr. Francis, and he was excused.

Mr. Tekulsky — Mr. President, I was here the other day when Mr. Herzberg asked leave to be excused, and he was excused by the Convention.

Mr. Barrow — Mr. President, I ask leave to be excused for the remainder of the afternoon. I ask this in good faith. I desire to get home, on account of illness in my family, and I have to take the train in fifteen minutes in order to do it.

The President put the question on excusing Mr. Barrow, as requested, and he was so excused.

The President — Mr. Herzberg was not excused for to-day, but for some other day; yesterday and the day before.

The Secretary (resuming) — Messrs. Kinkle, Koch, Kurth, Lester, Lyon, McCurdy, McMillan, Mulqueen, Rowley, Speer, Storm.

Mr. Jesse Johnson — Mr. President, I desire to move the excuse of Mr. Banks. He was suddenly called away, and desired me to present his excuse; and, I think, he has been uniformly present.

The President put the question on excusing Mr. Banks, as requested, and he was so excused.

Mr. Church — Mr. President, I desire to ask for the excuse of Messrs. Ackerly and Storm. I know not their excuses, but they must be good.

The President put the question on excusing Messrs. Ackerly and Storm, and it was determined in the negative.

Mr. Hamlin — Mr. President, Mr. McCurdy was called away unexpectedly, and left his excuse with me. It was on business that was pressing, and I ask that he be excused.

The President put the question on excusing Mr. McCurdy, as requested, and it was determined in the negative.

Mr. C. H. Lewis — Mr. President, I wish to ask for excuse for Mr. Abbott. Mr. Abbott had his family, including a little girl, here with him, and one of them was ill, and he had to leave on a noon train to take them home. I ask to have him excused by the Convention.

The President put the question on excusing Mr. Abbott, and he was excused.

Mr. Nicoll — Mr. President, I ask to have Mr. F. T. Fitzgerald excused. He was obliged to return to the city of New York for the purpose of transacting business in his Surrogate's Court.

The President put the question on excusing Mr. Fitzgerald, as requested, and he was excused.

Mr. Titus — Mr. President, Mr. Mulqueen was excused by the Convention in Committee of the Whole. He was called away by a dispatch.

Mr. President — Mr. Mulqueen was excused for Monday.

Mr. C. H. Truax — Mr. President, I think we have had a whole lot of fun this afternoon, and as it is about time when, under the rules, we would adjourn, I move now that we do adjourn.

Mr. Barhite — Will the gentleman withdraw his motion for a moment?

Mr. Truax — For what purpose?

Mr. Barhite — I desire to ask for the excuse of a member.

Mr. Truax — I withdraw for Mr. Barhite, who wants to have somebody excused.

Mr. Meyenborg — Mr. President, I rise to a point of order. It having been ascertained that there is no quorum present, I do not think it is within the province of the members to excuse anyone.

The President — The point of order is well taken.

The President then put the question on the motion of Mr. Truax to adjourn, and it was determined in the affirmative.

Monday Morning, August 20, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, at the Capitol, Albany, N. Y., Monday morning, August 20, 1894.

President Choate called the Convention to order at ten o'clock.

Mr. O'Brien moved that the reading of the Journal of Saturday, August eighteenth, be dispensed with, except the reading of the list of delegates absent on Saturday without leave.

The President put the question on dispensing with the reading of the Journal, and it was determined in the affirmative.

The President — The Secretary will read the list of members absent without leave on Saturday.

The Secretary read the list as follows:

Messrs. Campbell, H. A. Clark, Crimmins, Danforth, Durnin, Faber, Fields, Foote, Fraser, Galinger, J. I. Green, Herzberg, Kinkel, Koch, Lester, Lyon, McMillan, Rowley, Speer.

The President — This list will be referred to the Financial Secretary for his information.

Mr. Durnin — Mr. President, I ask that my name be erased from that roll of honor. I was excused for four days, and my time is up this morning, and I am here.

Mr. Foote — Mr. President, my name appears upon that list. I think it is proper to say that I was summoned to Buffalo on Friday evening on business which could not be attended to except by myself and which would not admit of delay.

The President — The record shows that Mr. Durnin is correct. The Secretary will correct it accordingly.

Mr. Francis — Mr. President, I understand my name is on that list. I was here at the last session, but only for a short time. I have attended the Convention at every session and have been present at my committee meetings at every session. I was called away by a disability which I could not overcome.

The President — Mr. Francis's name will be erased.

Mr. Lester — Mr. President, I wish to state that at the adjournment of the Convention Saturday morning, after the morning ses-

sion, I received a summons to come to my home upon a matter of pressing importance, a matter which imperatively required my attendance in Saratoga. The train which it was necessary for me to take leaves Albany at 3:10, which made it utterly impossible for me to be present at the opening of the afternoon session and ask for an excuse, and I was compelled to leave in that way.

Mr. Morton — Mr. President, I would like to call the attention of the Convention and of the financial officer to what I understand to be the situation of this matter. One of my colleagues was here Saturday and attended until the last hour before the Convention adjourned, when he was compelled to go to his home. I understand his name appears on that list, because he was not present during a roll-call on Saturday afternoon. Now, Mr. President, I submit that a forfeiture of pay depends upon the absence of the member from the sessions of the Convention on a particular day, and it does not depend upon the absence of a member upon a roll-call at a certain time during that day, and that no member of this Convention can be compelled to forfeit his pay on any such showing as that. In other words, he was in attendance upon the Convention at that session.

The President — The Chair does not know of any attempt to deduct the pay of members. This was only for the purpose of bringing the matter more forcibly to their attention.

Mr. Forbes — Mr. President, I desire to be marked as present to-day. I was excused last week by the indulgence of the Convention, and I desire to withdraw my excuse and thank the members for excusing me.

Mr. Maybee — Mr. President, in regard to my colleague, Mr. Danforth, I remember distinctly that he was excused, and I think the fact that his name appears on that list is due to an oversight on the part of the Secretary, who failed to note the fact that he was excused.

Mr. Burr — Mr. President, is Mr. Faber's name on that list?

The President — It is.

Mr. Burr — He was excused.

The President — Memorials and petitions are in order.

Mr. Moore presented a petititon from manufacturers of plumbing materials in relation to the employment of State prisoners, which was referred to the Committee on State Prisons.

Mr. Francis presented a petition relative to political meetings and caucuses, which was referred to the Committee on Suffrage.

The President — Does any delegate desire to give any notice, make any motion or offer any resolution?

Reports of standing committees are in order. Has any standing committee any report to make?

Has any special or select committee any report to make?

Mr. Acker — Mr. President ——

Mr. C. B. McLaughlin — Mr. President, on Saturday last I offered a resolution in reference to making the report of the Committee of the Whole final. That was referred to the Committee on Rules. I was not here at the last session on Saturday, and I desire to know whether any action was taken on that?

The President — No action was taken covering that whole general matter referred to in your resolution, but the Committee on Rules made a report, recommending an amendment to rule 29, that somewhat affected it. The matter was to be brought up this morning.

Mr. Acker — Mr. President, I have a report to make, but the clerk has it in his possession, and has not brought it around yet, and when he brings it, I would like permission to present it.

Mr. Moore — Mr. President, is it in order to call the Printing Committee to book this morning again?

The President — I believe that is always in order.

Mr. Moore — Mr. President, the Convention passed a resolution of mine some day last week, directing that the Printing Committee should compel the printer to place Document No. 15, complete, upon the files of the members this morning. I, therefore, wish to call up that motion and to ask the Printing Committee where Document No. 15 is; whether it is printed?

The President — Mr. Hamlin will please explain why the order of the Convention has not been obeyed.

Mr. Hamlin — Mr. President, I have consulted with the representatives of The Argus Company, and I am informed that, owing to the fact that the copy was not received at as early a time as was expected, they will be unable to furnish it this morning. They anticipated that they would have it here this morning, but there has been some delay. It will, however, be on the files to-morrow morning. The printer informed me that, owing to the character of the work, it being mostly what is called rule and figure work, it required much longer time than ordinary work, but they are making all the expedition possible in the matter.

Mr. Moore — Mr. President, I move you, sir, that the committee have further time, and that Document No. 15, when printed, shall

include the new rules which were reported here Saturday, and that the document be placed on the files on or before Friday.

The President — The difficulty is that they were reported, but not acted upon.

Mr. Moore — I mean those that shall be acted upon.

Mr. Hamlin — Mr. President, I think that the Convention ought to understand what the effect of that will probably be, as I understand it. This document is practically set up and will be ready for the press, if it has not already been printed. That will require more delay, and I desire that the Convention should understand it.

The President put the question on Mr. Moore's motion, and it was determined in the affirmative.

The President — The report of the Committee on State Finances and Taxation is now presented by Mr. Acker, its chairman, and will be read by the Secretary.

The Secretary read the report as follows:

Mr. Acker, from the Committee on State Finances and Taxation, reports in favor of the passage of a proposed amendment to article 3 of the Constitution (introductory No. 389, printed No. 441), Mr. Acker dissenting from said report, which report was agreed to and the said amendment committed to the Committee of the Whole.

Mr. Acker, from the Committee on State Finances and Taxation, to which was referred the proposed amendment, introduced by Mr. Pratt (introductory No. 241), entitled, "Proposed constitutional amendment to amend article 7 of the Constitution, by adding a new section thereto relating to taxation," reports adversely thereto.

The President — Does Mr. Pratt wish to be heard on this question?

Mr. Pratt — Mr. President, the majority of the Committee on State Finances and Taxation will, if they have not already, introduce an amendment in regard to taxation in this State. I should like to have this matter come up at the same time as the majority report of the Committee on State Finances and Taxation, and be considered in connection with it. I, therefore move that this report lie on the table, to be brought up by myself in connection with the majority report of the committee.

The President put the question on laying the proposed amendment on the table, and it was determined in the affirmative.

The President — The Secretary will call general orders.

The Secretary called the general orders as follows:

General order No. 2, introduced by Mr. Roche, to amend article

3 of the Constitution, by adding a new section, relative to the granting of pensions to any civil officer or employe.

Not moved.

General order No. 4 (printed No. 381), introduced by Mr. Hill, to amend section 5 of article 2, relating to the manner of elections.

Not moved.

General order No. 5 (printed No. 421), introduced by the special committee, relative to the transfer of land titles.

Not moved.

General order No. 7 (printed No. 316), introduced by Mr. Holls, to amend section 4 of article 2 of the Constitution, relating to enforcing the duty of voting.

Not moved.

General order No. 25 (printed No. 392), introduced by Mr. McDonough, to amend article 3, relating to the employment of prisoners.

Not moved.

General order No. 8 (printed No. 317), introduced by Mr. Lauterbach, to amend article 2, relative to suffrage.

Not moved.

General order No. 17 (printed No. 384), introduced by Mr. E. R. Brown, to amend article 1, against public officers riding on passes.

Not moved.

General order No. 19 (printed No. 396), introduced by Mr. Roche, to amend section 8.

Not moved.

Mr. E. R. Brown — Mr. President, in relation to general order No. 17, I am prepared to move that, but have been requested by some gentlemen who desire to speak upon it, not to move it this morning, and I, therefore, move that leave be granted to move it later in the day.

The President — Mr. Brown moves that this general order does not lose its precedence for the day by reason of not being moved now. If there are no objections, it is so ordered.

General order No. 21 (printed No. 388), introduced by Mr. J. Johnson, relating to the titles of bills.

Not moved.

General order No. 22 (printed No. 389), introduced by Mr. Barhite, to amend section 6 of article 1, giving the Legislature power to pass certain laws.

Not moved.

General order No. 23 (printed No. 390), introduced by Mr. Roche, to amend section 13, article 3, relative to the passage of bills by the Legislature.

Not moved.

General order No. 24 (printed No. 391), introduced by Mr. Becker, relating to grants.

Not moved.

General order No. 26 (printed No. 393), introduced by Mr. H. A. Clark, relative to the civil service.

Not moved.

General order No. 27, introduced by the Committee on Corporations, as to trusts or combinations. Minority report of the same on general orders.

Not moved.

General order No. 28.

Not moved.

Mr. Dickey — Mr. President, I move general order No. 27.

Mr. Burr — Mr. President, I would like to say to Mr. Dickey that Mr. Hawley requested this be not moved until to-morrow morning, as he is not present.

Mr. Dickey — Very well, I withdraw it.

General order No. 29, introduced by Mr. Dean, to abolish all commissions of the State, except such as are composed of State officers, and to inhibit the power to create permanent commissions, and providing that all public officials shall be paid by the State.

Mr. Dean moved that the Convention go into Committee of the Whole on general order No. 29.

The President put the question, and it was determined in the affirmative.

The President — The Chair will call attention to the fact that complaint has been made by several members that the list of general orders was not taken up each day where it left off the previous day, so as to give all these later ones a chance to be heard. The rule provides that the result of not moving a general order is simply that it loses its preecdence for the day. If any of these complaints are to be materialized the rule is at fault.

Mr. Moore will take the chair.

Chairman Moore — The Convention is in Committee of the Whole on general order No. 29 (introductory No. 23), introduced by Mr. Dean. The Secretary will read the proposed amendment.

The Secretary read the proposed amendment.

Mr. Dean — Mr. Chairman, I move to strike out the enacting clause of this proposed measure.

The question has been asked is it advisable to abolish these commissions; are they not necessary to the scheme of government? There are, I believe, fifteen commissions in this State, including the State Board of Pharmacy, and of this number eleven have been created since 1880. Prior to that time, with the exception of those created from among the State officers, a commission was almost unknown in this State, and a permanent commission, involving expenditures to the State, was almost without precedent. That they are contrary to the spirit of our institutions, I believe, will, on reflection, be conceded. They are not representative in their membership, because they are made by appointment; they are not judicial in their functions, because they have no power to enforce their decrees or rulings, and they are not executive in character, because they have been selected upon the theory that they were in some manner to represent something, and have been denied the power to enforce anything. They are in effect a confused and useless jumble of representative, judicial and executive functions, without the merits, and with all the demerits incident to co-ordinate branches of government. They are not responsible to constituencies as representative bodies; have no character in their quasi-judicial functions, and, as executive officers, there is too much of a division of responsibility to be effective, even were they given authority under the laws creating them. They are, as a matter of fact, the creatures of legislative cowardice and incompetency. Every time a popular clamor arises some member of the Legislature, lacking the courage or the capacity to deal with the subject, proposes the formation of a commission to take charge of the matter, and the action having a long line of precedence, and following the lines of least resistance, a commission is raised. To this body is delegated just enough powers and duties to keep it in existence without accomplishing any solution of the question, and drawing their pay from the railroad corporations, or being paraded before the world in many cases as serving without salaries, a drain upon the resources of the State is effected which few people know anything about. I call attention more especially to the State Railroad Commission, because it is the most flagrant of the abuses of this commission-creating era. This commission was created in 1883, under a statute which allowed one of the three members of the original commission to be chosen, not by the Governor or the Legislature, nor yet by the people, but by the Board of Trade, the Chamber of Commerce

and a labor organization in the city of New York. It was created to silence the clamor of labor organizations against the railroad companies, and to still further cater to this sentiment, it was enacted that the companies which were to be regulated by this commission were to be called upon to pay the expenses of this regulation, each of the three commissioners being paid a salary of $8,000 per year. The commission has now been in existence for eleven years, with what results, in the matter of regulating the railroads, is known to all, and the report of the Comptroller shows the result of the insinuating policy of these commissions in the following audits of the expenses of the office during that time. Having three members, each anxious to have an equal amount of patronage to distribute among his friends, and the board, collectively, having no fear of the people, who, not being called upon directly, to pay the salaries and expenses, are indifferent to results, the cost has been kept at a surprisingly large figure, considering the character of the services rendered to the people. Here is what the report of the Comptroller shows, in Document No. 20, now before the Convention:

"State Railroad Commissions. Salary and expenses of the office — $25,285.36 in 1883, $66,225.37 in 1884, $65,023.50 in 1885, $68,509.25 in 1886, $62,443.25 in 1887, $52,434.55 in 1888, $53,987.07 in 1889, $52,024.32 in 1890, $67,660.66 in 1891, $56,609.10 in 1892, $56,405.56 in 1893, making a total of $626,553.99 in the eleven years.

The disposition to encroach upon the resources of the State had become so flagrant that the Legislature of 1892 enacted that the total expenses of the office should not exceed $50,000 annually. This irresponsible body, created nominally in the interests of the people, has been given most extraordinary powers, which properly belong to the Legislature. In fact, the Railroad Commission has been given authority to do things which the Legislature would not dare to do in the first instance.

Mr. Peck — Mr. President, I would like an opportunity to ask the gentleman a question. I would like to ask the gentleman who pays the expenses of the Railroad Commission?

Mr. Dean — The railroads of the State pay them.

Mr. Peck — And the purpose of your amendment is to take away that privilege?

Mr. Dean — Yes, sir; they will simply be liable to taxation, and not to special assessments for that purpose, so that the Railroad Commissioners shall know that they are getting their pay from the State, instead of from the railroads.

Mr. Peck — You don't propose to do away with the commission?

Mr. Dean — The commission is to be done away with, providing the Legislature does not re-enact the law.

Mr. Dean (continuing) — A case in point is found in section 80 of the railroad law, which reads as follows: "No railroad corporation or corporations owning or operating railroads whose roads run on parallel or competing lines, except street surface railroad corporations, shall merge or consolidate, or enter into any contract for the use of their respective roads, or lease the same, the one to the other, unless the Board of Railroad Commissioners of the State, or a majority of such board, shall consent thereto."

Mr. McDonough — Mr. President, would your proposed amendment include the Superintendent of Insurance?

Mr. Dean — The clause referring to the payment of salaries would certainly refer to the insurance and the banking department. I think it is a wrong theory to pay salaries out of any assessment upon corporations. The State of New York ought to pay its own salaries.

Mr. Dean (continuing) — It is in the power of this commission, appointed, as every intelligent man knows, by railroad influences, and receiving its salary and compensation from such railroads, to allow that which has been declared by statute against public policy. There are other important instances in which legislative powers have been delegated to this commission, and it can scarcely be doubted that this is equivalent to granting such rights as the railroads may require. Certainly there is no man in this committee who, if he was receiving his salary from the railroads, would not feel himself morally obligated to do that which these railroads desired when he was given the right so to do by the State, which nominally employed him. I certainly should do so; I should feel it my duty to do so. Independent, however, of this consideration, is it dignified and decent for the great State of New York to lend itself to this cheap demagogism; is it consistent with the attitude of a sovereign State to create offices and allow its corporate creatures, having selfish ends to serve, to pay their salaries? I cannot understand how any self-respecting man, who loves his State, can consent to this prostitution of public office. If these officers are performing a service for the State, we ought to be great enough and grand enough to pay for it, and if the service performed is that of the railroad corporations, then we have no right to lend them the dignity of the sanction of the State to their servants and employes. Looked at in any light you may choose, the picture is one to disgust any

right thinking man, and I cannot believe this committee, or this Convention, in a full knowledge of the facts, will consent to a continuance of a policy which can have no other result than the serving of private ends and the debauchery of legislation and the public conscience.

Then there is the Commission of Fisheries. This commission serves without salaries, and might be supposed to be a very innocent institution, but the report of the Comptroller, in Document No. 20, informs us that it has cost the State the following sums:

Game and Fish Protectors — $306.70 in 1880, $5,536.82 in 1881, $6.102.70 in 1882, $6,084.71 in 1883, $9,938.42 in 1884, $11,205.67 in 1885, $12,025.86 in 1886, $10,058.12 in 1887, $11,882.76 in 1888, $16,190.35 in 1889, $17,157.70 in 1890, $16,409.04 in 1891, $18,492.50 in 1892, $23,958.65 in 1893, making a total of $165,290 in the thirteen years.

Then there is the Civil Service Commission, which shows the same progressive tendency in respect to patronage and expenses which we find in the other commissions, and which the Comptroller tells us are as follows:

Civil Service Commission — $3,420.37 in 1883, $14,331.41 in 1884, $14,131 in 1885, $15,501.66 in 1886, $18,052.17 in 1887, $17,136.28 in 1888, $14,933.61 in 1889, $16,391.88 in 1890, $15,805.15 in 1891, $17,708.63 in 1892, $17,209 in 1893, making a total of $164,691.16 in ten years.

Then there is another of those innocent appearing commissions without salaries. This is the commission which has charge of the Niagara reservation, and its expenses are reported as follows by the Comptroller:

Niagara Reservation — $1,027.50 in 1883, $3,243.84 in 1884, $25,143.76 in 1885, $3,000 in 1886, no report for 1887, $20,000 in 1888, $20,000 in 1889, $36,214.82 in 1890, $25,240,62 in 1891, $38,263.23 in 1892, $41,010.71 in 1893, making a total in eleven years of $213,004.08.

It is not to be supposed, of course, that some of these expenses were not entirely legitimate, but there are some remarkable charges in the expenditures, and, judging from the manner in which irresponsible officers conduct affairs, it is only reasonable to suppose that greater economy might be exercised if the people were allowed to employ and pay their public servants for whatever of services they may be able to render.

The Forestry Commission serves without salaries, but it entails a considerable expense, as will be seen by the Comptroller's report

as to bills audited in its behalf since its creation in 1884. The figures are as follows:

Forestry Commission — $1,928.70 in 1884, $2,954.22 in 1885, $16,694.16 in 1886, $24,847.22 in 1887, $24,686.86 in 1888, $27,070.14 in 1889, $26,793.12 in 1890, $38,478.55 in 1891, $36,299.04 in 1892, $45,218.01 in 1893, making a total of $244,970.02 in ten years.

The State Board of Mediation and Arbitration, than which a more useless aggregation does not exist, has cost the State the following sums, as shown by the Comptroller's report:

The State Board of Mediation and Arbitration— $3,685.25 in 1886, $14,552.83 in 1887, $18,055.71 in 1888, $16,325.11 in 1889, $17,823.28 in 1890, $15,093.91 in 1891, $16,399.89 in 1892, $15,537.40 in 1893, making a total of $117,487.44 in eight years.

I will say here that it has been stated that in some of these commissions, part of this expense has been due to the publication of the annual report. That is not true in regard to all of them. That is not claimed by all of them. In reference to the Railroad Commission I think that is true.

The Commission in Lunacy, all of whose duties could be much better discharged by a single individual, shows the same spirit of progress in respect to its expenditures. In 1889 it cost the State $4,217.79. In 1890 this had increased to $16,146.85. In 1891 it had reached $20,895.33. It fell off to $19,310.95 in 1892, and to $19,270.31 in 1893, and had aggregated the sum of $79,598.23 in the five years of its existence.

By the same report from which these figures are gleaned, it is stated that the new offices created since 1890, the most of which are commissions, cost in 1893 a total of $1,027,654.31, making a grand total for the thirteen years of $6,847,892.72. These seven leading commissions alone, the Game and Fish Protectors, the Civil Service Commission, the Niagara Reservation Commission, the Commission in Lunacy, the Board of Arbitration, the Forestry Commission and the Railroad Commission aggregate an annual charge of $218,364, and I submit that fully one-half of this expenditure has no practical utility beyond affording a place for someone at the expense of the taxpayers of the State, or, what amounts to the same thing in the long run, out of the treasury of the private corporations.

I think it will be conceded that any system of offices which permits of the rapid and continual increase in expenditures shown by the figures which I have quoted, is not calculated to build up the public service, or to produce an economical administration of public affairs. The proposal under consideration does not contemplate

crippling the public service in any degree; it does not propose to take from the Legislature the legitimate power to create offices which may from time to time become necessary. It simply abolishes the commisions which are at present in being, except those created of elective State officers, and leaves to the Legislature the power and the duty to create responsible public officials in the place of irresponsible commissions, at the same time insisting that the State shall not enter into partnership with any individual, association or corporation in the payment of its public officials for their services. This is not a radical innovation; it is simply a return to correct, first principles in government, and there can be no higher duty than to preserve the highest dignity and the highest utility for our public servants, a condition which cannot exist under the rule of irresponsible commissions.

I desire to state at this time that the report of the Committee on Legislative Powers and Duties, which is now before us, is a considerable modification of the original proposition. It does not do away entirely with commissions. It simply inhibits the Legislature the power to create commissions for more than three years. Those of the commissions that have demonstrated the needs of their continuance are to be re-created every three years, thus leaving it in the power of the Legislature to create such commissions as may be proper to carry on the business of the State, just as it is at present. It puts the seal of condemnation on commissions, in the hope that the Legislature will create elective officers or put these bureaus in the control of the several elective departments of the State.

Mr. Peck — May I ask the gentleman a question? Mr. Dean, I would like to know whether you understand that the Legislature cannot now, at any time, put an end to any commission in existence?

Mr. Dean — I think it can.

Mr. Peck — So that your proposition would be to extend them for three years, instead of at the pleasure of the Legislature?

Mr. Dean — No, sir.

Mr. Peck — What is the effect, then?

Mr. Dean — The effect is to do away with all commissions at the end of 1895, and then it inhibits the power of the Legislature to create any commission for more than three years.

Mr. Peck — Yes, but it is at the pleasure of the Legislature now to abolish them in less than three years.

Mr. Dean — The creation of these commissions by the Legislature is an exceedingly vicious and cowardly practice, and the Legislature

has avoided its duty to the public in this matter. Mr. President, I withdraw my motion to strike out the enacting clause.

Mr. Veeder — Mr. Chairman, I offer the following amendment: Insert after the word " commissions," first line, the words " of which a Democrat may be a member."

Mr. Chairman, my first recollection of the introduction of commissions was by the Republicans in the State Legislature, and the encouragement and continuation of that practice was by the Republican party. They began with the Metropolitan district police bill, and they have continued it wherever they had an opportunity, and until this day I have not heard a Republican raise his voice in favor of their abolition. I confess, sir, that personally I have never been in favor of commissions. I believed, and still believe, that, if the administration of the affairs of the State is necessarily to be discharged by any particular officer, the people are quite competent to elect those officers, and if I had my way, I assure you, that the people would elect all their servants and for a reasonable term.

Now, sir, what is the use of disguising the intention of this measure. It is purely and simply a piece of legislation which many of us have been objecting to as occurring in this Convention. There is not a commission in existence to-day that is constitutionalized that is continued. Now, what is the effect of this amendment? It will be to abolish all the existing commissions authorized by constitutional provision, the creation of new commissions, and limiting only their term of office. Why be timid about it? Why not say, because the Legislature, which meets a few days after this Constitution is to take effect, the incoming Legislature, is to go on and make new commissions to supersede the old ones? Now, to make it sure, so that it may not mislead any Democrat, why not say so, and then they may stop. They need not abolish any commission where they find any Republicans in it. All they need do is to abolish the commissions in which there are Democrats. I think the House ought unanimously to adopt my amendment.

Mr. Maybee — Mr. Chairman, I hope that the proposed constitutional amendment will not receive favorable consideration. I opposed it in committee and I shall oppose it here. There is no doubt that some commissions have been created by the State that are of no practical benefit, and some of them have been created as a part of a political machine; but a sweeping amendment like this, which should suddenly wipe out of existence all commissions, certainly seems to me not to be for the best interests of the State. There are commissions in the State that do benefit the people. The

Dairy Commission is certainly a vast benefit to the agricultural population of the State.

The Railroad Commission serves a useful purpose. The Commission of Claims, of which a gentleman residing in my county is at present a commissioner, has saved the people of the State untold thousands in the operation of the commission. Before the commission was created these claims were tried in the ordinary way, except those that were submitted to the Legislature. Special attorneys were employed throughout the State to defend these claims. At present one deputy attorney-general attends to all these claims for the State at a very small salary. Where it costs the State now one thousand dollars, it formerly cost the State tens of thousands of dollars to defend it against claimants that presented claims. Now, that commission has been of practical benefit. It would be a great public misfortune to abolish the Dairy Commission. It would be a great public misfortune to abolish the Railroad Commission. Any sweeping amendment that at one blow wipes out all of those commissions is not a wise measure for this Constitutional Convention to adopt. Now, I cannot see any objection to having the expenses of the Railroad Commission paid by the railroad corporations. Where is that objectionable? It saves just so much money to the taxpayers that would otherwise come out of their pockets. It certainly does not leave the commission under any obligations to the railroad corporations. Where is the objection to it, when it saves just so much money to the people of the State? Now, these functions that are carried on by these commissions must be carried on in some way. I understand the proposition of the mover of this amendment originally was that they should be composed of elective officers, and that is the purpose now behind this amendment. If that purpose is carried out we have a great number of additional officers to be elected by the people. I say we have enough elective officers now. The list of elective officers to be voted for by the electors of this State is already sufficiently long and sufficiently numerous. We ought not to add scores or dozens to the list to be elected by the people. It might be well to abolish some of these commissions by legislative enactment. There is no doubt as to the wisdom of that course. It is said that they were formerly used as political machines entirely, and by a former Governor, who is now in the United States Senate, and who for months has been engaged in the laudable work of upholding the hands of the President. I say that the abolishing of all these commissions would not be for the best interests of the people. We ought to separate the tares from the wheat, and if any of them do not serve a useful purpose,

let the Legislature abolish them, but a sweeping amendment that wipes them all out at one blow is not a proposition that ought to receive the favorable consideration of this Convention.

Mr. Dickey — Mr. Chairman, as the Republican party on the first of January next is to take charge of the government of this State, both in the Legislature and the Governor, and, if the only Democrats who will then be left in office will be the few who are on commissions and who will hold over, I think we had better let them remain in office.

Mr. Hotchkiss — Will the gentleman give way? Is this condition that the gentleman refers to to be brought about by any constitutional amendment?

Mr. Dickey — The gentleman does not understand me. I am trying to leave a few Democrats in office at that time, and, therefore, am opposed to this amendment.

The Chairman — The question is on Mr. Veeder's amendment.

Mr. Dean — Mr. Chairman, I desire to say in reply to Mr. Maybee's argument in support of paying public officials by assessing private corporations, the expense of this Railroad Commission is paid by the railroads, and, at a hearing before the committee which has reported this amendment, we were practically told that this is a matter which did not concern the people, because its work is done in common with the railroads. I desire to call attention to the fact that these commissioners are paid $8,000 a year each, including transportation.

The Chairman — The question is on Mr. Veeder's amendment.

The amendment was lost.

The Chairman — The question is now on the original motion of Mr. Dean.

Mr. Dean — That motion was withdrawn.

Mr. Veeder — Mr. Chairman, I desire to move to strike out lines 3, 4, 5, 6 and 7 and down to and including the word "corporation."

The Chairman — Will Mr. Veeder please send that up in writing?

Mr. Veeder — I cannot, any more than I have said, except to draw my pen through it. It is a motion to strike out.

Now, Mr. Chairman, I think if this proposition is to prevail, it will read as follows: "All State commissions shall expire on the 30th day of September, 1895. This section shall not, however, apply to commissions composed of elective officers of the State nor shall it prohibit the creation of a Board of Claims." I do not know why that is there, but, however, we will let that stand. I think, sir, that

we might just as well come right to the front and be fair and square. The proposition is simply one to abolish the present existing commissions, and is purely and simply a piece of partisan legislation, sought to be injected into the Constitution. Let us have the manhood to stand up and vote for the main proposition to abolish the office of every department that may possibly have a Democrat in it to-day. Now, these prophecies that we hear from Orange and down the river are like a great many that have been heard before. You can take it with a great deal of allowance. If the people of the State of New York will approve of a proposition, with this clean-cut evidence of partisan politics in it, I am satisfied, as a Democrat, that our party shall sustain defeat. If there is manhood in the people, there is no doubt about the victory of the Democratic party next fall, if you pass measures simply because you are in the majority in this Convention and want to take the chances that the people will be humbugged.

Mr. Jesse Johnson — Mr. Chairman, I deprecate the method of this discussion. I understand that we are in Committee of the Whole to perfect great constitutional measures; that it is regarded in this Convention as the duty of every delegate to gather what there is that is wise and proper and to eliminate that, if anything there be, which is improper. I was about to introduce an amendment that the portion which my colleague from Kings would strike out be retained, and that all else be stricken out. There is much of value in those lines which he would strike out. There is in them the proposition that no Railroad Commissioner shall be paid by the railroads. Is that anti-democratic? Is that aimed at the party that my friend would represent? There is in it a provision shortening the terms of commissioners and making earlier and more frequent power of appointment. I believe, sir, that that is wise. But, sir, whenever any amendment is introduced containing that which, even if not wise, should, nevertheless, command the thoughtful attention of every member of this Convention — to immediately start the cry — and it has been started before; this is no initial movement — to immediately start the cry that it is partisan, that it is legislating for party — unless that proposition is sustained in fact; unless the context of an amendment shows it — is a slander on this Convention. Mr. Chairman, why shall we say that a proposition that all commissions shall expire at the end of the year yet to follow, nearly eighteen months from now — why shall it be asserted gravely that that is aimed at one particular party? I know not what the events of the future may be, but I assert, sir, that a proposition that these long terms shall be taken away, that the work of the State

shall not be paid by assessment on the parties to be controlled, is right in principle, and it is much better to perfect these measures in fair consideration than to raise the cry of party whenever a noun and a verb are fastened together in an amendment here.

Mr. Veeder — Mr. Chairman, will the gentleman allow a question?

The Chairman — Will the gentleman give way for a question?

Mr. Johnson — Certainly.

Mr. Veeder — If the gentleman is sincere, and says that he will propose abolishing the portion of that section that I move to strike out, and move to strike the rest of the section out, as he states, I withdraw my motion, to give him the opportunity to make his motion and save time.

Mr. Johnson — Mr. Chairman, I move to strike out all before commencing with line three.

The Chairman — Does Mr. Veeder withdraw his motion?

Mr. Veeder — Wait till I hear the gentleman's motion. I might be mistaken. I might have misunderstood him.

Mr. Johnson — I said my motion would be, sir, to strike out all before line three; to strike out all after the word ——

Mr. Veeder — " Corporation," in line seven?

Mr. Johnson — To strike out all before line three. The saving clause after line seven, I would not strike out, which is obviously right.

Mr. Veeder — Then I understand that he is willing to strike out lines three, four, five and six and the part of the word " citation " and " or corporation " in line seven?

Mr. Johnson — No, sir; that is what I desire to retain.

Mr. Veeder — No; to save that part of the word " association " and strike that out, and the words, " or corporations," in line seven.

Mr. Johnson — I would strike out the first two lines.

Mr. Veeder — Then I cannot withdraw my motion. I was afraid of that; I was afraid the gentleman would not do it.

Mr. Johnson — The statement made by the gentleman was this, Mr. Chairman: That the proposition to abolish all the present commissions was partisan and aimed at the Democratic party; that it was not in the interest of the people, but of a party, and so concocted and presented. My thought was this — and he brought me to it — that the two lines which could give it that construction should be stricken out. Sir, if those were stricken out, it would

strike out the objection on which his speech hung, and would practically make his speech useless and inapplicable. Having offered to strike that out, that on which the claim of partisanship was made, and that offer being refused, I have the right to insist that the claim of partisanship is not well founded.

Mr. Lauterbach — Mr. Chairman, I do not know upon what particular grievance this proposed constitutional amendment is founded. Legislative commissions have done admirable work to my knowledge, and to the knowledge of every member of the Convention, during the last decade. I have in mind one commission especially, the board of electrical control in the city of New York. That has succeeded, in spite of the opposition of all the corporations using electricity, in ridding the city of New York of miles of poles and wires, and rendering the city infinitely more aesthetic than it was before the work of the commission was inaugurated. The effect of this amendment would be to repeal the existence of the personnel of the commission at all events; and if the same strenuous opposition was made by the telegraph and telephone companies to the creation of a new commission that was made during the five or six years of diligent battle that was waged in order to secure its appointment, there would never be a reappointment of the commission, and the spectacle would be presented that the streets of the city of New York, now absolutely cleared of poles and wires, and of the annoyance and nuisance of telegraph poles and telegraph wires, would again become burdened with them. The whole subway system of New York would be imperiled if this amendment were to pass. So far as the railroad commission is concerned, I believe it is composed of two Democrats and one conservative, Mr. Rickard. I have never heard of any criticism in respect to that commission. Their action has been fair, and their administration of very delicate questions has been the best; and no one from a partisan standpoint has been able to make any criticism, and no one from a corporation standpoint has been able to say one word against them; and this amendment is proposed without any earthly occasion for its adoption, to wipe out that commission, and leave it to the Legislature to make political capital, which would be a great injustice. There is one atom of sense in the proposed amendment. It does seem to be improper that the corporations that are being supervised, over which there is a surveillance by officers of the State, should be the ones to pay the salaries of those officers; but upon inspection even that objection against the existing system must pass away. The corporations do not pay this money voluntarily; it is not a matter of whim or caprice on their part to pay it or not, as they desire; there is nothing discre-

tionary about it. On the contrary both the railroad corporations in the one case and the telegraph and telephone companies in the other fought most strenuously against the provision of the law that saddled them, and not the people of the State of New York, with the burden of supporting the commissions, the necessity for the existence of which arose from the abuses that these corporations themselves suffered to exist. And so, on reflection, it will be found that the theory that these corporations should not pay for the support of the officers who are appointed to supervise them passes away; because, practically, it is an involuntary payment; it is subjecting them to a burden of which they ought to feel the justice of the imposition, because they created the necessity for the organization of these commissions. Now, if there is anything political in this amendment, I do not know it. So far as its practical features are concerned, I think it would create useless trouble. It would create a situation of affairs in which corporations that have been brought to book, and against whom there have been most salutary checks established, shall be relieved of burdens which they resent, and I can hardly imagine any occasion for the enactment of such an amendment except to say to the great corporations of the State of New York, "We are going to give you, at the next session of the Legislature, an opportunity to prevent the re-enactment of laws that subject you to these burdens which you have resented, and to make you again free to do as you please in respect to the change of motive power of railways in respect of the use of streets for telegraph and telephone purposes, and in respect of the thousands of other misuses that corporations have been accused of so justly." I think it would be a misfortune greatly to be regretted if this amendment in any form, whether it is suggested by partisan or non-partisan reasons, should prevail for a moment, either with or without amendment. There is no abuse which this amendment is intended to cure; there is every reason why the commissions that have made the perfect record that has been made should be permitted to exist, subject to the legislative regulation, which has been salutary in its restrictions.

Mr. C. B. McLaughlin — Mr. Chairman, I move that the committee do now rise and report this amendment adversely.

Mr. M. E. Lewis — Mr. Chairman, under the precedent which has been established in this Convention, I think the motion is entirely proper. It seems to be the custom in this Convention to reject the reports of all committees which have a majority of their members reporting in their favor. I think, under those circumstances, this report should be rejected.

Mr. Veeder — Report adversely on the proposition or on the amendment?

The Chairman — Adversely on the amendment.

Mr. I. S. Johnson — Mr. Chairman, has the amendment been withdrawn?

The Chairman — This motion to report adversely takes precedence of all amendments.

The Chairman put the question on the motion of Mr. McLaughlin, and it was determined in the affirmative.

President Choate resumed the chair.

Chairman Moore — Mr. President, the Committee of the Whole have had under consideration proposed constitutional amendment (printed No. 397), entitled "Proposed constitutional amendment to abolish all commissions, except those constituted of elective officers, and to inhibit the power of creating permanent commissions," have made some progress in the same, and have instructed the chairman to report adversely thereon.

The President put the question on agreeing with the report of the Committee of the Whole.

Mr. Dean — Mr. President, if there are fifteen gentlemen in this room who will support a motion for a call of the roll on this, I would like to have the ayes and noes.

The President — Does Mr. Dean call for the ayes and noes?

Mr. Dean — I do.

The President — Mr. Dean makes this a question of courage.

The call for the ayes and noes was supported.

The Secretary proceeded to call the roll.

Mr. Barhite — Mr. President, I am a member of the committee which reported this amendment favorably ——

The President — Do you desire to be excused from voting?

Mr. Barhite — I desire to be excused from voting. I desire to say that I can express the sentiments here which I expressed in the committee, namely, that while I think there are some commissions in the State of New York which are useless, there is a large number that are doing good and faithful work with but a small expense to the State of New York; and I think that this proposed amendment is altogether too sweeping; that there is no practical method by which the same amount of work could be done in any other way than that in which it is done by the commissions which are now empowered to act. I withdraw my excuse, and vote aye.

Mr. E. A. Brown — Mr. President, I ask to be excused from voting, and will briefly state my reasons. I am a member of the committee which reported this amendment favorably. I feel very much as Mr. Barhite does. I think that several of the commissions which are now in existence might be done away with. I think that it could be done, and I think that it would be advantageous to the people of the State if it could be done. There seems to be considerable difficulty in determining just which of the commissions should be abolished, and, therefore, I feel that the present proposed amendment is rather broad and sweeping in its terms. I have no private, personal opinion about the matter, nor do I sympathize with that class of persons which seems to think that the report of a committee should be conclusive. As the vote upon this question seems to have been foreshadowed by the action in Committee of the Whole, I bow to that decision and withdraw my application to be excused from voting, and vote aye.

Mr. I. S. Johnson — Mr. President, I ask to be excused from voting, and will briefly state my reasons. I fully agree wtih Mr. Barhite that there are some commissions that are doing a great deal of good; that there are many others that are entirely useless, and are entailing a great expense on the State and furnishing pap to either party, whether it be Democratic or Republican, when it happens to be in office, and I think that if this proposition was passed it would give the Legislature an opportunity to retain that which was good, and to reject that which was bad; and I think that is the spirit of this amendment. It has been suggested that the dairy commission was of great benefit to the agriculturists of this State. I believe if there is an unmitigated nuisance in this State, it is the dairy commission. In my own county, where the dairy interests are, perhaps, concerned as much as in any other county in the State, we had an assistant dairy commissioner who never saw a cow, hardly. He had been a conductor, I believe, at one time upon some freight car, and he had been a political manipulator, and he was appointed assistant dairy commissioner; and, sir, the power was taken away from the people who are interested in dairy interests, which had theretofore existed in them, of watching their own men, and it was put into the hands of persons who knew nothing about dairying. It is because I believe that we could in this way get rid of that which is bad, and retain that which is good, that I withdraw my request to be excused and vote no.

Mr. Lincoln — Mr. President, I ask to be excused from voting. It seems that the subject of commissions has become one which deserves the attention of the State, and might well deserve the atten-

tion of this Convention. Whether this amendment, as proposed, would accomplish the desired result may be somewhat doubtful. But I believe that this fashion, this modern fashion in the State of New York, of creating a series of officers by way of the appointment of commissions which become, in fact, permanent, should be deprecated; and if there is any way to check it, it should be checked. Now, I have some doubt about the availability of this proposed amendment to accomplish that result, but I believe that some result of that kind would be possible by this Convention if we should give it proper attention; and if this matter could receive further consideration from the Convention, something, perhaps, could be agreed upon. For that reason I withdraw my request to be excused, and vote no.

Mr. McDonough — Mr. President, I ask leave to be excused from voting, and will briefly state my reasons. I believe that the principles involved in this proposed amendment are desirable, and would, if carried into effect, work well. I think, however, it ought to be amended, and I am sorry that opportunity was not given in Committee of the Whole for amending it; and in order to bring the matter before the Convention, I desire to vote to that effect. I, therefore, withdraw my request to be excused from voting, and vote no.

Mr. McKinstry — Mr. President, I desire to be excused from voting. I could not hear Mr. Dean's argument very plainly, and, therefore, cannot corroborate what he said on the general merits of the proposition; but I wish to corroborate what Mr. Johnson has said about the feeling in the country, that a great many of these commissions while appointed ostensibly in the interests of the farmers, are really appointed for political purposes; and this dairy commission, spoken of so highly here, is spoken of in our county in the contemptuous term of the "sour milk brigade." If we could get rid of some of those commissions, I should be very glad of it. They are a great burden on the people and a fraud on the farmers. I withdraw my request to be excused, and vote no.

Mr. Spencer — Mr. President, I desire to be excused from voting. If I were a member of the Legislature, and were called upon to vote on this proposition I should cheerfully vote for the same, or something of that nature I would certainly vote to abolish a number of commissions as they now exist; but, if this Convention is to accomplish its work, we must draw the line between what we are to do and what should be left to the Legislature: and for us, in this Convention, to vote that all existing commissions shall be abrogated,

and that this whole matter should be relegated to the incoming Legislature to go over again, and that no commission should be created that would last longer than three years, is a proposition to which I cannot lend my approval. I think, sir, that in spite of the fact that many commissions have been created by the Legislature that were improper and should now be abrogated, nevertheless, it is a matter that should be left with the Legislature, and not be dealt with by this Convention. I, therefore, withdraw my request to be excused, and vote aye.

Mr. T. A. Sullivan — Mr. President, I desire to be excused from voting, and to state my reasons. I am opposed to the system of administration of our laws through legislative bureaus and commissions. However, I do think that the Legislature should have power to appoint commissions for certain purposes, not for the administration of the law, as they have been appointed in many instances. I think that legislative bureaus and commissions for the administration of laws are contrary to the principles of our government. However, this amendment is too broad for me to subscribe to. Therefore, I must withdraw my request to be excused, and vote aye.

Mr. Vedder — Mr. President, I ask to be excused from voting. There are some things connected with this proposition which I do not believe in. However, as a member of the committee, I thought that the good that was in it very greatly overbalanced some defects that might be in it. While I did not believe it was perfect, I felt, nevertheless, that when it came before the Convention the combined wisdom of the Convention might suggest some things that I myself did not think of and perfect the bill, saving so much of it as was absolutely good. I knew this — I believed at least — that the Convention knew more than any one member of it; that the Convention knew more than any one member of the committee, and I thought, as I said before, that the Convention might suggest some method of perfecting the bill and saving that in it which was absolutely good, and there is much of it which is good. Believing that it will still do that, I withdraw my request to be excused, and vote no.

Mr. Burr — Mr. President, I have received a telegram from Mr. Cochran and also one from Mr. Arthur D. Williams, stating that they desire to be excused from this morning's session, but that they will be here at 12 o'clock.

The President put the question on the request to excuse Mr. Cochran and Mr. Williams, and they were so excused.

The Secretary then completed the calling of the roll and the ques-

tion on agreeing with the report of the Committee of the Whole was determined in the affirmative by the following vote:

Ayes — Messrs. Acker, Ackerly, Alvord, Arnold, Baker, Barhite, Barnum, Brown, E. A., Brown, E. R., Burr, Cady, Campbell, Cassidy, Chipp, Jr., Church, Clark, G. W., Cookinham, Countryman, Danforth, Davenport, Dickey, Doty, Durfee, Durnin, Emmet, Floyd, Foote, Forbes, Francis, Fuller, C. A., Fuller, O. A., Giegerich, Gilleran, Hamlin, Hawley, Hill, Holcomb, Holls, Hotchkiss, Hottenroth, Johnson, J., Kerwin, Kurth, Lauterbach, Lester, Lewis, C. H., Lewis, M. E., Marks, Marshall, Maybee, McArthur, McCurdy, McIntyre, McLaughlin, C. B., Mereness, Nichols, Ohmeis, Osborn, Peabody, Peck, Platzek, Redman, Root, Rowley, Sandford, Spencer, Steele, W. H., Sullivan, T. A., Sullivan, W., Truax, C. H., Turner, Veeder, Wellington, Whitmyer, Wiggins, President — 76.

Noes — Messrs. Bigelow, Cornwell, Dean, Jacobs, Johnson, I. Sam, Kellogg, Kimmey, Lincoln, McDonough, McKinstry, Moore, Morton, Nostrand, O'Brien, Parker, Pratt, Rogers, Schumaker, Vedder, Woodward — 20.

The President — While we are in Convention a communication has been received from The Argus Company, which will be read, as it refers to the printing business of the Convention.

The Secretary read the following communication:

OFFICE OF THE ARGUS,
ALBANY, *August* 18, 1894.

The Honorable Joseph H. Choate, President Constitutional Convention:

SIR.— In reply to the inquiry of your honorable body in relation to the printing for the Constitutional Convention, The Argus Company would respectfully report:

First. That in every case the work of The Argus Company has been done pursuant to the contracts and the resolutions and instructions of your honorable body.

Second. That The Argus Company is unable to supply printed copies of the debates for the simple reason that the copy for the past five sessions is not in its possession and has not been furnished to it by the stenographer and that, furthermore, The Argus Company, in compliance with the resolution of the Convention has employed an additional force of men at considerable expense in order to furnish the printed copies of the debates speedily and that these men have been without copy of the debates, for two days of the current week to the loss and injury of The Argus Company.

Third. The stenographer informs us that one reason for the delay in furnishing copy for the debates is that the members of the Convention obtain his copy for the purpose of revising and editing their speeches. The result of this revising and editing is that the copy is frequently illegible and that it does not reach this office until some time after its preparation by the stenographer. In the case of Tuesday evening's debates the type was set and proofs furnished for the use of members who retained them some time making corrections and alterations in them.

The Argus Company feels that its business reputation is injured by the unjust and unfounded attacks made upon it in the Convention. We are held responsible for the acts of the delegates and the employes of the Convention. We have been blamed for not furnishing documents when employes of the Convention had not placed them on the file boards, although the documents had been delivered and we held receipts for them. We are neither the stenographers of the Convention, nor its sergeant-at-arms and page boys. We have given the Convention more prompt and better service than under any legislative contract. We have run nights at a greatly increased expense in order to print in time for the morning sessions, matter which, by resolutions of the Convention, was ordered to be sent to us before four o'clock in the afternoon and which we do not receive until eleven o'clock midnight.

We appeal to you as the presiding officer of the Convention, and to your sense of justice to protect us against these unfounded attacks and to prevent statements on the floor of the Convention and on its authority which are libels upon our business reputation.

We ask that this communication be treated as a formal communication to the Convention and entered upon its records.

Very respectfully,

THE ARGUS COMPANY,

M. V. D.

The President — This seems to require some action by the Convention, if it is not content to receive the reports of the debates a week after the debates in expectation on their part that they will be read. (Laughter.) As it is, the stenographer has not seemed to be performing his duty, as I think it was prescribed by the former orders that each night he should deliver this matter to The Argus Company. What action will the Convention take?

Mr. McDonough — Mr. President, I move that the communication from The Argus Company be received and placed on the minutes.

Mr. Schumaker — Mr. President, it certainly is a gross violation of privilege for any delegate of this Convention to revise his speech after he delivers it. It is not known to me to be done with the consent of any deliberative body that ever I have been connected with, and they are not a few, unless the member moves for leave to print. If a delegate rises in a deliberative body where there are debates, and does not wish to say anything, but asks leave to print, then it is proper; but you cannot lug in an oration and all that that has not been delivered in the body. In doing so, a man is guilty of something which he ought not to do.

The President — The speech may not be as good as he thought for. (Laughter.)

Mr. Schumaker — That won't do; he has to take it as it comes. He cannot insert the Declaration of Independence and three or four Constitutions of various States and a lot of poetry and all that. He has to give it to the reporter as delivered, and we have to have it as he said it here, or it is not fair as the record of the monks of old.

The President — Perhaps Mr. Hamlin can inform the Convention upon the subject. The Chair is under the impression that the standing orders require the stenographer to give this matter to The Argus Company each night.

Mr. Hamlin — I think that is so, Mr. President.

The President — If so, he should be either compelled to do it, or relinquish it.

Mr. Hamlin — But the difficulty arises from the good nature of the stenographer toward the members of this Convention, who are not satisfied with their speeches and desire to revise them.

Mr. Schumaker — That is not fair.

Mr. Hamlin — And I think The Argus Company is entirely correct in that particular instance, from the investigations I have made. For instance, this morning I went to the stenographer, and there lay upon his table the proceedings of Saturday morning and Saturday afternoon, which were held for members of this Convention, at their request, for correction. They had either taken a portion of it away, or else it was held for their particular benefit; and, of course, The Argus Company, under such circumstances, is not at all responsible for the delay in putting these Records upon the files of the members. Certainly some resolution should be passed, either asking the stenographer to discontinue this practice, or else that he enforce the rules as they actually exist.

Mr. Schumaker — Is there anything in the rules about it?

The President — Mr. Acker has the floor.

Mr. Acker — Mr. President, I am sure that all I have said in this Convention will very soon find its way into the waste basket, in some form or other, and, therefore, I move you that the stenographer be asked to present his notes to The Argus Company as required by the former resolutions of this body, and that if any person wishes to revise his speech, he shall do it in time for the stenographer to carry out the former orders of this Convention.

Mr. Schumaker — Mr. President, does the gentleman mean to say that a member has the right to revise his speech after he delivers it in this body, without reading it again in this body? Is that the rule of any deliberative body in the world?

Mr. Acker — Mr. President, I do not propose to say any such thing, or to say anything on that subject at all. My only proposition is, that we should have this printing done as we have said we would have it done, or else back down and say something else.

The President — I wish Mr. Acker, or some other gentleman, if he can find the previous order in the Journal, would call it to the attention of the Convention.

Mr. Veeder — Mr. President, I submit that the correction or the editing of the debates can be abandoned. Every member of this Convention is invited by the Compiler, who will issue the official edition of the Debates, to go there or to send to him corrected copies of his speeches or of the arguments made here. Now, I submit, as to substance, my colleague, Mr. Schumaker, is perfectly correct; that gentlemen should not alter, nor should new matter be injected into their remarks, else matters may be talked of here in this Convention ostensibly, and delegates remain in their seats, without making answer thereto, when they may have had complete answers to make. Now, if there is any compiling or correction of these speeches going on, it should not be permitted that any member of the Convention may inject into his speech any new matter.

Mr. McKinstry — Mr. President, I want to say that I do not believe any delegate here has revised a speech so as to put into it anything different from what he said. What they do object to is having matter printed that they never said at all and having it reported entirely different. Stenography is not an exact science; this is a hard room to hear in. I have heard complaints from members here who have spoken and found their words almost reversed or made ridiculous. It seems to me no more than fair, when this matter is going into a permanent record, that the members should be allowed to make typographical and grammatical cor-

rections in their speeches. It makes no difference to me; what little I have said I have submitted in manuscript, and they did not get that right, although written very plainly; but the main fault found here has been by members who have made very careful speeches, and then found the stenographer's report has not been correct, and, I think, they ought to have the opportunity of going into history on exactly what they do say.

Mr. Hottenroth — Mr. President, that resolution can be found on pages 225, 226 and 227 of the Journal.

Mr. Vedder — Mr. President, I beg leave to make a suggestion. I suppose all the delegates have received a communication from Mr. Glynn, the Compiler, to the effect that he was revising the debates that have been had here, and asking delegates to look over the debates and see whether or not they desired to make corrections, and that they send the corrections in to him. I do not understand that in permanent form these debates will be as they are printed here; that the same types are to be employed. These debates, as I understand, when they go into a permanent record, will all be reset, in a different type, and at that time corrections can be made. I would suggest, if that be true, as it seems to be, that these debates be printed, and then members will all have an opportunity to correct them as they go into permanent form. There are not very many mistakes made; some, but not many. They could be corrected before the Compiler puts them into permanent form. Then we can have the debates. I would like to see what members have said the day before, if I can, without criticising their grammar, either.

Mr. Holls — Mr. President, it seems to me that this entire matter is sufficiently covered by the existing rules of the Convention, and I surely bear witness to the fact that the stenographer's report is not accurate, owing, as it is, to the difficulty of hearing in this chamber, and that very often very grave mistakes are made. I think, however, that this discussion and the calling attention to the abuse and delay of this matter, has done good, and I, therefore, believe Mr. McDonough's motion, which was that the communication be received and laid on the table, and which I hold not to be debatable, will now be, it seems, the best possible disposition of the matter.

The President — The Chair did not understand Mr. McDonough to make that motion. If you make it, it will be put.

Mr. Alvord — Mr. President, I make the motion, in order to get out of this trouble, that this be received, laid upon the table and printed.

The President put the question on the motion of Mr. Alvord that the communication from The Argus Company be received, laid upon the table, and printed, and it was determined in the affirmative.

The President — The Chair has received a communication from Mr. Tucker, stating the fact of his illness, and asking to be excused on that account until Thursday.

The President put the question on the request of Mr. Tucker to be excused, and he was so excused.

The President — The Secretary will call the general orders.

Mr. I. S. Johnson — Mr. President, I offer the following resolution:

The President — If no objection is made, this resolution offered by Mr. Johnson will be received.

The Secretary read the resolution offered by Mr. Johnson, as follows:

R. 179.— Resolved, That the Committee on Rules be requested to report an amendment to rule 21, by adding after the word " day," in the sixth line, the following words: "And if not so moved on a second call, it shall go to the foot of the calendar of general orders."

The President — It will be referred to the Committee on Rules. It refers to this habit we have got into of beginning at the beginning and calling them several times.

The Secretary proceeded to call the general orders.

On the calling of general order No. 30 (printed No. 398), introduced by Mr. H. A. Clark, Mr. Hill stated that Mr. Clark was to be absent from the Convention for to-day, and did not wish that general order to be moved.

The Secretary called general order No. 31 (printed No. 399), introduced by Mr. O'Brien, as to suffrage.

Mr. O'Brien — Mr. President, I move that.

The President put the question on going into Committee of the Whole on this general order, and it was determined in the affirmative.

The House resolved itself into Committee of the Whole, and Mr. Schumaker took the chair.

The Chairman — The Convention is in Committee of the Whole on general order No. 31 (printed No. 399), introduced by Mr. O'Brien, entitled, " Proposed constitutional amendment to amend section 3 of article 2 of the Constitution, as to suffrage."

The Secretary read the amendment as follows:

Section 3 of article 2 of the Constitution is hereby amended so as to read as follows:

Sec. 3. For the purpose of voting no person shall be deemed to have gained or lost a residence by reason of his presence or absence, while employed in the service of the United States; nor while engaged in the navigation of the waters of this State, or of the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any alms-house, or other asylum or institution, wholly or partly supported at public expense, or by charity; nor while confined in any public prison.

Mr. O'Brien — Mr. Chairman, I move to strike out the first line. While this proposed amendment bears my name, I do not assume any responsibility for it, nor claim any credit for its paternity. It is really an emanation from the Suffrage Committee, and the intention of the amendment is clearly seen in the portion which is printed in italics, in lines nine and ten, which make the only change from the original section in the Constitution, and it is intended simply to carry out and effectuate the spirit of the section of the present Constitution. It will be seen that no one may gain or lose a residence "while a student of any seminary of learning, nor while kept at any alms-house." Now, we simply extend that a little further, and say that no one shall gain a residence while kept in any institution of a charitable nature.

Mr. C. B. McLaughlin — Will the gentleman permit me to ask him a question? Does such a person now gain a residence?

Mr. O'Brien — I understand that in the Sailors' Snug Harbor, for instance, on Staten Island, in Richmond county, that there are a large number of inhabitants of that institution who now obtain a residence by reason of their living there and being supported at public expense or private expense.

Mr. C. B. McLaughlin — Will the gentleman call the attention of this Convention to some provision or statute by which a person can obtain a residence?

Mr. O'Brien — I know of no such decision, but they vote there and have voted for a long time at all elections. I am told by other members of the Suffrage Committee, who have looked into the matter that there is a decision on that question in the 117th New York. I have no extended remarks to make on this amendment. I think it is one that commends itself to the favorable consideration of the committee. I am ready to answer any question which I am able to answer on the subject.

Mr. Titus — Mr. Chairman, the gentleman proposing this amendment states that he is willing to answer any question. How will this affect the Soldiers' Home in Bath?

Mr. O'Brien — I suppose that is left just as it is. There was another proposition pending before the committee in regard to soldiers' homes, and which is not included in this amendment. This refers simply to those charitable institutions, such as old men's homes, Sailors' Snug Harbor, and institutions of that kind, which, although not alms-houses under the law, are really charitable institutions.

Mr. J. Johnson — Mr. Chairman, I would like to ask the gentleman a question in relation to this matter, whether the committee has considered how this amendment will affect persons who have already gained a residence in the sections where such an institution exists, under the provisions of the existing Constitution?

Mr. O'Brien — Mr. Chairman, I suppose that a person who has already gained a residence will maintain that residence. I do not see how this constitutional amendment will affect that.

Mr. Holcomb — Mr. Chairman, I think that the gentleman from Cayuga (Mr. O'Brien) is under a misapprehension in reference to the men who live at Sailors' Snug Harbor. If I understand it correctly, they are men like the sailors, who, having passed their lives on the high seas and navigation of the waters of the State and the waters generally, wherever the calling of the sailor might take them, find themselves at the close of their lives without any home, and the Randall charity, as it is called down there, which establishes the Sailors' Snug Harbor, simply gives them what the State gives the soldiers, who, having done their duties in the armies of the republic and State, and who are really the wards of this State, from which they enlisted into the armies of the United States, gives them the right to a home which they would have nowhere else in the world. They are not strictly charitable persons at the Sailors' Snug Harbor; they are not living upon any charities. They are simply men whose lives have been exhausted, as we might say, in the service of the commerce of the country, and they go to the Sailors' Snug Harbor at the close of their lives to enjoy what cannot be given them anywhere else, and which, in truth, literally speaking, is their home just as much as was their home from which they went as children to enter upon that calling. I do not think any discrimination should be made against those men. They are not poor men in any sense. They are not evil men. They are not suffering anything at all, except the penalties which come at the end of a long life, after the

energies of their manhood have been exhausted by their arduous labors. I think that it would be entirely improper. I shall ask that there may be an amendment made. I would like the privilege of putting it in writing, so that it can be better understood than it is, that which is in my mind. But, sir, I should not like to except from the operations of this amendment the Sailors' Snug Harbor alone, but any charity of that sort. I used the word "charity," not in the strictest sense, but any institution where a man can be given an abiding place, a home from which they never can go again, except to their grave. I think that those men should certainly be excepted from the operations of this amendment. I will have prepared and submit in writing presently an amendment that will cover that.

Mr. C. A. Fuller — I do not know what particular vice this proposed amendment was designed to cure, what particular class of persons it would reach. I remember in 1888, in the Legislature of this State, there was a good deal of controversy as to the status of those who were cared for at the Soldiers and Sailors' Home at Bath. I think the result of the controversy at that time was that a special provision was made in some way that the occupants of the home might be allowed to vote in the localities from which they came. I do not see how this addition could very much change the present condition of the law. It does not say that those in any condition, whether they be sailors on Staten Island, residing in that home, shall be allowed to gain a residence there and vote there, or at some other place, where they previously have had a residence. It does not say that the soldiers at Bath may retain their residence where they had it before going to the home, and send their votes by mail, as was provided that the soldiers might do in war times. For my part, I cannot see how the addition of the italicised words would add any value to the provision as it now stands.

Mr. Lester — Mr. Chairman, I am in favor of this proposed amendment to the Constitution. I had occasion, in performing the duties with which I was charged as a member of the Committee on Privileges and Elections, to visit the districts in Staten Island which included the Sailors' Snug Harbor. I find that in at least two election districts in Staten Island the principal vote is made up of the inmates of the Sailors' Snug Harbor. These old sailors, who have come from different parts of the United States, have settled down there, and are entirely under the rules and restrictions imposed by that institution; they have nothing in common with the members of the community in the midst of which they reside. They do not participate in any of its activities. They do not share in any of its burdens and they have no practical interest in any of the questions

which agitate that community; and it is a demoralizing thing there that hundreds of voters who have nothing in common with the inhabitants of that portion of the country should have the right to exercise the right of franchise in that place. It is demoralizing for many reasons. It is demoralizing for this reason, among others, I regret to state it, but it is a fact which was forced on my attention and which I must believe, that these old men down there in the Sailors' Snug Harbor, contain a very large proportion of those who are accustomed to cast their vote under the influence of some pecuniary consideration. I was urged by residents of those districts who had no connection with the institution, but represent both of the political parties, to introduce an amendment for the relief of that community very similar in its purport to that which is now under discussion. This, sir, does no injustice to any citizen of this State. If any of these old men have now a residence and a right to vote elsewhere, they would not, under the operation of this amendment, lose it. But, sir, it would prevent a large number of voters being accumulated in that place and exercising a powerful influence upon all elections whether municipal or general, who have no practical interest whatever in the concerns of the community in the midst of which they reside. It is a demoralizing thing as it now exists, and I am in favor of this amendment, which would remove it.

Mr. Titus — Mr. Chairman, the gentleman from Saratoga (Mr. Lester) is entirely in error. He says that these old sailors come from all parts of the United States. The prerequisite to a home in the Sailors' Snug Harbor, Richmond county, is that a sailor sail on a merchant vessel twenty-one years, under the American flag, out of the harbor of New York. When he says that they come from all parts of the United States, it is an error. This institution, I do not think, receives any State aid. It is provided for by bequests that were originally made for it. Also, under this amendment, we have to take the ship-carpenters, at Captain Webb's home, on the Hudson. Mr. Jenks has offered an amendment which, I think, every member of this Convention will agree with. It was reported and on general orders, but owing to the absence of Mr. Jenks, who was called away on account of sickness in his family, has not been moved. I think it will relieve us in this matter.

Mr. Lauterbach — Mr. Chairman, there is no intent to change the principle of the existing constitutional amendment. There is simply a desire on the part of the Suffrage Committee to have that principle extend, not only to the asylums and schools and colleges mentioned in that section, but to cover a class of institutions, the precise status of which has not been fixed or determined. The law

at present states that in respect of certain institutions mentioned in the section — and I will read them in a moment, so that you may know what they are — an inmate of those institutions shall not gain or lose a residence by reason of being an inmate. That is to say, that going to an institution of that character shall not localize him for the purposes of voting in the institution of which he has become an inmate, but that he still remains, for voting purposes, a resident of the place from which he came. The purpose of that is apparent. It must be apparent to everyone, of whatever political complexion he may be, that it is a gross injustice to local interests to have gathered together in a building in a certain district a number of people, either wholly or partly supported by charity, who have no interest in local affairs, and who yet may determine local affairs absolutely by reason of the concentration of their vote. The Court of Appeals, in passing upon the Constitution, as it now reads, decided that the Soldiers' Home at Bath was covered by the constitutional provision, and in the 107th New York, in the case of Silvey v. Lindsay, at page 55, they decide that being an inmate of the Soldiers' Home at Bath was, *prima facie*, a deprivation of the right of voting in that district, and that, as the Soldiers' Home at Bath was an asylum, a soldier could not vote at Bath, but was assumed still to be a resident of the district from which he had come, unless he chose to appear before the election officers and make proof that he had no other residence, and that his home was at Bath, and nowhere else. So that there is not in this constitutional amendment any effort to deprive anyone, even if he be the subject of charity, of the right to vote somewhere on election day; but the presumption is that, being an inmate of a public institution of this character, he is not a resident of the district in which that institution is located, and that he is presumed to vote elsewhere. He may rebut that presumption, even under the decision in 107th New York, upon showing the fact to be that he has no other residence. But the inhabitants of that particular district are guarded and protected against a tremendous mass of votes being thrust upon them to the extent, at least, of being able to put each inmate of such institution upon his *voir dire* to say whether he has any other home, and if he has any other home, to insist upon it that his vote shall be cast at his true residence, and not at the residence that he has acquired as an object of charity. It is but just that you should protect the various districts of the State against inroads of this character. I do not speak of any particular abuse, but if the case may be that in the name of charity you were to gather together thousands of men and locate them anywhere, and then have them vote in that particular district, without having any interest in

the place or in the affairs of the community that surrounds them, you are, in the name of charity, doing a grievous injustice to the honest residents of that particular section; and it is against that abuse that the constitutional amendment, as it originally read, was aimed.

Mr. Moore — Mr. Chairman, I would like to ask the gentleman a question, if there is any provision of law for getting those cripples back to their homes where they can vote?

Mr. Lauterbach — I know of no legislative provision, but there is no difficulty in enacting it if it is desired. What ought to be done for the purpose of carrying out the objects of the constitutional amendment, I do not know. The question has been mooted in the Suffrage Committee in respect to the Soldiers' Home, but there is no difficulty in providing that the vote may be transmitted by mail, or otherwise disposed of. That is another question. I think everyone agrees with me that no locality ought to be deprived of its legitimate vote by the casting of the vote of those who are foreign to that locality. Now, if they are not foreign, if that is their home, all they have to do is to make proof of that fact and they become localized.

Mr. Holcomb — Mr. Chairman, may I ask the gentleman a question? Was there ever any question raised in reference to a soldier that went into the military service, or a sailor that went into the merchant marine and risked his life ——

Mr. Lauterbach — It may be that he has risked his life, that he has become a soldier or a sailor, and that he is being very properly cared for in one of these homes, but that his identity is not really at Bath, but in the city of New York, or that his identity of location ought not to be at Sailors' Snug Harber, but at Buffalo, or some other city in the State.

Mr. Holcomb — Is there any difference in the identity of the interests of a citizen whether he dwell in the city of New York or in Steuben county, when you are talking about the interest of the State of New York? I don't understand it so.

Mr. Lauterbach — Certainly I am not talking for an election for Governor or President, but undoubtedly and undeniably the life-long resident or the real resident of a community, who is interested in the personality of his Member of Assembly or of his State Senator, or of some other officer to a very great extent and in a very different direction from a resident of another section of the State, and that must be conceded. Now, what is the point that is sought to be covered by this amendment? There are certain institutions

which are not looked upon as asylums within the terms of the statute. Take the Sailors' Snug Harbor, for instance; I believe it receives no money from public sources. It is entirely, or partly, supported from private charity, from a private endowment, and it has been held that that institution is not within the statute, and it is in order to bring that institution within the statute that this amendment is passed, adding the words, "or institution wholly or partly supported," and the words, "or by charity."

This is not new legislation; it is simply amplifying terms so as to cover that particular case and other cases. Take, for instance, the Home for Aged and Infirm Hebrews, at One Hundred and Fourth street, New York, of which I am a director. You bring from all sections of the State people who have no identity or interest in that particular locality. Most of them come from the East side of the city, and know the personnel of the people upon that side; their interests are entirely with that section of the city, and yet, by having seven or eight hundred people, who are inmates of that particular institution, an election of aldermen may be changed. The personnel of the Assemblyman who is to be returned to Albany may be turned in a direction different from that which the majority of the voters of the district would have directed it. You are gathering together from the highways and by-ways of the city, in one particular district, a number of people, who are, for the purposes of this discussion, absolutely foreign to the interests of the locality in which they are voting. Now, why is it not a just thing to say that the inmates of the Home for Aged and Infirm Hebrews shall not, on the Tuesday in November, when this election is to take place, vote here, but that they shall vote in Rivington street, or Twenty-third street, or Seventy-eighth street, or wherever their real habitation is? Now, what is the habitation? If they have a family, they are localized at the place of residence of the family. If they have no family, and have no residence, and claim no other residence, they are not disfranchised. They may then go before the election inspector and swear that the only home that they have is One Hundred and Fourth street and Tenth avenue, in the city of New York, and they may vote, and still perpetrate what is a wrong, that of bringing a concentrated pauper vote, or quasi-pauper vote, to control local interests, which is an injustice to the residents of that particular district. In other words, if you desire to do charity, do it; but do not do it at the expense of the rights of those in whose neighborhood, you may establish your charitable institution.

Mr. Hotchkiss — Mr. Chairman, I should feel that it was a distinct misfortune if this amendment should not pass. Now, sir, I

have had considerable personal experience in the matter covered by it. In 1892, and in 1893, I happened to be of counsel for the city of New York in a number of what were called election cases, where the right to vote of some four hundred inmates of a public institution was questioned, and leading counsel were employed in their behalf. Under those circumstances, I came to give some considerable attention to this subject embraced within this proposed amendment. I hope that the Convention has given due weight to what Mr. Lauterbach has said. This amendment will deprive no one of his vote in the locality where he belongs and where he ought to vote. It simply deprives him of his vote in the locality or district where, by accident, or by the chances of his life and the charity which has been extended to him, he has become located, and it deprives him, in those localities, of the opportunity and the abuse of plumping *en masse* those votes affecting local questions from people who have absolutely no interest at all in the locality. While it is suggested by my colleague from New York that it perhaps might, in some instances, deprive a person of the right to vote upon national questions or upon State questions, where the mere question of locality where he voted would be immaterial, it is, however, distinctly in the interest of the locality where they are residing in an institution, that they should be deprived of the right to vote upon all local matters. It is possible that by some amendment, by some direction, possibly of the Legislature, it might be that upon national questions and State questions they might be permitted to vote from the institution, but, so far as the amendment seeks to deprive them of the opportunity to vote in the locality where the institution is located, it will correct very many grave abuses. What has been referred to on Staten Island is familiar to most of us who live in New York and have paid any attention to Staten Island affairs during the last fifteen years. I venture to say that there has not been a local or a State election or a national election on Staten Island in the last twenty years when there have not been frauds and all kinds of difficulties growing out of the voting of the inmates of the Sailors' Snug Harbor, and more than that, it has been charged, and in very many instances it has been proved, that these old sea captains, for an allowance of tobacco or grog or cash have gone up to the polls and almost solidly cast their votes in the way they have been directed.

Mr. Holcomb — Mr. Chairman, may I ask the gentleman a question?

The Chairman — Will the gentleman give way for a question?

Mr. Hotchkiss — Oh, yes.

Mr. Holcomb — I would ask if the gentleman is now speaking of his own knowledge in respect to how these votes are purchased or not?

Mr. Hotchkiss — In reply to the gentleman, I would say that I have never bought any votes, and I never had occasion to sell a vote, but I am taking what I give to the Convention from what has been currently reported in the newspapers and what friends and neighbors living on Staten Island have in frequent coversation reported to me as being a matter beyond any question at all.

Mr. Burr — Mr. Chairman, I desire ——

Mr. Holcomb — Mr. Chairman, I would like my amendment reported.

The Chairman — The Chair recognizes Mr. Burr.

Mr. Holcomb — My amendment is before the House. Can I have it reported?

The Chairman — The Clerk will read it.

The Clerk read Mr. Holcomb's amendment as follows:

"Add at the end of line ten: 'The provisions hereof shall not be construed to affect soldiers who may be inmates of State soldiers' homes, or sailors who dwell upon the Sailors' Snug Harbor foundation in Richmond county, or like institutions.'"

Mr. Burr — Mr. Chairman, I offer a substitute for that.

Mr. Lauterbach — May I ask Mr. Holcomb a question?

The Chairman — Mr. Burr has the floor.

Mr. Burr — I offer this as a substitute for the whole matter ——

Mr. Lauterbach — Mr. Burr, can I ask you a question, then?

Mr. Burr — Yes, sir.

Mr. Lauterbach — Do you desire that the decision of the Court of Appeals, in 107 N. Y., should be eliminated by your proposed amendment, and that the soldiers at Bath shall be permitted to vote at Bath upon local issues, without any question as to their residence?

Mr. Burr — No, sir.

Mr. Lauterbach — That would be the effect of your amendment.

Mr. Burr — No, sir. Upon national and State affairs they shall be permitted to vote; that is all. If you will listen to my substitute you will see that it is so.

The Chairman — The Clerk will read the substitute of Mr. Burr.

The Clerk read Mr. Burr's substitute as follows:

"Section 3 of article 2 of the Constitution is hereby amended so as to read as follows:

"Sec. 3. For the purpose of voting no person shall be deemed to have gained or lost a residence, by reason of his presence or absence, while employed in the service of the United States, nor while engaged in the navigation of the waters of this State, or of the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any alms-house or other asylum, at public expense; nor while confined in any public prison; provided, however, that the residence of any honorably discharged soldier or sailor of the late civil war at any soldiers or sailors' home in the State, as an inmate thereof, must be deemed a residence for the purpose of voting for national or State officers, within the meaning of section 1 of this article, and such home shall be deemed an asylum within the meaning of this section."

Mr. Moore — Mr. Chairman, I rise to a point of order.

The Chairman — The amendment offered by Mr. Holcomb is before the committee, and after that is disposed of, then Mr. Burr's substitute would be up.

Mr. Acker — Mr. Chairman and gentlemen, I am in favor of this amendment for one reason, and this is not any fictitious story or creation of the imagination. I believe that this proposition puts the soldiers and sailors, whom so many of us seem to take such a great interest in, in the same position that it has placed our sons who are attending college. The young man at Cornell University may elect to make that his residence and vote in the village of Ithaca, but if he does not do that, and desires to return home, he may go and vote at his own home. Now, in my own city, one of my neighbors, an old soldier, found it necessary to go over to Bath and have one of his feet amputated. He was over there some six or eight months. When he got back home, just before election, he desired to engage and act his part as a citizen of that city, but somebody stepped up before him and said: "You have been absent six months, and, therefore, you cannot vote; you have not resided in this election district within three months," and so the old man had to swear in his vote. Now, this proposition, as it is proposed to amend the Constitution, puts him on an equal, and he can still retain his residence and vote at home where he wants to; and I can see no reason why, if he desires to make his home in Bath permanently, he may not vote there. He cannot vote in two places, but he may return and vote in the village where his home is, if he wants to. If these people, who

are so anxious because a man is old and cannot go to his home at a national election, are not satisfied, why, we can do as we do by the students — take up a contribution and pay their expenses, and let them go back to their homes and friends and vote there. Those are the only places where they should be allowed to vote, and this amendment does not prevent them from voting there.

Mr. Root — Mr. Chairman, I hope this amendment will pass exactly as it has been reported. It introduces no new principle. It merely covers an omitted case in the provision of the Constitution which we now have, and which is uniformly approved. It puts the inmates of institutions which are upon private foundations in the same position as members of our institutions of learning, and relieves many communities in this State from the incubus of a great body of voters who can overcome the votes of the general citizens, and who yet have no interest in the governmental affairs of the community, but are more interested in having plenty of rum and tobacco and other comforts in the institutions than they are in the good government of the community.

Mr. Holcomb — May I ask the gentleman a question?

The Chairman — Will Mr. Root give way for a question?

Mr. Root — I will give way to a question.

Mr. Holcomb — I would like to ask the gentleman whether his proposition that these people have no pecuniary and monetary interest in their localities is not deliberately placing the property qualification upon the right of the franchise in this State?

Mr. Root — My proposition was not that they had no pecuniary interest. My proposition was that they have no interest in the government of the locality, but interest solely in the government of the institution where they are. Their interests properly are in the homes from which they came, and to which they should return to vote, just as our students do from our institutions of learning.

Mr. O'Brien — Mr. Chairman, I desire to state simply this, in answer to the gentleman from New York (Mr. Holcomb), that the Constitution does not guarantee to every man an opportunity to vote; it gives him only the right to vote, and, therefore, we cannot say that every man shall have the chance to cast his vote. For a hundred reasons a man may be deprived of his vote. Poverty may deprive him of his vote. In a dozen different ways he may be deprived of it. He may be absent from his home and unable to pay his way back. Some of our best young men may be at institutions of learning and unable to pay their way home. They are deprived

of the opportunity of voting, but they are not deprived of their right to vote. And so it is in this case, we do not deprive any man of his right to vote. We deprive him simply of the opportunity to vote if circumstances happen to deprive him of his opportunity. We give him his right to vote. We leave his right to vote unchanged. I hope, sir, that this amendment will pass just as it is reported.

Mr. Holcomb — May I ask the gentleman a question?

Mr. O'Brien — Yes, sir.

Mr. Holcomb — I would like to ask this. Suppose that poverty might deprive a man of his vote, is there any reason why a citizen should be deprived of his right to vote because he has served his country in the merchant marine or in the navy or in the army?

Mr. O'Brien — Certainly not.

Mr. Holcomb — It is not a question of poverty at all. It is a question whether these men should be deprived of their votes because they did their duty at the call of their country.

Mr. Moore — Mr. Chairman, I think gentlemen take a wrong view of this proposed amendment if they even imagine that it proposes to deprive any man of his right to vote. With all due respect to my friend on the other side, Mr. Holcomb, of New York, I must oppose his amendment, as I think it false in principle and false to the theory upon which this section 3 of article 2 of the Constitution is based. This simply gives to the inmate of any of these homes mentioned in section 3 of article 2 the right to vote in the places where they live, and does not compel them to vote as inmates of the institutions where they may be at the time of the election. I am in favor of this amendment, Mr. Chairman, exactly as the committee have reported it, and I hope it will be adopted by the committee.

Mr. Dean — Mr. Chairman, I believe this committee is as unanimous in support of this proposition as it was against mine. I, therefore, move that we rise and report this to the Convention, and recommend its adoption.

The Chairman — That would be out of order at present, because the question is on Mr. Holcomb's amendment.

Mr. Nichols — Mr. Chairman, there is something that may be said which will tend to a right conclusion of this matter that has not yet been presented. The soldiers in the Soldiers' Home at Bath for ten years exercised the right of franchise in our community. For ten years our local affairs were dominated by a class of men who had no interest whatever in the property of the community, who were entirely unacquainted with the candidates for whom they

voted, and who cared nothing about the result of the election, except so far as it might have been along party lines. Both parties were satisfied that that course of dealing was unfair to the community and was debauching to the soldiers. It therefore became necessary to present this question to the courts, and out of that grew the case of Silvey v. Lindsay, reported in 107 N. Y. Since that time there has been no effort on the part of non-resident soldiers to vote. Since that time there has been absolute quiet at the polls. The Home has been protected in all its parts by the State. The legislative and executive departments have given it whatever was necessary. And there those men have lived comfortably, quietly, peaceably and as respected citizens. Now, the soldiers are not deprived of the right to vote by reason of being inmates of that institution. They go, and have gone during the five or six years since they were excluded from participating in our elections at Bath, to their respective places of residence. Troy, Albany, New York city, Rochester, Buffalo, every part of this great State is represented there, and to their respective localities they have from year to year gone, where they have exercised this right, where their families live, where their children are growing up, and where their property is located. I contend upon this proposition, not only that they ought not to vote in Bath, but that it is your duty to retain their residence where they see fit to choose it, where they can do the most good for their families, where they can contribute something by their voice to the choice of instructors for their children and the management of the local affairs in which they have a right to be interested. I am handed by Mr. Parkhurst this resolution — and this comes from the board of managers of the Home, largely Democratic, I think, at the time this was passed, and, I believe, entirely Democratic now, and I want to say to you that I have yet to hear one of the members of that board of trustees say that those men ought to be fixed as a charge politically upon the town of Bath or the county of Steuben. Now, this resolution reads as follows:

"Resolved, That in the judgment of this board the charge made against the managers of the Home originated in personal and political differences and antagonisms among people residing at Bath. The opinion of the Attorney-General of the State, sent to the board in 1879, to the effect that the inmates of the Home are entitled to vote at all elections, thereby virtually placing the management of local affairs in the town of Bath and the election of representatives in the Legislature from this district in the hands of these old soldiers who are strangers to the interests of this locality and are supported by the bounty of the State, can, in our judgment, never result in

anything but evil in the Home, and the town in which it is located."

That was passed by nearly a unanimous vote. General Slocum was chairman of the board. General Quinby, of Rochester, was a member. Mr. Taggart was a member. Mr. Rogers, the present manager of the Home, a Democrat, and a resident of the city of Buffalo, was a member. William E. Howell, also a resident of Bath; John Palmer, the Secretary of State at present, and another, now deceased, with one dissenting voice, and that was Mr. Rockwell, of Elmira. Now, this proposition went to the court, and the Court of Appeals, in its opinion upon the subject, stated as follows:

"We have no doubt that the institution in question is within purview of the constitutional provision above referred to. It is an asylum supported at the public expense, and its members are within the mischief against which that provision is aimed, the participation of an unconcerned body of men in the control, through the ballot-box, of the municipal affairs, in whose further conduct they have no interest, and from the mismanagement of which, by the officers their ballots might elect, they sustain no injury. But the question in each case is still as it was before the adoption of the Constitution, one of domicile or residence to be decided upon all the circumstances of the case. The provision (art. 2, sec. 3) disqualifies no one; confers no right upon any one. It simply eliminates from those circumstances the fact of presence in the institution named or included within its terms. It settles the law as to the effect of such presence, and as to which there had been before a difference of opinion, and declares that it does not constitute a test of right to vote, and is not to be so regarded. The person offering to vote must find the requisite qualifications elsewhere."

That is found at page 60, 107 N. Y., the case of Silvey v. Lindsay, opinion of Judge Danforth, all the judges concurring. Now, it was under that decision that this mooted question which had troubled our community and agitated the soldiers at the Home was determined, and, as I have said, the determination was for the benefit of two classes. First, the State, in which they have chosen residence, and, secondly, the inmates of the Home themselves. They are better off. They are better protected by the Constitution as it is, than by the exception which the gentleman from New York (Mr. Burr) seeks to engraft upon it. But, one word with regard to the proposition which has been submitted ——

Mr. Holcomb — The question is not are we better protected under the existing Constitution. The question is how will they be protected under the Constitution as it is proposed to be amended here.

Mr. Nichols — That simply extends the provision of the Constitution as it is now to other institutions. I do not think it makes any difference to any member of the Home to-day whether the proposition is passed or not, as proposed by Mr. O'Brien. But the same principle that prevails in the case of the Soldiers' Home at Bath is clearly applicable and with equal force to other institutions of a like nature throughout the State. The amendment that Mr. Burr proposes is an anomalous one, though it may strike one at first as having some force to it, but it seems to me absolutely dangerous and open to criticism — that the proposition involves the political division of a man and that cannot be done. He proposes to let the soldier vote in Bath on State and national issues. Where shall he go to vote for county officers? He has not the right to do it in Bath. If you give him the right to vote in Bath on State and national officers, you must deprive him of the right to go elsewhere and vote for local officers. How will you meet the proposition? He must either be left to the town of Bath, or the locality wherein it may be that the institution is located, or he must be sent back to his home, as is done in very many instances now, and permitted to cast his ballot there. I hope, above all things, that the amendment to the proposed amendment may not receive favorable consideration, or at least approval, at the hands of this Convention. It will be absolutely destructive to the rights which you seek to preserve — the rights of the citizen who is the soldier, on the one hand, and the public on the other.

Mr. Hamlin — I move that the committee do now rise and report to the Convention, recommending the passage of the amendment.

The Chairman — That is out of order. We have got to dispose of Mr. Holcomb's amendment first.

Mr. Maybee — Mr. Chairman, I hope the constitutional amendment will not be favorably reported. I had supposed that the Republican party was very solicitous of the interests of the old soldier, but it seems that I was mistaken in that view. I do not believe that when a man has spent the better part of his life, perhaps, in fighting the battles of his country, and because in his old age he is so unfortunate as to become poor and obliged to go to a State institution and be supported by public charity, that he should be deprived of the opportunity to vote. To deprive him of the opportunity to vote is practically to deprive him of the right to vote. I do not think that the fact that a man has been patriotic enough to go on the battlefield or on the high seas and fight for the flag of the republic ought to work his disfranchisement. When a man has for

years spent his life on the ocean wave and made his home on the rolling deep, and has been unfortunate enough to become poor in his old age, and to be confined in the Sailors' Snug Harbor, or in any other similar institution, I do not think he ought to be deprived of the right or the opportunity to vote, and it seems to me that this proposed amendment would practically disfranchise a large, worthy and respectable class of our fellow-citizens. I do not believe that principle ought to receive the sanction of this Convention, and I hope that at the very least, Mr. Burr's amendment will be tacked on to the proposed constitutional provision if it goes back to the Convention.

Mr. O'Brien — I move that the committee now rise and report to the Convention, with the recommendation that this amendment be passed; and I wish to call the Chair's attention to a point of order, and that is that a motion of this kind cuts off all further amendments and all debate.

The Chairman — The Chair rules that you cannot dispose of it in that way until you vote on Mr. Holcomb's amendment. The question before the committee now is on Mr. Holcomb's amendment.

The Chairman put the question on Mr. Holcomb's amendment, and it was lost.

The Chairman — The question is now on the substitute presented by Mr. Burr. The Secretary will read it.

The Secretary read the substitute offered by Mr. Burr as follows:

Section 3 of article 2 of the Constitution is hereby amended so as to read as follows:

Sec. 3. For the purpose of voting no person shall be deemed to have gained or lost a residence, by reason of his presence or absence, while employed in the service of the United States, nor while engaged in the navigation of the waters of this State, or of the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any alms-house, or other asylum at public expense, nor while confined in any public prison, provided, however, that the residence of any honorably discharged soldier or sailor of the late civil war, at any soldiers or sailors' home in the State, as an inmate thereof, must be deemed a residence for the purpose of voting for national or State officers, within the meaning of section one of this article, and such home shall not be deemed an asylum within the meaning of this section.

The Chairman — Is the house ready for the question upon this substitute?

Mr. Burr — Mr. Chairman, I can hardly believe the fact that a man has spent the greater or the better part of his life in extending the naval supremacy of the United States or of the State of New York, or of advancing the commerce of this State, should be alleged as a justifiable reason against his exercising the fullest and freest power of the ballot. If a man, after twenty-one years displaying the power of the United States in every part of the world and carrying the beauty of Old Glory and the nobility of the principles it represents into those dark places where they know nothing of the liberty which animates and controls these United States, and spreading the doctrine of equal justice to all men, if that is to be the reason, when after that period, he finds his battered hulk needs repose in some sort of comfort at the expense of the public in a place like the Sailors' Snug Harbor on Staten Island, he is to be deprived of the exercise of the right of suffrage, I think the people of this State should know it now.

Mr. Nichols — How are the inmates of these institutions now deprived of the right of suffrage?

Mr. Burr — My amendment contemplates, I would say to Mr. Nichols, as he calls my attention to the fact, that they should be given the right to vote on State and national affairs, without interfering with local affairs, which seems to be the great bugbear here. The fact of the matter is, gentlemen, that an amendment of this kind tacked on to the Constitution would prevent these weary, tired and jaded defenders of the nation's honor and of the State's supremacy from having any vote at all, because there is no provision made for taking them home to the place where they formerly resided to vote.

Mr. Moore — May I ask the gentleman a question?

Mr. Burr — Certainly, sir.

Mr. Moore — Do you mean that you would give these men the right to vote in two places?

Mr. Burr — I mean to say if their only residence upon this earth is in the asylum in which they happen to be situated, that they should not interfere in local affairs; but do not deprive them of a voice in the affairs of the State and of the nation they have done so much to defend, to honor and to maintain. If they choose to do so, let them go back to the places where they may originally have come from, to their domicile, and there vote at local elections.

Mr. Moore — Has not the Court of Appeals said that their residence is where they came from, and that they have a right to vote there now?

Mr. Burr — But suppose a man has no residence other than the asylum?

Mr. Nichols — Then he votes there, of course.

Mr. Moore — Certainly. Then he votes there, if that is his place of residence.

Mr. Burr — I believe in giving to the soldier and the sailor the right to vote upon State and national affairs, and if he desires to go back to the place of his former residence in any other part of the State let him go there and vote upon local affairs. It seems to me — of course, I may be mistaken — that this proposed apportionment, of which we have read something, may affect this very question. I think the kernel of the whole matter is the fact that we propose to tack on Richmond county to Suffolk county, and we fear the vote of the sailors in the Sailors' Snug Harbor may in some way interfere with the plans we are about to formulate. I do not know that such is the case, but it would appear there might be some truth in that statement. But upon you must rest the responsibility for depriving these men of their votes.

Mr. I. S. Johnson — Mr. Chairman, I will not detain the committee but a moment. What I wish to say, as one having the interests of the old soldiers at heart as much as any man in this Convention, because I know something of what their sacrifices have been, is this: I would not for a single moment consent to take away a single right which they now have, nor would I by sustaining the amendment of the gentleman upon the other side, say that they should not have the privilege of casting their votes where they have lived and where they have gone out into the service of the country. The amendment as I understand it from the gentlemen would say that they shall not vote at their homes; that they shall not have the privilege of going there and casting their votes.

Mr. Burr — I would say to the gentleman, the amendment means nothing of the kind. If it means anything it means that they may vote on State and national affairs where they are, and if they choose to go and vote upon local affairs at the places where they may have come from, they shall be permitted to do so.

Mr. I. S. Johnson — I do not know what the meaning of the amendment is except as I gather it from its reading as it is presented here, and that is that they shall not be allowed to vote with

their neighbors and their friends at home and help build up a majority in the locality from which they went into service.

The Chairman — Gentlemen, the question is on the substitute offered by Mr. Burr.

The Chairman put the question on the substitute offered by Mr. Burr, and it was lost.

Mr. O'Brien — Mr. Chairman, I now renew my original motion, that the committee rise and report this proposed amendment to the Convention, with the recommendation that it be passed.

The Chairman put the question on Mr. O'Brien's motion, and it was determined in the affirmative.

The President resumed the chair.

Mr. Schumaker — Mr. President, the Committee of the Whole have had under consideration general order No. 31 (printed No. 399), introduced by Mr. O'Brien, entitled, "Proposed constitutional amendment to amend section 3 of article 2 of the Constitution, as to suffrage," have fully considered the same and have directed me, as chairman, to report the same to the Convention, recommending its passage.

The President — Gentlemen, you hear the report of the Committee of the Whole, recommending the passage of the amendment as originally reported.

Mr. Burr — I call for the ayes and noes.

The call for the ayes and noes was sustained.

Mr. Peck — Mr. President, I ask to be excused from voting, and will briefly state my reasons. As I understand it, this amendment does not deprive any individual of his right to vote, but practically it does most effectually prevent his exercising that right. I, therefore, withdraw my excuse and vote no.

The Secretary called the roll and the report of the Committee of the Whole was agreed to by the following vote:

Ayes — Messrs. Acker, Ackerly, Allaben, Alvord, Arnold, Baker, Banks, Barhite, Barnum, Bigelow, Brown, E. A., Brown, E. R., Cady, Carter, Cassidy, Church, Clark, G. W., Cookinham, Cornwell, Crosby, Dean, Dickey, Doty, Durfee, Emmet, Floyd, Foote, Forbes, Francis, Fuller, C. A., Fuller, O. A., Hamlin, Hill, Jacobs, Johnson, I. Sam, Johnson, J., Kurth, Lauterbach, Lester, Lewis, C. H., Lewis, M. E., Lincoln, Marshall, McArthur, McDonough, McIntyre, McKinstry, McLaughlin, C. B., Mereness, Moore, Morton, Nichols, Nostrand, O'Brien, Osborn, Parker, Parkhurst, Pratt, Redman, Root, Schumaker, Steele, W. H., Sullivan, T. A., Sullivan, W.,

Turner, Vedder, Vogt, Wellington, Whitmyer, Wiggins, Woodward, President — 72.

Noes — Messrs. Burr, Campbell, Davenport, Durnin, Giegerich, Gilleran, Hawley, Holcomb, Hottenroth, Kerwin, Kimmey, Marks, Maybee, Ohmeis, Peabody, Peck, Platzek, Rogers, Rowley, Sandford, Speer, Titus, Truax, C. H., Veeder — 24.

The President — One o'clock having arrived, the Convention will take a recess until three o'clock.

AFTERNOON SESSION.

Monday Afternoon, August 20, 1894.

President Choate called the Convention to order at three o'clock.

The President — The Secretary will proceed with the call of general orders.

The Secretary called general order No. 32 (printed No. 400), introduced by Mr. Roche, prescribing the duties of citizenship as prerequisite to the right to vote.

Not moved.

General order No. 33 (printed No. 401), introduced by Mr. Gilbert, in relation to the qualification of voters, was called.

Not moved.

General order No. 34 (printed No. 402), introduced by Mr. Nichols, relative to registration of voters, was called.

Not moved.

General order No. 35 (printed No. 407), introduced by Mr. W. H. Steele, as to restrictions on private and local bills, was called.

Not moved.

General order No. 36 (printed No. 408), introduced by the Committee on Corporations, relating to corporations, was called.

Not moved.

General order No. 37 (printed No. 412), introduced by Mr. Goodelle, relative to criminal prosecutions, was called.

Not moved.

General order No. 38 (printed No. 413), introduced by Mr. Francis, relative to religious liberty, was called.

Not moved.

General order No. 39 (printed No. 414), introduced by the Committee on Preamble, relating to persons answering for capital and otherwise infamous crimes, was called.

Not moved.

General order No. 40 (printed No. 415), introduced by the Committee on Preamble, to amend article 2, section 17 of the Constitution, was called.

Not moved.

General order No. 41 (printed No. 416), introduced by Mr. Roche, relative to distribution of the powers of government, was called.

Not moved.

General order No. 42 (printed No. 417), introduced by Mr. Parker, relative to drainage of agricultural land, was called.

Not moved.

General order No. 43 (printed No. 419), introduced by Mr. Nichols, relative to soldiers and sailors' homes, was called.

Not moved.

General order No. 44 (printed No. 420), introduced by Mr. Foote, to authorize the Legislature to provide for the construction of dams and reservoirs, was called.

Not moved.

General order No. 45 (printed No. 422), introduced by the Judiciary Committee, to amend article 6, relative to the judiciary, was called.

Not moved.

General order No. 46 (printed No. 423), introduced by Mr. Gilbert, to amend article 3, to establish boards of arbitration, was called.

Not moved.

General order No. 47 (printed No. 424), introduced by Mr. Arnold, to amend article 3, relative to private and local bills, was called.

Not moved.

General order No. 48 (printed No. 425), introduced by the Committee on Preamble, to amend article 1, section 10 of the Constitution, in relation to the suppression of gambling, was called.

Not moved.

General order No. 49 (printed No. 426), introduced by Mr. Marks, to amend article 1, section 7 of the Constitution, relative to taking private property for public uses, was called.

Not moved.

General order No. 50 (printed No. 427), introduced by Mr. C. A. Fuller, to amend article 3, section 16, relative to restrictions as to private and local bills, was called.

Not moved.

General order No. 51 (printed No. 428), introduced by Mr. Becker, to amend article 10, section 1 of the Constitution, relative to the Governor removing public officers, was called.

Not moved.

General order No. 52 (printed No. 425), introduced by Mr. Doty, to amend article 1, section 17 of the Constitution, relative to the appointment of commissioners of codification, was called.

Mr. Doty — Mr. President, I move that this be referred to the Committee of the Whole.

The President put the question on the motion of Mr. Doty, and it was determined in the affirmative.

The President — Mr. Kellogg will please take the chair.

Mr. Kellogg took the chair.

The Chairman — The House is now in Committee of the Whole on Mr. Doty's proposed amendment, general order No. 52 (printed No. 429), relating to the appointment of commissioners of codification. The Clerk will read the proposed amendment.

The Clerk read the same, as follows:

Section 17 of article 1 of the Constitution is hereby amended so as to read as follows:

Section 1. All the provisions of section 17 of article 1 of the Constitution, after the word "abrogated," and reading as follows: "And the Legislature, at its first session after the adoption of this Constitution, shall appoint three commissioners, whose duty it shall be to reduce into a written and systematic code, the whole body of the law of this State, or so much and such parts thereof as to the said commissioners shall seem practicable and expedient, and the said commissioners shall specify such alterations," are hereby abrogated.

Mr. Doty — Mr. Chairman, the purpose of this amendment must be perfectly obvious. It is simply designed to take out of the Constitution obsolete matter. The provision sought to be abrogated by this amendment relates to the codification of the laws under the Constitution of 1846, which seems to be simply an injunction on the part of the Legislature to do certain things which I do not suppose it would be doubted that the Legislature had the power to do. It is simply dead matter at present. The only purpose of this amendment is to rid the Constitution of this apparently unnecessary and useless provision.

Mr. Peck — Mr. Chairman, may I ask the gentleman a question?

I would like to inquire whether there is anybody holding office at this time by virtue of this power?

Mr. Doty — I am not aware that there is. I do not suppose this will affect them, inasmuch as the Legislature has ample power without any constitutional provision, to create and maintain an office.

Mr. Peck — It seems to me that the gentleman ought to inquire before he offers this whether there is anybody holding office at present who will be affected by it.

Mr. Doty — It is not my understanding that it will affect in any possible way any existing office or officer.

Mr. McDonough — I desire to call Mr. Doty's attention to general order No. 40 (introductory No. 381), to see if it is the same as his. It is the report from another committee.

Mr. Doty — It is evident, Mr. Chairman, that this is not to be the subject of any very serious discussion, and I, therefore, move that the committee rise and report this amendment to the Convention, and recommend its passage.

The Chairman put the question on this motion, and it was determined in the affirmative.

The Committee of the Whole thereupon rose, and the President took the chair.

Mr. Kellogg — Mr. President, the Committee of the Whole have had under consideration the proposed constitutional amendment (printed No. 429), entitled, "To amend section 17 of article 1 of the Constitution, relating to the appointment of commissioners of codification;" have gone through with the same, have made no amendments thereto, and have instructed the Chairman to report the same to the Convention, and recommend its passage.

The President put the question on agreeing to the report of the Committee of the Whole, and it was determined in the affirmative.

Mr. Forbes — Mr. President, before that vote is put, I do not understand what has been done by the Committee of the Whole. The report that was made by the Chairman of the Committee of the whole was not heard very distinctly over here.

The President — The report of the chairman of the Committee of the Whole was that the Committee of the Whole had had this amendment under consideration, and reported recommending its passage, and the House has so voted.

Mr. Forbes — Has the vote been declared?

The President — The vote has been declared.

Mr. Forbes — I do not understand it. Has the Convention approved of the report?

The President — The Convention has agreed to the report.

Mr. Forbes — I desire to say something on the subject, and I move that the vote be reconsidered.

The President — Did Mr. Forbes vote with the majority?

Mr. Forbes — I will now vote aye, sir.

Mr. Kerwin — He cannot do that now.

The President — I believe, where the vote is not recorded by the ayes and noes that any member has a right to move a reconsideration.

Mr. Bowers — Mr. President, is not a motion to reconsider debatable? May not Mr. Forbes state his reason for moving a reconsideration?

The President — Certainly he may. A motion to reconsider is debatable, of course.

Mr. Forbes — Mr. President, the reason I desire this vote to be reconsidered is this. The amendment has not been considered in the Convention. The debates on this subject have been in so low a tone that I could not hear them, and I do not know whether other members near here heard the explanation that was made in favor of the passage of this particular amendment. There is a great deal that may be said against the amendment. I deprecate its hasty consideration and, therefore, in order that the amendment may be discussed, I move that it be reconsidered.

Mr. Bowers — Mr. President, I oppose the motion to reconsider under those circumstances. This amendment simply provides to wipe out what I understand to be an obsolete provision of the Constitution. If there were any good reasons for reconsidering this vote, I certainly should favor it, and that was the reason I asked a moment ago that Mr. Forbes should explain why he moved the reconsideration. It seems to me that Mr. Forbes advances no reason why we should reconsider this vote. The matter was carefully considered in the committee, and the Convention undoubtedly knows what it was about.

The President — The reason stated by Mr. Doty for the passage of this amendment was that this was an obsolete provision of the Constitution, merely encumbering the Constitution, without any meaning or effect.

Mr. Forbes — Now, is that the fact?

Mr. Peck — And, also, Mr. President, it affects nobody in office.

The President — And affects nobody at present in office.

The President put the question on the motion to reconsider, and it was determined in the negative.

The President — The Clerk will proceed to call general orders.

General order No. 53 (printed No. 430), introduced by the Committee on Canals, relative to canals, was called.

Not moved.

General order No. 54 (printed No. 431), introduced by the Committee on Canals, to amend article 7, section 6 of the Constitution, relative to canals, was called.

Not moved.

General order No. 55 (printed No. 432), introduced by Mr. C. H. Truax, to amend section 14 of the Constitution, was called.

Mr. C. H. Truax — Mr. President, general order No. 55 has not been printed, and is not yet on the files, but I have consented to allow general order No. 45 to be substituted in place of it. The Judiciary Committee was in session when No. 45 was called, and I understand it was the intention of the committee to move No. 45 at this session, but owing to the fact that they were not here at the time, they were not able to do so. I, therefore, consent that No. 45 be substituted in place of No. 55, and move that we go into Committee of the Whole upon it.

The President — Unless objection is made, No. 45 will be called in place of No. 55, and the Clerk will call it.

The Clerk called general order No. 45 (printed No. 422), introduced by the Judiciary Committee, to amend article 6, relative to the judiciary; and minority report on the same, general order Document No. 54.

The President put the question on the motion to go into Committee of the Whole on general order No. 45, and it was determined in the affirmative.

The Convention went into Committee of the Whole, and Mr. Acker took the chair.

The Chairman — The Clerk will read the first section.

The Clerk then read as follows: "General order No. 45 (printed No. 422), introduced by the Committee on Judiciary, proposed constitutional amendment to amend article 6 of the Constitution, relating to the judiciary.

"The delegates of the people of the State of New York, in Convention assembled, do propose as follows:

"Section 1. The Supreme Court is continued with general jurisdiction in law and equity, subject to such appellate jurisdiction of the Court of Appeals as now is or may be prescribed by law, not inconsistent with this article. The existing judicial districts of the State are continued until changed, as hereinafter provided. The Supreme Court shall consist of the Supreme Court justices now in office, and of the justices transferred thereto by the fifth section of this article, all of whom shall continue to be justices of the Supreme Court during their respective terms, and of twelve additional justices who shall reside in and be chosen by the electors of the several existing judicial districts, three in the first district, three in the second, and one in each of the other districts, and of their successors. The successors of said justices shall be chosen by the electors of their respective judicial districts. The Legislature may alter the judicial districts once after every enumeration under the Constitution of the inhabitants of the State, and thereupon reapportion the justices to be thereafter elected in the districts so allotted."

The Chairman — Are there any amendments to the first section of this proposed amendment?

Mr. Root — Mr. Chairman, if the members of the Convention in committee will bear with me for a few minutes, I would like to explain the relation of this first section to the other sections of the proposed article, and, in so doing, to explain the general scheme of reform in the judicial system of the State which is proposed by the committee. The two main evils which manifestly require treatment by this Convention, so far as the judicial system is concerned, are the great delay in bringing causes to trial, in the first instance, and the great delay in securing the final disposition of causes because of the overcrowding of the calendar of the Court of Appeals. The proposed article is designed in the best way which the committee could devise to meet these two evils. So far as the first is concerned, that is to say, the overcrowding of calendars of courts of the first instance, the cure is simple. It is, to bring about as great an economy of judicial force in the trial courts as possible, and to make a sufficient number of additions to those courts to enable a suitor to have his case tried at the earliest possible day. The overcrowding of calendars of trial courts exists chiefly in the great cities. It is worst in the city of New York. Next to that comes the city of Brooklyn, and so on through the other cities of the State, almost in proportion to their size. The committee has proposed in this

article to dispose of this evil, in the first place, by consolidating with the Supreme Court the Superior City Courts which exist in the cities of New York, Brooklyn and Buffalo. This will lead to great economy of judicial force, because, at present, in the city of New York, there is the Supreme Court, with its jury terms, which we call circuits, its Special Terms for the trial of equity causes, its chambers for the hearing of motions, and its General Term for the hearing of appeals. There is also the Court of Common Pleas, with a like array of jury terms and special terms and chambers and general terms. Then there is the Superior Court, with a similar array of different parts, and, in the midst of these, with three general terms and a great number of special terms, and three judges sitting in chambers, and a great number of jury terms, judges assigned for a particular term for a month, run out of business and have nothing to do for the rest of the month. A great deal of time is occupied in passing from one assignment to the other, and in this paraphernalia and machinery of judicial procedure, multiplied over and over again in the different courts. A lesser evil is the great expenditure of money involved in keeping up separate clerks' offices, separate attendants, and the separate machinery of the different courts. We think there will be a very decided economy of judicial force arising from the consolidation of these courts. We next propose to secure to the suitor the early trial of his cause by a moderate increase of the judicial force. That increase, in the first place, adopts, or the provision for that increase, in the first place, adopts an amendment which has already been proposed to the people by two existing Legislatures acting in constitutional form. That amendment is before the people, and is to be submitted to them at the election this coming fall, at the same time that our revised Constitution will be submitted. It provides for two additional justices of the Supreme Court in the first department, and for two additional justices of the Supreme Court in the second department. They are grievously needed in both of these departments; and, as two successive Legislatures have provided for them, we adopt their recommendations to the people, and submit in our proposed article the same proposition which will come before them under the separate submission by the Legislature. We also propose to add one additional justice of the Supreme Court in each of the existing judicial districts, and that, we think, will fully supply the need which is felt in the courts of first instance, and will, moreover, make up for a single loss of working force in the trial courts arising from the Constitution of the immediate appellate tribunal of the Supreme Court, which we propose shall take the place of the General Term, and which I will

explain presently. So much for the courts of first instance. The other evil is the overcrowding of the calendar of the Court of Appeals, and we have treated that with this view of the function of a court of last resort and of the intermediate courts of appeal which exist in this State. It is perfectly apparent that when the State has furnished to its citizens one trial of their rights and one impartial review of the rulings and the results of that trial by a competent tribunal, it has fulfilled its duty. That is all that is done in the other States of the Union. It is all that is done under the system of the federal judiciary. One trial by a competent court and one review by a competent and impartial tribunal is all that either public duty or private interest in litigation requires, so far as the litigant himself is concerned. There is no reason for having a court of appeals superior to the courts which in the first instance review judgments of the trial courts in this State, except for this consideration which I will now state. It is, that the amount of judicial business in this State is so great that it is impossible for any one court to review all the decisions of courts of first instance. It would be impossible for any two courts to review them all, or for any three courts, probably. So that, in order that litigants may have the hasty rulings of the trial courts reviewed, it is necessary that we should have three or four courts of appeals to perform that function. But, three or four courts never can settle the law, and it is of the highest importance to the people of the State, and all the people of the State, not merely that the litigant in a particular lawsuit shall have his right, but that the law shall be settled; that it shall be declared so clearly that all the people may know what is the law by which they are to regulate their contracts and their conduct and keep out of litigation, if may be, so that it may be a symmetrical and harmonious system for the government of the people of the State as well as for according specific rights to the parties in particular litigations. Now, three or four courts can never accomplish that. They are certain to vary and differ and conflict in their decisions. It is necessary, in order that the law shall be settled, shall be clear, shall be harmonious, shall be known, and shall be a guide for the conduct of all the people of the State, that some one supreme authority shall overrule and supervise the decisions of these various courts of original appeal, and once for all declare what is the law. That is the sole reason for the existence of the Court of Appeals. But for that we might abolish the Court of Appeals and constitute four supreme appellate tribunals in different parts of the State, and allow them to render to litigants their rights in their particular litigations. When the judiciary article of 1867 was adopted it was supposed that the Court

of Appeals, as then constituted, would be able to review all of the decisions of the General Terms of the Supreme Court then constituted, and that those General Terms would so sift out the appeals which came to them that only so many would go to the Court of Appeals as it should be able to take care of. That was so for a time, but of late years it is no longer so. Various circumstances connected with the organization and action of the General Terms have brought about a state of affairs in which so large a body of appeals passes through those courts on to the Court of Appeals that that court no longer can keep up with its work and perform the function of settling and declaring the law of the State; and with this view we addressed ourselves to ascertain whether it was not possible to so constitute the intermediate appellate tribunal which we have heretofore called the General Term, and so regulate the appeals from its judgments to the Court of Appeals that it would perform the function which it was originally designed to perform. We found among the reasons why the General Terms were not able to stop the great body of appeals to the Court of Appeals, these: In the first place, the General Term is so small, consisting of only three members, that there was not that consultation, that deliberation, that correction of one mind by another which is necessary for the satisfactory conclusion of an appellate tribunal. In the next place, as the justices of the General Term are engaged in the ordinary judicial work, trying and deciding cases, and, in many instances, doing their full share of trial work, in numerous cases litigants coming before that court find that one of the judges is obliged to retire from the bench. And a double evil has resulted. First, that there were but two judges to pass upon the appeal — a number manifestly insufficient to secure full consultation and deliberation and correction of one judgment by another. And another evil was that litigants were obliged to see the very judge from whom they were appealing going into the consultation room with the other two judges who were his associates, and upon whose decisions he was about, in the due course of the call of the calendar, to sit in review for consultation on all the general business of the court.

And both of these have tended to decrease respect for the judgments of the General Terms. Moreover, the fact that these judges in the General Terms were called upon to leave that work to go to their circuits and to their Special Terms has led to the shortening of their hearing, and to cutting down counsel, so that they have been in the habit, in many places, of uniformly leaving the court feeling dissatisfied and that they had not had an opportunity for the full presentation of their cases. And the judges, called away by these

other duties, have been in the habit frequently of separating with their work unfinished; and we all know that it has been largely a practice for the judges of the General Terms, after these brief and hurried hearings, after counsel have gone out of court dissatisfied because they have not been fully heard, to separate and, without much of any consultation, have one judge write an opinion and send it around to be concurred in, or not, as the case might be; and all the tendency of all the *vis inertiae* which exists among judges, as it does among others, has led toward concurrence rather than courting a troublesome struggle by disagreement with an opinion already written.

Then, again, the Legislature has been constantly enlarging the scope of appeal from the General Term to the Court of Appeals. It has opened doorway after doorway, through which constantly additional kinds of questions could be taken up to the Court of Appeals, so that the finality of the judgment of the General Term has been constantly decreased, and, therefore, respect for their decisions has been decreased, and their own sense of responsibility has been decreased. Now, what we propose to do is this; we propose to divide the State into four departments, and in each department have a new appellate tribunal, which will take the place of the five General Terms of the Supreme Court, and the four General Terms of the Superior City Courts, nine in all, to which all appeals, from whatever tribunal, shall go in the first instance; and we propose to make that a more effective and satisfactory tribunal than the existing General Terms in these ways: In the first place, by giving a greater finality to its judgments than the General Terms now have; finality in a much wider range of questions, by imposing limitations upon the jurisdiction of the Court of Appeals, and on the right of appeal to that court. In the next place, by giving stability, permanence and independence to that court, through making its members hold for a fixed term; and for that purpose we provide, that they shall be selected from all the justices elected to the Supreme Court, for terms of five years; the presiding judge for a term which shall be coextensive with the remainder of his term of office in the Supreme Court. We give them also the right, the power, to govern their own sessions and to appoint their own clerk, and fix the place where his office shall be held. So that instead of being a court without a clerk, without a home, without power of self-control, shifting, variable always, coming in and out from the trial courts, reviewing each other's decisions, without sufficient time for the performance of their duties, it will be a real court, with power, with permanence, with stability, and worthy of the name of an appellate tribunal. We

propose, further, to give it the opportunity for full discussion, by making it a court of five members; and five members, gentlemen, will have to consult. One of the presiding justices of the General Term said to me some time ago upon the subject: "We cannot do any more work with five judges than we can with three." "Yes," I said, "but if you have five judges, will you not consult?" "Yes," he said, "we will." And, therefore, I say, though five judges will not do any more work than three, they will do better work and better respected work. In the next place, we propose to give them the opportunity for deliberation, consultation and full hearing, by relieving them of the obligation of doing all other judicial work. We leave them certain opportunities to hear motions by consent and perform the duties of a justice out of court for the convenience of the people in their own localities, but we make it so that they cannot be called upon to sit in Circuit or in Special Term, or to try or determine cases. This, then, will be a real court, constituted, selected from good material, selected from a great and intelligent population, constituted by the conjoint action of the elective principle, through the power exercised by the people, and the appointive principle, through the power exercised by the Governor, of selection from the justices of the Supreme Court, as respectable, as able, as efficient, as any court of last resort in any State of the Union. We believe that it will be more satisfactory and effective, that its judgments will be more respected, that they will be less frequently reversed, and, therefore, less frequently appealed from than the existing General Terms. The correlative to this plan as to the formation of this new court — which, by the way, we call the Appellate Division of the Supreme Court, abandoning the misnomer of General Term, which now means nothing, and which nobody but a lawyer understands — the correlative to this plan is the limitation upon the appeals to the Court of Appeals. In framing this we have endeavored to follow a clear line of logical distinction between the proper functions of this Court of Appeals and the courts of first review, a line of distinction marked out by the very definition of the proper function of a court of second appeal. That is marked out by the function of settling and declaring the law; and we propose to limit the Court of Appeals in two ways; first, by limiting them to the review of questions of law, and, second, by limiting appeals to them to final judgments or orders, and to appeals from orders granting new trials, where there is a stipulation for judgment absolute, so that in case of affirmance their decision would be final. There is a general understanding now that the proper function of a Court of Appeals is to pass only on questions of law, and that it is, under the

law, to pass only upon them; but there is a great class of cases which finds its way into the Court of Appeals where virtually there is a review of the question of fact for a second time, and we close the door to that class, by declaring the principle that their jurisdiction shall be limited to the review of questions of law, and by providing that no unanimous decision of an appellate division that there is evidence to sustain or support a verdict not directed by the court, or a finding of fact, shall be reviewed by the Court of Appeals. So that when a man has tried his case and he has got a jury or a court to decide that a fact is proved, and five judges of the Appellate Division of the Supreme Court have unanimously held that the fact was proved, there is to be an end of controversy upon that fact. There certainly is no reason, no sense, in allowing parties to go on and contest, over and over again, the existence of a fact so conclusively passed upon as that. We do not touch the question of nonsuits. We do not touch the propriety of directed verdicts. We do not touch the question of reversals. We do not touch any question where there is any dissent in the Appellate Division, but where a fact has been declared by a jury to be proved, and five justices have unanimously declared that it was proved, we say that the State has done its whole duty to the litigants in that case, and the controversy upon that fact should stop, and that the question as to the fact should not be allowed to go on to the court of last resort, which we have constituted solely to decide the law for the whole State, and take its time away from the performance of its proper functions. And so as to questions of practice. Why should this court, which is to declare the law for all the people, be bothered about petty questions of practice, which can as well be settled by the appellate tribunal which we now constitute, as by the Court of Appeals? We believe that these two limitations, one limiting them to the decision of questions of law, made effective by the supplementary provision that I have mentioned; the other limiting the review of final judgments, together with the increased respect and efficiency of the appellate tribunal, will so greatly decrease the number of appeals to the Court of Appeals that it will for many years, will until the time comes for another Constitution to be made, be able to deal with all the questions presented to it, and to keep up with its calendar. We have, also, for greater certainty, and out of abundant caution, proposed the addition of two members to the bench of the Court of Appeals; and we think, or many of the committee think, that that will to some degree increase the working power of the court.

I think, Mr. Chairman, that that covers the main and substantial subjects which are treated of in this report, and which enter into and are essential to the general scheme, the main and substantial features, destroying any one of which would bring down the whole edifice. In reaching the conclusion that the course which I have outlined was the proper course to remedy the evil which I have mentioned, the committee has had in contemplation several other alternatives, some of which have been proposed in amendments laid before it. And those were, first, that we might limit the jurisdiction of the Court of Appeals by fixing a moneyed amount, and preventing appeals to that court in any case which involves less than the amount fixed, following in that respect the federal system of judicature, which allows no appeal to the Supreme Court of the United States in cases involving less than five thousand dollars. But we do not believe, gentleman, that that is a wise provision for the courts of this State. We think it decidedly objectionable. We think that as important questions of law arise in small cases as in great ones; and we believe, moreover, that the Court of Appeals of this State, the court of last resort, which is to declare the law for the guidance of all the people, ought to be all the people's court. We believe that it should be the court of the poor man, so that he may feel that he may go there if he wants to, with his question of law, as well as the court of his wealthier fellow-citizen. (Applause.) We believe that it is only when based upon such a foundation, that any public institution can be considered permanent in a free constitutional government. Therefore, instead of putting in a moneyed limit upon appeals to the Court of Appeals, we have provided that the limit now existing should be taken off, and that no such limit shall ever be imposed. (Applause.) Another alternative was, that we might increase the Court of Appeals so largely that it could sit in two divisions, or that it could become a rotary court, a large part of its members being always absent, and filling the places of others in succession, so that the members of the court would always be changing from week to week, from day to day. But the adoption of either of these expedients would have frustrated the sole object for which the court exists. It would have destroyed its unity, it would have destroyed its consistency, it would have prevented it from being the expounder of a consistent and harmonious system of law, it would have prevented it from settling the law, it would have brought down its decisions, its opinions, which are now second to none in the Union, which now stand side by side with the Supreme Court of the United States, and are the just source of pride to every member of our commonwealth, would have brought their authority down to a

point where they would have been less respected and less valuable than the decisions of the tribunals which they are to govern, and would have been merely the varying and fluctuating utterances of a divided or of a continually changing tribunal. We might as well abolish the court and rely solely upon these four separate Appellate Divisions as to divide the court and have it open to the same objections which have led us to put a court above them. Another alternative was that we might do as the judiciary commission of 1890 proposed, undertake to enumerate classes of cases upon which parties might go to the Court of Appeals, leaving other classes of cases upon which they should be stopped at the tribunal of first resort. But that is uncertain, indefinite, difficult of application. It is not within human power to avoid mistakes in enumeration and definition of such classes. It may be well to attempt it when, as in the federal Circuit Court of Appeals act, there is a statute which may be revised every year by Congress; but to undertake to place in a Constitution provisions of this kind, which are certain to require amendment, is an undertaking, an experiment which ought to be avoided if possible. There are these substantial objections to that also that it involves an element of unfairness to the citizens who are most interested in the class of cases that are not allowed to go to the Court of Appeals; and this other objection, that the same questions of law arise in different kinds of cases; the same kinds of questions as to evidence of various descriptions will arise in civil cases and in criminal cases, in common law cases and in equity cases, in cases sounding in tort and cases sounding in contract; and if you undertake to limit the jurisdiction of the Court of Appeals by enumerating classes that can go and classes that cannot go there, you will have one court deciding as a last resort upon a given question arising in one kind of a case, and another deciding as a court of last resort, upon the same question arising in another kind of a case. Then there is the provision for a second division of the Court of Appeals, which now exists. As a make-shift, while it has some advantages, we think they are more than counter-balanced. In the first place, it has no element of prevention. It is but a cure after the disease has gained headway; and it necessarily implies what involves great injustice and inconvenience and loss — the accumulation of a great number of cases on the calendar of the Court of Appeals, for the hearing of which litigants are waiting year after year, before the remedy is applied, and a second division constituted. It has this other objectionable feature, that when the remedy is applied, it deranges the work of the Supreme Court, from which the judges of the second division are taken, and withdraws them

from their proper field of labor, and leaves the people who want their decisions in their own courts, without judges to do their work.

So, we come down to the plan we have adopted, which draws the line of limitation clearly on the logical division around the decision of those questions for which, and for which alone, the Court of Appeals was created, and leaves those questions to that court, and leaves all other questions to the new, strong, competent court which we propose to create for that purpose, and which we believe will give to every litigant all the protection to which he is entitled, for which he may ask.

Mr. Chairman, there is another series of revisions in this report relating to Circuit Courts, Courts of Oyer and Terminer, and Courts of Sessions. We have provided for the abolition of the Courts of Oyer and Terminer, and of the Circuit Courts. Those courts are but a shadow; they are but a form, but a name. Laymen do not know what they are; lawyers do not know what they are. How absurd it is for a justice of the Supreme Court to go in and take a seat on the bench and be sitting in the Supreme Court at ten o'clock, trying an equity case; a jury case is to be tried; he has to empanel a jury, and lo, he is converted in the twinkling of an eye into a Court of Oyer and Terminer. It is the same man, it is the same bench; there are the same officers, but he has suddenly become a Court of Oyer and Terminer and goes on and tries his case; or it is a civil jury case, and he then has to go through the performance of the character artist again and becomes a Circuit Court. Of course, since there are no side judges, there is no occasion to preserve this shadow of a court; the form, the name, but mystify laymen, embarrass lawyers, and confuse and interfere with legislators in the making of statutes. Some time or other the name and the form have got to be dispensed with, and we thought this was as good a time as any, and so we have abolished the Circuit Court and Court of Oyer and Terminer, and conferred all their jurisdiction upon the Supreme Court, by the justices of which that jurisdiction now is exclusively exercised. We have done the same thing as to Courts of Sessions. The committee was prepared to report favorably the amendment abolishing side judges in the Courts of Sessions. They seem to be wholly unnecessary and useless, but when side judges are abolished, there remains nothing but the county judge sitting in the Court of Sessions, performing the same functions there that the Supreme Court justice performs in the Court of Oyer and Terminer; and so we do away with that form and that name, and abolish the Court of Sessions, and confer its jurisdiction upon the County Court. We think, gentlemen, that this is not merely simplifying

the statutes and doing away with something that is useless. We think that it is a distinct advantage in a popular government that the people shall understand the administration of the law, and that the fewer terms and forms you have in it, which are like the Egyptian mysteries, and that people do not know anything about, the better it is for the administration of the law; and these changes make in that direction.

We have done one other thing, to which I beg to call your attention; that is this: There has been a constant process in this State of enlargement of the jurisdiction of local and inferior tribunals. That is the way in which we found ourselves confronting the situation with four Superior City Courts, which had been gradually built up, one of them during two hundred years, the others during much shorter periods, by the constant addition of jurisdiction, until each one had equal jurisdiction with the Supreme Court within the locality in which it was situated. That is not the way to enlarge the Supreme Court. We are proposing to take the judges of these courts into the Supreme Court, but it is not the scientific or the practical, or the proper way to enlarge the Supreme Court of the State. The true way is, if the Supreme Court is not large enough to perform its functions, and the people are satisfied of that, to make it large enough; not to build up another court which will be a rival to it, creating different jurisdictions, giving people an opportunity to select their jurisdiction, which, as somebody has said, if it is a good thing for the plaintiff, is always a wrong to the defendant. So, while we destroy by consodidating all these tribunals which have grown to be equal in jurisdiction to the Supreme Court, and leave only one Supreme Court, we prohibit the Legislature from ever enlarging the jurisdiction of local and inferior courts, so that they shall exceed as to the courts now existing, the jurisdiction they now have, and as to any court they may hereafter create, the jurisdiction of the County Courts. We thus keep down to the level of the County Courts local tribunals and useful tribunals, adapted to the performance of specific functions, all courts except the one Supreme Court; and we do that not only for symmetry, not only to avoid the inconveniences to which I have referred of the building up of these rivals to the Supreme Court, but we do it because it gives effect to a principle, and this is the principle. The proper trial of small causes is just as important as the proper trial of large causes. Small causes are just as important to those who have them as large causes are to wealthier men. The great body of the people of the State have only small causes. When a court is organized for the trial of small causes it ought to attend to its business and try

to do it just as well as any other court tries a million-dollar cause. But, if you enlarge the jurisdiction, and give it million-dollar causes to try, it will never attend to the little causes, and you spoil your court for the trial of small causes, and merely add another court to those which try large ones. We propose by this inhibition upon the Legislature, to keep a system of courts in this State which will attend to the proper function of properly trying the small causes, in which the great body of the people are more interested than they are in the large ones.

Mr. Woodward — Will you permit me to ask a question? Is there any provision in this report that, the judge who has once tried the case upon the facts, and his decision has been reversed, it shall not be brought before him again for trial, but must be taken before some other judge, as is the rule in the case of a referee? A referee is never allowed to try a case a second time.

Mr. Root — We have not incorporated any such rule.

Mr. Woodward — It seems to me there should be such a rule.

Mr. Root — Mr. Chairman, I think I have covered the substantial features of the system which is incorporated in this reported article. There are many matters of detail which I shall be happy to explain, and which the other members of the committee will be happy to explain whenever called upon to do so by the members of the Convention; and any further discussion or explanation I will leave to the time when such occasions may arise.

Mr. Pratt — Mr. Chairman, I do not desire at the present time to discuss the merits of this proposed amendment. I would, however, call the attention of the Convention to what I think is an oversight on the part of the Judiciary Committee, and which I have no doubt they will remedy upon its being pointed out to them. On page 6 of the proposed amendment, commencing at line 20, is this provision: "After the additional judges are elected, any seven members of the court shall form a quorum, and the concurrence of five shall be necessary for a decision." Now, Mr. Chairman, these additional members of the Court of Appeals will be elected on the first Tuesday after the first Monday in November. They will not be inducted into office and become members of the court until the first day of the succeeding January. Consequently, during the months of November and December, it will be necessary to have seven members constitute the quorum of the Court of Appeals. Therefore, the entire court, the entire present court, will be obliged to sit in order to form a quorum, and, if by any chance, any one member of that court were disabled and unable to sit, it would be

impossible for the court to conduct its business. The provision reads that after the election, instead of after being inducted into office, which I think is an error.

Mr. Root — Perhaps, Mr. Chairman, when we reach that section it may be advisable to put in the word "qualify," or some such word, as Mr. Pratt suggests.

Mr. C. B. McLaughlin — Mr. Chairman, will Mr. Root permit a question? Why do you fix the term of the surrogate in the city of New York at fourteen years, and in the other counties at six?

Mr. Root — Because, Mr. Chairman, that is now the term of office in New York. The people of that city wanted it fourteen years, and they got the Legislature to make it fourteen years, and we thought we would leave it as it is.

Mr. C. B. McLaughlin — But you are presenting a judiciary article, a new one. Now, what is the reason which actuated the committee in fixing the term of the office of surrogate in that city at fourteen years, and in the other counties at six?

Mr. Root — Because in that city the term is now fourteen years.

Mr. Morton — I should like to ask the gentleman why it is the term of office of the surrogate in Kings county, which is now six years, has been fixed in this bill at fourteen years?

Mr Root — That was done, Mr. Chairman, because the people of Kings county, the representatives of Kings county, requested that the term should be assimilated to the term in New York. Whether it was on general principles, or because they anticipate and hope for a consolidation of New York and Kings, I do not know; but that was their expressed wish. My idea is, that if the people of any county want the term of such an officer to be fourteen years, they are entitled to have it.

Mr. Morton — Mr. Chairman, if the gentleman will allow me to say, as a representative in part of the county of Kings, it is the first time that I ever heard that there was any one in the county of Kings who desires the term of this office to be extended to fourteen years. So far as I am concerned, as a representative of Kings county, I am most decidedly opposed to it.

Mr. Dean — Mr. Chairman, assuming that there will be comparatively little criticism of the magnificent and scientific judiciary article which is now before us, I think I may be pardoned for, at this time, finding a little fault with a mere matter of detail. I, therefore, move, in section 7, page 6, to strike out in line 17, all after the word "article," and including the word "judge" in line eighteen.

The Chairman — The Chair holds that the motion is out of order. We take this up section by section, and we have not disposed of section one.

Mr. Dean — I simply desire to say that the scope of the discussion has covered every section of this article. If I am out of order I am willing to wait.

The Chairman — The Chair so holds.

Mr. J. Johnson — Mr. Chairman, as the question of the term of office of the surrogate of Kings county has been presented, I desire to say ——

Mr. Chipp — Mr. Chairman, I rise to a point of order. I understand the Chairman to have ruled that the section is not under discussion.

Mr. J. Johnson — I think I may be allowed to correct a misstatement. It has been stated that the extension of the term was made with the assent of and by the request of the members from Kings county. While I am quite certain that information was conveyed, it was inaccurate. I desire to place myself in the position which was taken by my colleague (Mr. Morton). It was another member of the Judiciary Committee that requested it. He understood it was done with my concurrence.

Mr. Jacobs — Mr. Chairman, I wish to go on record the same way that the other delegates from Kings county have gone. We never have heard of it before.

Mr. Chipp — I move to amend section 1, on page 1, line 12, by striking out the word "twelve" and inserting in lieu thereof the word "thirteen." On page 2, line 2, after the word "second," insert the words, "two in the third," so as to include two additional judges in the third judicial district, instead of one, as provided by this amendment. I presume, Mr. Chairman, we will have full opportunity to discuss this matter hereafter?

The Chairman — The question arises on Mr. Chipp's amendment.

Mr. Chipp — Mr. Chairman, I understand that this amendment can all be discussed together. I do not understand that there has been any motion or resolution here that this bill shall be discussed in sections. I have other amendments to make here to this proposed amendment.

Mr. C. H. Truax — Mr. Chairman, I think rule 27 provides for it. Rule 27 says it shall be considered in sections, unless otherwise ordered.

The Chairman — Well, that is what the Chair now holds. We

have taken it up section by section, and must dispose of it in that way.

Mr. Chipp — Mr. Chairman, I move that we discuss this proposed judiciary amendment as a whole, and not by sections.

The Chairman — The Chair rules that out of order; there is a motion before the committee now.

Mr. Platzek — Mr. Chairman, if in order, I would like to make a motion to the effect that we read each section through, and that amendments are to be introduced to the particular section, and handed up to the Secretary, until all the amendments are in, so that they may be printed, and that every member may distinctly understand what he is to discuss and what he is to act upon.

The Chairman — The Chair rules that out of order.

Mr. Moore — Mr. Chairman, I move to suspend the rule in relation to taking up the judiciary article by sections at this time.

Mr. Cochran — We object.

The Chairman —The Chair rules that motion out of order. The question is on the motion of the gentleman from Ulster, Mr. Chipp.

Mr. Moore — Mr. Chairman, I do not understand that he had made any motion yet.

Mr. McCurdy — Mr. Chairman, is it possible that in this amendment we shall be compelled to take this up section by section, when, if it is properly drawn, it is so inter-related and so interdependent that it is utterly impossible that we should consider one section separate and apart from the others? It seems to me that this, of all other amendments which have been proposed here, should be considered as an entirety.

The Chairman — The Chair understands this question to be asked for information. The Chair so holds unless the committee order otherwise.

Mr. Vedder — Mr. Chairman, I suppose the orderly procedure will be this, that we read the bill through first by sections, then you can amend the sections, if you please, as you go along, after which amendments generally will be in order, and you can range over the whole proposition. Is that the rule?

The Chairman — That is the correct rule.

Mr. Moore — Mr. Chairman, may I ask Mr. Chipp a question for information?

The Chairman — If he consents you may.

Mr. Chipp — Mr. Chairman, do I understand that the Chair

assented to the statement from the gentleman from Cattaraugus (Mr. Vedder)?

The Chairman — Most certainly. The Chair understands that to be the practice.

Mr. Chipp — Then I prefer to wait before making any remarks.

The Chairman — Do you withdraw your motion?

Mr. Chipp — Is not an amendment in order at this time?

The Chairman — It is.

Mr. Chipp — Yes, sir.

Mr. Cookinham — I understood him to withdraw it.

The Chairman — He has not withdrawn it.

Mr. Chipp — Mr. Chairman, do I understand that this is the only opportunity that I have to amend this section?

The Chairman — The Chair does not so hold.

Mr. Chipp — Very well, then I will withdraw it for the moment, and will offer it again.

Mr. Vedder — Mr. Chairman, I would like to have an explanation from the chairman of the Judiciary Committee with reference to the last paragraph in section 1: "And thereupon reapportion the justices to be hereafter elected in the districts so altered." Does that mean that the Legislature may change the number of justices, different from the number adopted, if this article is adopted?

Mr. Root — Mr. Chairman, it means that if the Legislature takes a strip of territory, a county, or two or three counties out of one district and puts them into another, that it may determine in which district the judges thereafter elected for that territory shall be. In other words, it is necessary to have some power to take a judge out of one district and put him into another district, when you take territory out of one district and put it into another.

Mr. Veeder — Mr. Chairman, I find no such authority in the present Constitution. They have taken from article 6, section 6, this language: "The Legislature may alter the districts, without increasing the number, once after every enumeration, under this Constitution, of the inhabitants of the State." Now, I understand that the Legislature may do about what it pleases after every enumeration; the size of the districts and the number of judges that shall be in the district, regardless of this provision. I submit that this matter should have careful consideration. It is an innovation, and a very material one, I think.

Mr. Peck — Mr. Chairman, I should like to have some statement from the Committee on Judiciary with regard to the information on which this assignment of new judges was made. I have been told since the Convention assembled that there were, in certain districts of the State, judges who found it impossible to occupy themselves three months in the year. I do not mean that they are occupied three months in the year, but that there was no possibility growing out of the business of the district that any one judge should be occupied three months in the year, and yet in those districts we have assigned to them by this committee a new justice of the Supreme Court. Now, in the district in which I have the fortune to practice, the Third Judicial District of the State, we have at this time but two trial justices, our justices are occupied all the time, and we are assigned a single justice of the Supreme Court in addition to those we now have. It seems to me that this apportionment of the new justices of the Supreme Court cannot have been based upon information with regard to the present business of the courts in the different districts. I agree, so far as Mr. Chipp's amendment is concerned, that we should have, in the Third judicial district, another justice of the Supreme Court, in addition to those assigned to us in this first section. I think that that might be done without increasing the number of Supreme Court justices, if they were assigned or apportioned among the districts according to the present business of the courts.

Mr. Smith — Mr. Chairman, I rise to a question of order. The gentleman from Cattaraugus (Mr. Vedder) made a motion as to the order of procedure, and it has not been acted upon.

The Chairman — The Chair did not so understand. He was merely explaining what the Chair understands to be the general order of procedure.

Mr. Barhite — Mr. Chairman, I ask permission to ask the chairman of the Judiciary Committee a question. On page 8, section 10, I find the following words: "The judges of the Court of Appeals and the justices of the Supreme Court shall not hold any other office or public trust. All votes for any of them, for any other than a judicial office, given by the Legislature or the people, shall be void." Would not that prevent the election of a judge of the Court of Appeals or a justice of the Supreme Court to a Constitutional Convention? And if it would, is there any reason why a judge should not sit in such a body? Is not that the one body over and above all others, in which all classes and conditions of people should be allowed to sit? Is it not a fact that many of the most eminent

judges who have ever lived or sat upon the bench in this country have been members of Constitutional Conventions?

Mr. Dean — Mr. Chairman, I rise to a point of order. The Chair has held that this is to be considered section by section. The gentleman is discussing section 8.

The Chairman — He is simply asking the question.

Mr. Root — Mr. Chairman, in answer to the question of the gentleman from Monroe (Mr. Barhite) I would say that the paragraph is precisely as it stands in the present Constitution. We did not see any adequate cause for changing it so we have left it as it was. I can conceive that there might be circumstances arising in a Constitutional Convention which would make it perhaps awkward for a justice of the Supreme Court, or a judge of the Court of Appeals, to take part in its discussion.

Mr. Vedder — Mr. Chairman, it may be pertinent now to ask a question of the chairman of the Judiciary Committee, and I do it for my own information. In section 1 it makes provision for twelve additional justices. The language is, "The Supreme Court shall consist of the Supreme Court judges now in office, and of the justices transferred thereto by the fifth section of this article, all of whom shall continue to be justices of the Supreme Court during their respective terms, and of twelve additional justices." Are the twelve justices in addition to the justices who will be made such, coming from the City Courts of New York, and of Brooklyn, the Superior Court of Buffalo, and so forth?

Mr. Root — They are.

Mr. Vedder — That makes how many justices of the Supreme Court in addition to those we now have?

Mr. Root — It will make twelve more judges than we have, and thirty more in the Supreme Court.

Mr. Maybee — Mr. Chairman, I desire to ask the chairman of the Judiciary Committee a question. Will he tell the Convention why it is proper to abolish the name of Court of Sessions, and why it is not necessary to make it harmonious to abolish the name of the Court of Special Sessions, and confer its jurisdiction on justices of the peace and police justices? What sense is there in maintaining the name of Court of Special Sessions when there is no Court of Sessions existing?

The Chairman — If there are no further amendments to the first section the Secretary will read the second section.

Mr. Forbes — Mr. Chairman, as I understand it, amendments can be handed in after the sections are all read. Is not that the fact?

The Chairman — Yes; after the proposition has been considered section by section and acted upon, then amendments generally may be in order.

Mr. Forbes — Otherwise I would present an amendment at the present time, but I do not care to have it voted upon because it will call up a general discussion in regard to the fifth section, abolishing the Court of Common Pleas and Superior Courts.

The Chairman — If there are no further amendments to section 1, the Secretary will read section 2.

Mr. E. R. Brown — I would like to make some remarks on section 1, or the last section under discussion. I would like to suggest to the Convention, if I am in order, in relation to the increase of judges proposed by this section, that I believe it to be a very doubtful expedient. I should not object to a provision in this article which would enable the Legislature, as the public interests require, to give an additional judge, or two or more, to the districts of this State; but I do not believe that there is a gentleman sitting in this hall who believes that if an amendment were submitted to the people of the State to-day for an increase of the Supreme Court judges by twelve, and for an addition to the Supreme Court bench of the eighteen judges in the Superior Courts and the Common Pleas in this State, that it would be adopted. I feel it my duty, although I approve of this report in its general tenor, and in the purposes which it accomplishes, to call the attention of the Convention to what I believe will be likely to be the source of fatal criticism to the work of this Convention.

Mr. Bowers — May I ask the gentleman a question? Do I understand, Mr. Brown, that your objection to the increase of the number of judges is because you believe that they are not needed, or because you merely fear criticism?

Mr. Brown — It is both. I desire to say one word more in reply to the gentleman, which suggests itself to my mind. It has been claimed that the division of the jurisdiction in New York city, in Brooklyn and in Buffalo made the same number of judges less efficient by the establishment of separate rules of procedure, by the establishing of separate General Terms, calling for General Term duties by those judges. Now, if these judges are all carried into the Supreme Court, they represent a force greater, how much greater I do not know, but certainly much greater than they would be when sitting in the courts as they are now organized; and I

believe that this Convention should wait and see whether they are sufficient to perform the duties which devolve upon the Supreme Court with this additional efficiency before we provide twelve additional judges in this State. I believe, sir, as matter of my own personal opinion, but I do not desire to be too forward in advancing it, inasmuch as I do not reside in any one of those cities, I believe that the addition of these eighteen judges will be sufficient to arm the General Terms in those departments without creating additional Supreme Court judges.

Mr. Griswold — May I ask the gentleman who spoke last a single question. If you leave it entirely open to the Legislature, and leave them unrestricted, to provide as many judges as they see fit, is there not great danger that different districts and different localities, in creating new judges, will unnecessarily increase their number? I would like to ask whether it would not be better to settle that matter, if it be desirable to have any more judges, rather than to leave it open to constitutional amendment through the Legislature?

Mr. E. R. Brown — Mr. Chairman, I did not expect to answer interrogatories, but I take pleasure in saying that one of the members of the Judiciary Committee is chairman of the Committee on Future Amendments; that he is now proposing in this Convention an amendment which will virtually prevent our getting amendments adopted in the future, by amendments to the Constitution submitted to the people for that purpose, and rather than to have it so that we could not meet the wants of the people in this regard, I would submit it to the Legislature. I would prefer greatly to leave it to the Legislature, with a more hopeful view of what that body is likely to do in performing a great public duty, than I would to tie it up so that nothing could be done. I would much prefer it, Mr. Chairman, to taking action here which I believe would subject this Convention, as a body, and individually, to the charge of having made a grab-bag of the treasury of the State for a body composed mostly of lawyers. I regret and deplore such criticism when it is applied to myself, or to the body to which I belong. Such criticism is already spreading throughout the State, and I believe that we ought to be very careful, and if we are to err, to err upon the side of economy and of modesty, instead of upon the side of extravagance and of private aggrandizement.

Mr. Davenport — Mr. Chairman, if we are to consider the question ——

The Chairman — If the gentleman will permit, I desire to call his attention to the fact that there is no motion before the committee,

and that hereafter the Chair will expect a motion before there is discussion.

Mr. Davenport — I understood that there was a motion upon the first section. If not, I will move to strike out the first section of the article.

Mr. Bowers — I make the point of order that there is a motion before this body now to increase the number of judges in the third district.

The Chairman — That motion was withdrawn.

Mr. Bowers — Then there is no motion pending?

The Chairman — None, whatever.

Mr. Davenport — I will move then to strike out the first section, and in considering that I beg to say, that if we are to consider this question upon the plan which has been suggested, and well suggested, by the gentleman from New York (Mr. McCurdy) it is necessary that we should look at the whole situation as we find it in this State. If we find by experience and by examination that there are changes that are necessary, it would ill become our courage, if, in the view of possible criticism for doing what is right, we should hesitate to make them. Will you, therefore, Mr. Chairman, permit me to call attention to the condition in which this article as a whole would leave theSecond Judicial Department of this State. I speak with an experience relating to it of a quarter of a century. We have to-day in that department six Supreme Court judges. We have three judges of the City Court of Brooklyn, making nine, and the article proposes to add three, making twelve judges of the Supreme Court. It is proposed that five shall sit in an Appellate Division for the review of the work which belongs to a department with over a million and a half of population, including the second great city of this State, with commercial questions arising from its warehouses and its manufactories which are second only in importance to those of the city of New York. Is it reasonable to suppose that the work of five judges in the Appellate Division of that court would be sufficient to occupy their time and attention, if there were less than seven judges sitting below to do the work necessary for that division? Is it possible that, with the present condition existing where there are six Supreme Court judges constantly at work, in addition to the General Term work now upon them, and three industrious judges occupied with the work of the City Court of the city of Brooklyn, there can be any doubt that there will be need of seven judges actually at work in the Circuit and in the Special

Term of that great department, including as it does nine important counties of this State? I withdraw my motion to strike out.

Mr. Dickey — Mr. Chairman, I renew the motion for the purpose of calling the attention of the gentleman from Jefferson county (Mr. E. R. Brown) to the fact that the Legislature he regards so highly, has not only in one year, but two years, passed amendments to the Constitution that are to be voted upon this coming fall increasing the number of judges in each of the districts of the State, two in the first and two in the second divisions, and this bill as proposed by the Judiciary Committee only adds one to each of those divisions. I may say, while I am on my feet, that my own experience agrees with the experience of the gentleman who last spoke (Mr. Davenport, of Kings), that the three additional judges provided for in this amendment are not unnecessary, but on the contrary they might well have provided for a larger increase, and in proposing three only in each of the departments they have been very moderate indeed, and that there should be no change in this provision. The people will gladly sanction this increase at the polls when they come to vote upon the question.

Mr. O'Brien — Mr. Chairman, I would like to ask the gentleman from New York (Mr. Root) a question in regard to the first section, as to what effect the appointment of these judges, provision for whose appointment is contained in this first article, will have upon the present pending constitutional amendment for the appointment of the four extra judges.

Mr. Root — Our view is that it adopts those same judges.

Mr. O'Brien — But does not increase?

Mr. Root — No; is not additional.

Mr. Kellogg — Mr. Chairman, I move to strike out the section.

The Chairman — There is a motion now pending. Mr. Dickey's motion is pending; you may speak to that if you wish.

Mr. Dickey — I withdraw my motion in order that my friend may make it.

Mr. Kellogg — Then I renew the motion. Mr. Chairman, it seems to me the objection made by the gentleman from Jefferson (Mr. E. R. Brown) is not well taken. We have in our judicial district at the present time, five justices of the Supreme Court, and in the adjoining judicial district there are five. That would make ten judges of the Supreme Court in one department. Adding one in each of the judicial districts, would make twelve in the department. Subtract five for the court of appellate jurisdiction and you only have seven justices left to do the business in two districts, leaving four in one and three in the other. It would be absolutely impos-

sible for three judges to perform the duties which they ought to perform in our judicial district, and instead of the proposed amendment increasing the number of the justices of the Supreme Court, one in each judicial department, it might well and with safety increase the number to two. This talk about increasing the expense of the people and shivering in your boots over it should not be considered. It seems to me simply a question of expediency as to whether it is right and equitable. I withdraw my motion to strike out.

Mr. Peck — I renew the motion for the purpose of asking the question again, on what information and with what view this apportionment of judges was made, one to each in other than the first and second districts. It seems to me that the information must have been incorrect.

Mr. Root — We did not think so, Mr. Chairman. Our information about the third district is that with one additional justice, it would have sufficient force to do this work, in consideration of the fact that one justice who is now taken from the third district and put into the General Term in New York would come back; and when the Governor is making up the Appellate Division, we assume that, of course, he would consult the needs of the several judicial districts in making the selection of the judges.

Mr. Crosby — Mr. Chairman, I would like to inquire of the chairman of the Judiciary Committee whether or not the committee has considered the situation that our Constitution and legislation will be placed in, if the concurrent resolution which has been passed by two successive Legislatures and is to be voted upon by the people shall be adopted, and also section 1 of the proposed amendment; the concurrent resolution providing in terms that the Legislature, at the first session thereof after the adoption of this amendment shall provide for the election, at the general election next after the adoption of this amendment, by the electors of the First Judicial District, of not more than two judges of the Supreme Court in addition to the justices now in office in said district, by the election in the Second Judicial District, of not more than three justices of the Supreme Court, in addition to those now in office, the proposed constitutional amendment containing a provision that there shall be elected three in the first district and three in the second district. My question is, has the committee considered what would be the situation if both of these provisions should be adopted?

Mr. Root — Mr. Chairman, I shall be glad to repeat my explana-

tion to Mr. Crosby. The committee has considered that question, and we are clearly of the opinion that the justices provided for by the concurrent resolution would form a part of the additional justices by this article. We also considered that to obviate any possible question upon that subject it would be appropriate, in the final article which it will be necessary to insert in regard to the submission, to provide what shall be the relations between the Constitution which we submit and the various constitutional amendments which are all ready to come before the people under the action of the Legislature, so that any possibility of a reduplication of provisions for additional justices will be obviated.

The Chairman — The question now arises on the motion of the gentleman from Rensselaer (Mr. Peck), to strike out the first section of this proposition.

Mr. Peck — I withdraw that motion.

Mr. Barhite — I renew it, Mr. Chairman. The government of the State of New York, like all Gaul, is divided into three parts — the executive, the legislative and the judiciary. The function of each of these separate departments of the government is separate and distinct from the others. The number of persons who shall constitute the executive department, the number of persons who shall constitute the legislative department, is defined by the Constitution of the State; and, I believe, the judicial department, both as to its functions, its duties, its jurisdiction, and the number of persons who shall compose it, should be fixed and prescribed by the Constitution itself. I do not believe this most important department of all — the judiciary — upon which we must depend to preserve us from political machinations, should be left in anywise under the control of either the executive or legislative department. I believe it is the duty of the delegates in this Convention to say, in their judgment, how many justices of the Supreme Court should compose that court. If the people of the State, at the next election, are not satisfied with that judgment, they can show their displeasure by voting it down. During the discussion upon the women's suffrage question the other evening, one strong argument that was brought up against the submission of the proposed amendment to the people, was that it is the duty of the delegates in this Convention to pass upon that question, that they should not attempt to avoid the issue by saying that we are in doubt, we do not know what should be done, but we should submit it to the people of the State. If that argument was good upon that amendment, it is good upon this proposed amendment of the judiciary article. If

we should pass upon the number of judges required in the Supreme Court, we should express that judgment here and now. I do not believe in turning over to the Legislature the power of determining whether there should be a greater or a less number of judges. I am in favor of section 1 as it has been submitted. I withdraw my motion.

Mr. E. R. Brown — Mr. Chairman, is amendment to section 1 now in order?

The Chairman — An amendment is in order.

Mr. E. R. Brown — I desire to offer an amendment to section 1, to strike out in line 12, on page 1, commencing with the word "and" after the word "term," to and including the word "districts" in line 2, on page 2; also in line three, the words "and their successors," and substitute therefor, "the Legislature may, as the public interests require create not exceeding twelve additional justices, as follows."

Mr. Root — As but five minutes remain before the gavel will fall, I move that the committee rise, and I hope that we may retain our place and continue the discussion of this article this evening. For that purpose I move that the committee rise, report progress, and ask leave to sit again this evening on this proposed amendment. Mr. Chairman, I would like to ask for information, if we take our recess, still in Committee of the Whole upon this subject, whether we will be in Committee of the Whole on this subject when we come together?

The Chairman — I think that is correct.

Mr. Bowers — I make the point of order, that if we adjourn at five o'clock, we meet at eight o'clock in Committee of the Whole upon this subject.

The Chairman — The Chair so holds.

Mr. Titus — Mr. Chairman, I move that we take a recess until eight o'clock.

The Chairman — The Chair rules that the motion is out of order. We are in Committee of the Whole and should proceed until five o'clock.

Mr. McKinstry — Mr. Chairman, may I ask the gentleman from New York a question. Who pays the judges of the Court of Common Pleas and the Superior Court now? Are they paid by the State at large, or by the cities?

Mr. Root — I will answer the gentleman's question. They are paid by the cities in which they are elected.

The President here resumed the chair.

The President — We are now in Convention, Mr. Root will continue his remarks at eight o'clock.

Mr. Alvord — Mr. President, I move that the judiciary article be a special order at each and every session of this body until it shall have been perfected.

The President put the question on Mr. Alvord's motion, and it was determined in the affirmative.

The hour of five o'clock having arrived, the Convention took a recess until eight o'clock in the evening.

EVENING SESSION.

Monday Evening, August 20, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, in Albany, N. Y., August 20, 1894, at eight o'clock P. M.

President Choate called the Convention to order.

Mr. Barhite — Mr. President, before we go into Committee of the Whole I desire to call attention to the motion which was made by my distinguished friend, Governor Alvord, that the committee should sit continuously upon this judiciary article until it was disposed of. Several members of the Convention have spoken to me about the matter, and it seems to be the opinion that in so important a matter as this, we should not bind ourselves to past history upon it. I do not desire to delay the work of the Convention or to make any motions which will be of no benefit, but I think that this motion ought to be reconsidered, and if it is passed upon favorably I shall immediately follow that with a motion that it lie upon the table and then the Convention can take such action in the matter as subsequent proceedings may make proper.

The President — You move to reconsider, and to lay it upon the table?

Mr. Barhite — I simply make the motion to reconsider, Mr. President, and if it is carried I shall make the motion to lay upon the table.

Mr. Root — Mr. President, I have no desire that the Convention shall take up any undue time or give any undue preference to the judiciary article. That motion was made and seemed to be carried promptly, without any opposition. The only thing I should like to suggest is this, that the discussion upon the judiciary article, now

that it is commenced, should continue until the views of the members of the Convention shall be fully developed, so that when we take a recess in the discussion, it may be a fruitful and useful recess, and the whole business not be postponed by it. Now, if Mr. Barhite will make this motion to reconsider and let that lie upon the table ——

The President — The Chair would advise Mr. Barhite that if he wishes to keep the matter in the control of the Convention that is the way to do it.

Mr. Barhite — I will consent to that, Mr. President.

The President put the question on the motion of Mr. Barhite that the motion of Mr. Alvord be reconsidered, and that motion lie on the table, and it was determined in the affirmative.

Mr. Hamlin — Mr. President, owing to a pressing business engagement I would like to be excused from attendance to-morrow and next day.

The President put the question on the request of Mr. Hamlin to be excused from attendance, and he was so excused.

Mr. Lincoln — Mr. President, I move that the privileges of the floor be extended to Mr. A. W. Ferrin, of Salamanaca, N. Y., editor of the Cattaraugus Republican.

The President put the question on the motion of Mr. Lincoln, and it was determined in the affirmative.

Mr. Kellogg — Mr. President, I have no desire to delay the Convention by excuses. I think I have been excused twice for sickness. The Otsego County Firemen's Association elected me as their representative at the State firemen's convention which convenes in Oswego to-morrow. I should like very much to attend in obedience to their request if the Convention thinks that is a sufficient excuse.

The President put the question on the request of Mr. Kellogg to be excused from attendance, and he was so excused.

Mr. Alvord — Mr. President, I move that the privileges of the floor be granted to the Rev. Dr. Raymond, president of Union College.

The President put the question on the motion of Mr. Alvord, and it was determined in the affirmative.

Mr. T. A. Sullivan — Mr. President, I desire to ask for an excuse on behalf of Mr. Putnam. I would have done it earlier, but he hoped to be able to be present to-day. He is unable to be here on account of illness.

The President put the question on the request of Mr. Putnam to be excused from attendance, and he was so excused.

Mr. Cornwell — Mr. President, I would like to be absent on Friday and Saturday of this week.

The President put the question on the request of Mr. Cornwell to be excused from attendance, and he was so excused.

Mr. Crosby — Mr. President, I should like to inquire when the copies of the judiciary article will be ready for delivery. I intended to send some to my constituents, who are lawyers, for their examination, but I was unable to obtain them.

The President — Perhaps Mr. Hamlin can answer the question as to when the copies of the judiciary article will be ready for distribution.

Mr. Hamlin — Mr. President, I inquired about it this morning, expecting they would be upon the files, but was informed by The Argus Company that for some reason they would be unable to supply them until to-morrow, and that they would be ready for distribution to-morrow morning.

Mr. Acker resumed the chair in Committee of the Whole upon the matter pending at the time recess was taken.

The Chairman — The question before the committee is the amendment offered by Mr. Brown, of Jefferson, which the Secretary will please read.

The Secretary read the amendment of Mr. Brown as follows:

"Strike out all of line 12, page 1, after the word 'terms,' and lines 1 and 2, page 2, to and including the word 'district,' and the words 'and of their successors' in line 3 on page 2, and substitute the following words, 'but the Legislature may, as the public interests require, create not exceeding twelve additional justices as follows.'"

Mr. Cookinham — Mr. Chairman, I observe that Mr. Brown is not in the chamber. This is a very important amendment. I hope the motion will not be put until he may return to the chamber. Unquestionably he desires to be heard upon it. I would suggest, as I had intended to suggest before, that this article be read, and as each section is read, amendments be proposed to it, and that after we have gone through with it in that way, we should vote upon the amendments. I realize that there will be, perhaps, some amendments made; those amendments may absolutely require some other amendments in other sections, and it seems to me that we will proceed more rapidly if we read it through, and then commence with

the first section and vote upon the amendments. I make that suggestion. I will make it in the form of a motion if it be necessary.

The Chairman — The Chair sees no other way than to put the motion as made by Mr. Brown.

Mr. C. A. Fuller — Mr. Chairman, it seems to me that if this Convention pursues the practice of deferring action upon matters because the mover of an amendment is not present, it will have a tendency to build up a system of shiftlessness and delay that will very much impede our action. I believe it is the duty of those who introduce measures and who offer amendments to see to it that they are present to take care of them, and not have any expectation that there will be delay because of their absence. It seems to me that the business now is in a condition so that we may vote upon Mr. Brown's amendment.

Mr. Cornwell — Mr. Chairman, I believe it to be my duty, as representing in part the Seventh Judicial District of the State, to raise my voice against an increase of the justices of the Supreme Court, as proposed by this report. I, sir, do not understand that there is any demand for this measure, so far as the interests of the State are concerned. It looks to me like special legislation in the interests of a class. Believing this, I consider it my duty to oppose this part of the proposition with what little power I may possess, and that is, to vote against its adoption.

It will not be denied that the tendency of legislation has for many years been to increase and enlarge the demands upon the revenues of the State, not alone in the creation of new offices and commissions, but in every department of the public service, without a careful and proper regard in all cases for the interests of the people. The deluge of this large increase of justices of the Supreme Court, with all the expense incident to this great office, is certainly a proposition that should be entered upon with great care and wise consideration of the demands of the general public. The putting the machinery into operation is a very simple matter, considered in itself, but when we contemplate the consequences of this large increase in the way of expense necessary to its support, and the severe drain upon the resources of the already overburdened taxpayers of the State at large, it seems to me we can well afford to pause and consider the public interests in this direction. I believe it is safe to say that the present force of justices of the Supreme Court is ample, and that there is very little, if any, demand for its increase.

I desire it understood that I speak only from my information and

knowledge of the region of the State, middle New York, in which I reside, and not as to the needs of the great centres of the State, as I have little or no knowledge of their needs and the desires of those localities. I believe I am also safe in saying that the justices of the Supreme Court are not an overworked body. They have, as a matter of fact, their holidays and vacations, all they desire or need. Is it not also a matter of fact that there is no class of citizens holding office within the bounds of the State so independent of the people, and it might with propriety be said a law unto themselves, as are the justices of the Supreme Court of the State of New York?

Gentlemen of the Convention, unless it can be shown beyond the possibility of a doubt, not only that the public necessity and demand for this additional burden upon the State (there being none greater than the courts), carrying with it, as it of necessity does, the equipment and paraphernalia incident thereto, is in the interest of the masses, then we should not for a moment consent to its adoption. To my mind the weal of the public generally should be paramount in this Convention of the people, and not the convenience, or desires, or the pleasure of a class of our fellow-citizens.

Mr. Veeder — Mr. Chairman, I want to call for a division of the question on the motion to strike out and to substitute. On the question of creation I am not very well informed, and I should like to hear that discussed by itself.

Mr. Dean — Mr. Chairman, I rise to a point of order, that a motion to strike out and insert is not divisible.

The Chairman — The point of order is well taken.

Mr. Cochran — Mr. Chairman, may I ask for information from the chairman of the Judiciary Committee or some member of the committee, if the number of judges is changed from what is proposed in this amendment, would not the entire scheme as presented by the judiciary article be upset? I think if the Judiciary Committee could enlighten us upon that subject it might aid us very much.

Mr. Nicoll—Seven of these judges are needed in the work of the Appellate Division, so that the only increase generally for the Special Term and Circuit work through the State is five judges. We have now five General Terms with three judges each, making fifteen appellate judges.

Mr. Cochran — So, that if we should abolish the twelve judges, or rather, if we should not provide for them, then this proposed amendment would have to be returned to the Judiciary Committee to devise some new scheme. Is that correct?

Mr. Nicoll — Certainly it would.

Mr. E. R. Brown — Mr. Chairman, in regard to the remarks that I made just before recess, the matter came up so suddenly, and I had not carefully reflected upon the subject, but upon further consideration, I discover that there can be no division of the State on the lines laid down, probably, which would not include the Sixth, Seventh and Eighth Judicial Districts in a single district. The Seventh and Eighth Judicial Districts now have four judges on the General Term. The Sixth Judicial District, which would then be added to that department, now has a judge upon the General Term. So that the new department would have five judges already in service, at General Term, available for that court. It is also suggested to me that Judge Follett, of the Sixth Judicial District, is at service in General Term in New York, so that that district would have six justices of the Supreme Court already serving in General Term. The next district which would be most likely to be formed, would be of the fifth, fourth and third. The Fifth Judicial District now has two judges sitting in General Term. The Fourth Judicial District has two judges in General Term, and the Third Judicial District has three judges in General Term. So that we have thirteen judges now serving in General Term in what will be the two districts; and not only would there be judges enough to equip the new General Term but, according to these figures, there would be three judges to withdraw from service in General Term, and put at Circuit work, or lend to the more crowded districts about New York.

What I said in relation to the subject of expediency seems to have been misinterpreted by some of the members with whom I have talked. I put it upon the ground of expediency out of courtesy to those gentlemen, and especially to the gentlemen of the committee, who thought these additional judges were necessary to the State. There is certainly room for a fair difference of opinion upon this subject, and I would not press my objection, believing that there are judges enough now, in opposition to their views, to the point of excluding the creation of new judges by the Legislature. I do not think that the question of expediency ought always to be followed by us here, but, if it rises to such dignity and importance that it may lead to the rejection of our work, we might better establish this much improved system of judicial procedure shorthanded for judges, and rely upon the future to properly equip our courts.

Mr. Crosby — Mr. Chairman, I shall not support the amendment of the gentleman from Jefferson, although I concur with his reasoning and the principle that he seeks to sustain, namely, to have additional judges provided as the emergency may appear. The office

of justice of the Supreme Court of the State of New York is so dignified, and so responsible, clothed with so much authority, that, in my judgment, it would be a dangerous expedient to adopt, to leave it to the Legislature without a vote of the people, as he proposes. As I understand the amendment, it would give a political Legislature, swayed by all the influences that surround that body, the power, without any vote of the people, to create any number of judges it might see fit at any session, up to the limit. I hardly think, upon reflection, that the gentleman who proposed the amendment would wish to change the rule that has prevailed for many years in this State. I shall not support the amendment for that reason.

The Chairman put the question on the adoption of Mr. Brown's amendment, and it was determined in the negative.

Mr. Forbes — Mr. Chairman, my proposition at the last session was that amendments should be received at the end of the reading of this proposed amendment as a whole. I have an amendment which applies to this section, and also to section 5, but I would rather have the amendment come in at the proper place in section 5, than at this time. I desire that the matter should not be overlooked.

The Chairman — How would the gentleman get in his amendment to section 1?

Mr. Forbes — By the ruling of the Chair, that we should have that privilege.

The Chairman — The gentleman must take his chances.

Mr. Smith — Mr. Chairman, I have an amendment to propose, and to make it plain, I will strike out and insert; on pages 1 and 2, strike out all of line 12, on page 1, after the word "terms," and also lines 1, 2 and 3, down to and including the word "districts," on page 2, and insert in place thereof the following: "and of sixteen additional justices, who shall reside in, and be chosen by the electors of, the several existing judiciary districts; five in the first district, three in the second, two in the third, and one in each of the other districts."

The Chairman put the question on the adoption of Mr. Smith's amendment, and it was determined in the negative.

The Chairman — Are there any other amendments to the first section of the report? The Chair hears none, and the Secretary will read the second section.

The Secretary read section 2 as follows:

Sec. 2. The Legislature shall divide the State into four judicial departments. The first department shall consist of the county of New York; the others shall be bounded by county lines, and be compact and equal in population as nearly as may be. Once every ten years the Legislature may alter the judicial departments, but without increasing the number thereof.

There shall be an Appellate Division of the Supreme Court consisting of seven justices in the first department, and of five justices in each of the other departments. In each department four shall constitute a quorum, and the concurrence of three shall be necessary to a decision. No more than five justices shall sit in any case.

From all the justices elected to the Supreme Court the Governor shall designate those who shall constitute the Appellate Division in each department; and he shall designate the presiding justice thereof, who shall act as such during his term of office, and shall be a resident of the department. The other justices shall be designated for terms of five years, or the unexpired portions of their respective terms of office, if less than five years. From time to time, as the terms of such designations expire, or vacancies occur, he shall make new designations. He may also make temporary designations from time to time in case of the absence or inability to act of any justice in the Appellate Division. A majority of the justices designated to sit in the Appellate Division in each department shall be residents of the department. Whenever the Appellate Division in any department shall be unable to dispose of its business within a reasonable time, a majority of the presiding justices of the several departments, at a meeting called by the presiding justice of the department in arrears, may transfer any pending appeals from such department to any other department for hearing and determination. No justice of the Appellate Division shall exercise any of the powers of a justice of the Supreme Court other than those of a justice out of court and those pertaining to the Appellate Division or to the hearing and decision of motions submitted by consent of counsel. From and after the last day of December, 1895, the Appellate Division shall have the jurisdiction now exercised by the Supreme Court at its General Terms, and by the General Terms of the Court of Common Pleas for the city and county of New York, the Superior Court of the city of New York, the Superior Court of Buffalo and the City Court of Brooklyn, and such additional jurisdiction as may be conferred by the Legislature. It shall have power to appoint and remove a reporter.

The justices of the Appellate Division in each department shall

have power to fix the times and places for holding Special and Trial Terms therein, and to assign the justices in the departments to hold such terms; or to make rules therefor.

Mr. Platzek — Mr. Chairman, I desire to offer an amendment.

The Secretary read the amendment of Mr. Platzek as follows:

"To amend section 2 by striking out, after the word 'justices' in line 22, on page 2, the words 'elected to,' and insert in place thereof the word 'of.'"

Mr. Platzek — Mr. Chairman, the purpose of this amendment is very evident. I desire to avoid any possible discrimination between judges of the Supreme Court. If the Court of Common Pleas and the Superior Court of the city of New York are to be consolidated with the Supreme Court, and the City Court of Brooklyn is to be consolidated with the Supreme Court, and the Superior Court of Buffalo is to be consolidated with the Supreme Court, and the business of those courts is to be transferred to the Supreme Court, and the justices of these several courts are to be made judges of the Supreme Court, they ought not to be a tender to the Supreme Court, but ought to stand upon an equal footing, with equal rights and equal dignity. It appears to me that there are some men to-day who occupy positions upon the bench in several courts who would resent it as an indignity. It cannot be argued that the proposition to take away from the Governor the right to assign either of the judges of these respective courts to an appellate court is directed against the individual. If so, they are unfit to sit upon the bench in either court. If it is right that these courts shall be merged and these judges now occupying honorable positions and discharging their duties faithfully and ably are to become judges of the Supreme Court, it is unjust that there should be any discrimination whatever. Either these men have a right to be Supreme Court judges, with all the powers that that implies, or the courts should not be consolidated. So far as the gentlemen occupying those positions in the city of New York are concerned, they have had long experience, and their work upon the bench and their written adjudications show them to be capable of sitting upon the Supreme Court bench. Whether the Governor will at any time assign these judges to do appellate work is a matter for the hereafter; but as a practicing member of the New York bar, knowing the work and appreciating the ability of these judges and of the judges who sit in the City Court of Brooklyn, I, for one, cannot stand here without protesting against an attack upon what I call their judicial ability, and I insist that it would be unfair and unjust to make them Supreme Court

judges without conferring upon them all the powers of that office. We all remember only a short time ago when we had two divisions of the Court of Appeals in this State. So far as I am concerned, I read the opinions written by the judges of the second division with as much respect and I obtained as much learning and as much law from those decisions as those written by the judges of the Court of Appeals, more properly called the first division. Yet there are lawyers, not a dozen, but there are hundreds, who did not have the same respect for the decisions of the judges of the second division as for the judges of the Court of Appeals. And time and again we have heard it stated, in the court houses and in lawyers offices, when they came back from the Court of Appeals: "Had we been before the Court of Appeals, and not before the second division, our cases would probably have been differently decided."

Now, I say we cannot afford to raise any such distinctions. I say the time might come when some lawyer would try a cause before one of these judges, against whom this discrimination is proposed to be made, and, being defeated in his cause, might say: "Had I been before a full-fledged Supreme Court judge, my cause might have been differently determined."

I am here to maintain the dignity of the bench, and I am here to protest against it being assailed. I am all the more inclined to assume and argue that proposition because of what I know, as a man and as a practicing lawyer since 1876 at the New York bar, of the men and the ability of the men who have sat upon the bench in the Court of Common Pleas and in the Superior Court.

Because of these reasons, M. Chairman, I insist that it is only proper and only fair and only just that the amendment should prevail.

Mr. Root — Mr. Chairman, the precise words used in this part of this section are the result of very numerous and very patient consultations with the judges and justices of these courts in the city of New York. They are the outcome of a score of different plans, and they come nearer, I think, to satisfying the wishes and the best judgment both of the judges of those courts in the city of New York, and of the members of the bar of that city, than any other possible expedient. I believe the provision is not only expedient for that reason but is in accordance with substantial justice, and conduces to the best administration of affairs. It would be going a great way to put the judges of the Superior Court and the Court of Common Pleas and of the City Court of Brooklyn and the Superior Court of Buffalo into the Appellate Division, to review the decisions of the justices of the Supreme Court; and so long as this provision

is substantially satisfactory to the judges who are concerned, and substantially satisfactory to the great body of the bar of those cities who have expressed themselves upon the subject, I hope the Convention will not disturb it. Any disturbance of it would reduce our whole consolidation of the courts into confusion worse confounded.

Mr. O. A. Fuller — Mr. Chairman, I would like to make an inquiry, so that I may know where we stand. We do all our Special Term work in Buffalo. Now, if you take the justices of the Superior Court of Buffalo and make Supreme Court judges of them, we will find them holding Special Terms in Erie county, where we do our Special Term work. If we desire to make a motion in the Erie County Special Term and we find one of those judges holding that Special Term, can we who live in outside counties make the motion before him?

Mr. Root — Mr. Chairman, I will answer the gentleman's question in the affirmative. Those judges can perform any judicial duties, sitting in Erie county.

The Chairman put the question on the motion of Mr. Platzek, and it was determined in the negative.

Mr. Dickey — Mr. Chairman, I move to amend on page 3, line 19, by striking out the word "counsel" and inserting the word "parties." I do this, Mr. Chairman, for the reason that it might happen that parties would not be represented by counsel in the case therein provided. They should have a right to appear in person and not necessarily by counsel.

The Chairman put the question on the adoption of Mr. Dickey's amendment, and it was determined in the negative.

Mr. Vedder — Mr. Chairman, I wish to ask a question of the chairman of the Judiciary Committee. In section 2, line 16, it is provided that "there shall be an Appellate Division of the Supreme Court, consisting of seven judges in the First Department and of five justices in each of the other departments. In each department four shall constitute a quorum, and the concurrence of three shall be necessary to a decision." Would it not be better, so far as that First Department is concerned, to have a majority of all the justices who sit there necessary to a decision? Now it is only three.

Mr. Root — Mr. Chairman, before answering the question, may I call attention to the next sentence, "No more than five justices shall sit in any case." The idea is, that the court sitting in the First Department shall be just the same kind of a court, with just the same number of justices as the courts in each other department.

But in the First Department, the court is obliged to sit continuously from the first of October until the end of June, for nine solid months, and it is not within human power to do effective judicial work sitting all that time. The object of the addition of two justices is that they may serve in relays, relieving each other, and having all the time a court of the same size, an expedient which we thought unobjectionable in a court, the prime object of which was to pass upon the particular rights of litigants, although very objectionable in a court which was designed to maintain a harmonious and consistent system of law.

Mr. Spencer — Mr. Chairman, I wish simply to make an inquiry in regard to the appointment and removal of a reporter, provided for on page 4, line 2. The words in that regard are as follows: "It shall have power to appoint and remove a reporter." Now, the word "it" no doubt has reference to the Appellate Division. In the sentence which precedes that it speaks of the Appellate Division as one entire court, or a court comprised of all the judges of the Appellate Division, it would seem, for it confers jurisdiction upon the Appellate Division of all of the courts, in Buffalo, in New York and Brooklyn that are done away with. But in other parts of the section, to wit, on lines 23 and 24 of page 2, the inference from the language there, it seems to me, would be that there should be an Appellate Division in each department; and my inquiry is, whether the committee intend to have a reporter for each department or whether there is to be a reporter for all the departments, and whether that is clearly understood. It is not clear to my mind.

Mr. Root — Mr. Chairman, the design of the committee was to provide for one Appellate Division, and to provide that that Appellate Division should sit, with not more than five justices in any one case, in each of the four departments; so that it is the Appellate Division sitting in the First Department, the Appellate Division of the Supreme Court sitting in the second, in the third and in the fourth. The whole Appellate Division appoints the reporter. That is a substitute for the provision now to be found in the existing Constitution, in section 23 of the judiciary article, which prescribes that the Legislature shall provide for the appointment, by the justices of the Supreme Court designated to hold General Terms, of a reporter of the decisions of that court. The main provision establishing this Appellate Division is on page 2, and is in these words: "There shall be an Appellate Division of the Supreme Court consisting of seven justices in the First Department, and of five justices in each of the other departments." And then follows the provision: "In each department, four shall constitute

a quorum, and the concurrence of three shall be necessary to a decision." This follows the analogy of the Court of Kings Bench, in England, and the High Court of Judicature, in England, which is a single court, although it never meets and never comes together into one body for any purpose. The High Court of Judicature is sitting at the trial of numerous causes throughout the United Kingdom. The High Court of Judicature is sitting in its Appellate Divisions and in its divisional courts at the same time. And it is also in strict analogy to the Supreme Court of this State. It is the Supreme Court which sits at the same time, presiding in the persons of its several judges, in the Special Terms and the Circuits all over the State. In each room, under the presidency of the single judge, is the Supreme Court of the State. It is one Supreme Court, although sitting in many parts; and it is the Supreme Court at the same time which is sitting in each of its departments. So, it will be the Supreme Court sitting in all its trial and Special Terms, and the Supreme Court sitting in the Appellate Division, and the Appellate Division of the Supreme Court sitting in the several departments. It is the whole Appellate Division which will appoint the reporter, and where any power is confined within a particular department, we specify the division in that department as exercising the power.

Mr. E. R. Brown — Mr. Chairman, I would like to inquire of the chairman of the Judiciary Committee if it was his intention that the apportionment of the judicial districts should be based on the enumeration of the inhabitants of the State once in ten years. In line 14, on page 2, it says: "Once every ten years the Legislature may alter the judicial departments, but without increasing the number thereof." Was it the intention to base it upon the enumeration of the inhabitants of the State?

Mr. Root — Mr. Chairman, I will answer that question by saying not necessarily. The act requires the Legislature now to divide the State into four departments. We had not the time nor the information, nor the opportunity to get the information, to constitute those departments. It would require consulting the convenience and wishes of a great number of the people of the State. We conceived that the Legislature would be able to do that. They are required now, and it will be their duty at their first session, after the adoption of this article, if it be adopted, to divide the State into four judicial departments. That is the starting point. Then, once in every ten years, they may rearrange the departments.

Mr. Cornwell — Mr. Chairman, by request of one of the justices of the Supreme Court of the Seventh Judicial District, I wish to

offer an amendment. Section 2, on page 4, reads as follows: "The justices of the Appellate Division in each department shall have power to fix the times and places for holding Special and Trial Terms therein, and to assign the justices in the departments to hold such terms," and so forth. I wish to amend by striking out the words "Appellate Division," and insert therein the words "justices of the Supreme Court," so that it shall read "the justices of the Supreme Court," and so forth. This is in deference to the wishes and desires of a Supreme Court judge of the Seventh Judicial District, who claims that the justices of the Supreme Court have heretofore made their own appointments of terms of courts, and they desire to do it hereafter.

Mr. Hottenroth — Mr. Chairman, will the chairman of the Judiciary Committee permit me to ask a question? I note in section 2, line 10, "the Legislature shall divide the State into four judicial departments." Is it the intention of the committee to have that division made at once? It appears to me that if that is the intention, it would be advisable to so provide in the amendment, so as to avoid possible confusion.

Mr. Root — Mr. Chairman, the article provides that the Appellate Division, and the courts composed of justices of the Appellate Division in the four departments, shall be organized at such a time that it will be necessary for the Legislature to divide the State into departments at their next session. They would be plainly derelict in their duty if they did not do it at the first session after the adoption of the article. It seemed, therefore, unnecessary to put in the specific provision.

Mr. Chairman, I hope the amendment of Mr. Cornwell will not prevail. It would introduce very great confusion, and would do away with one thing which I think is of some importance. I do not wish to say anything against any justice of the Supreme Court, but they are the only body of public officers that I know of anywhere who have the absolute power to determine what they shall do, when and where they shall do it, and whether they shall do it or not. I do not believe that a judicial system is perfect unless it provides in some way, in which duties may be prescribed, which it shall be incumbent upon a justice of the Supreme Court to perform. I think that this provision, which merely provides that the Appellate Division in the department shall determine the times and places and assign justices thereto, or make rules therefor, is a necessary and proper provision. They probably

will do, as the General Terms have done hitherto, exercise the same powers, make rules, and let the justices arrange their work to suit themselves. But there ought to be some power, which the citizen can hold responsible for the performance of judicial work, and some place to which the citizen can go to complain if it is not performed, with judges the same as any one else. In the first department, if this provision were expunged, it would result in the judges of the Superior Court and the judges of the Court of Common Pleas, who outnumber the judges of the Supreme Court, into which they are introduced, assigning the justices of the Supreme Court to their duties and controlling their action absolutely, a thing which I think neither they wish to arrogate to themselves, nor to which the justices of the Supreme Court wish to submit themselves. This provision was introduced into the article, after a great deal of careful consideration and discussion, and it would be, I think, exceedingly unfortunate if it were out.

Mr. Holcomb — Mr. Chairman, could we have the proposition of Mr. Cornwell read, so that we could understand it here?

The Secretary read the amendment as sent up by Mr. Cornwell, in the words following:

"Section 2, page 4, line 3, strike out the words 'Appellate Division' and insert the words 'Supreme Court.'"

Mr. Cornwell — I do not rise with any idea of making any impression upon this body with reference to this matter. It seems to me that the justices of the Supreme Court should have the arrangement of the terms at which they shall hold courts as the justices of the Appellate Division, so called. The justices of the Appellate Division are selected, as I understand, from the justices of the Supreme Court. Now, in giving them the power to prescribe the times at which the justices of the Supreme Court shall hold their terms, it places them over and above that body. I do not see any more reason why the appellate justices should appoint the terms of courts of justices of a Supreme Court than that the justices of the Supreme Court should appoint the terms at which the General Terms should hold their courts. I believe the justices of the Supreme Court should be granted this small privilege, to designate the terms of their courts.

Mr. C. B. McLaughlin — Mr. Chairman, I desire to say just a word upon this proposed amendment. I sincerely hope it will be voted down. I consider the report of this committee, upon this branch of this article as one of the wisest provisions contained in it. There should be lodged somewhere the power which will assign the justices

of the Supreme Court and distribute the work which they are to do with reference to the work of the district in which they are located. In the judicial district in which I live we have during two months of the year only five justices, practically no Special Term; at least none which we can reach without traveling from where I live, 150 miles, or nearly that. Now, if this power is lodged as proposed in this article reported by the committee, the General Terms can say to some of these justices when they shall hold terms, where they shall hold them; and it seems to me that that is one of the wisest provisions contained in the article.

The Chairman then put the question on the amendment offered by Mr. Cornwell, and it was determined in the negative.

Mr. Peck — Mr. Chairman, for the purpose of developing discussion, as I understand is the wish of the Judiciary Committee, I move at this time to strike out the whole of this second section. The great purpose of this provision, as I understand it, is to remedy the evils, or what are the inconveniences, of our present system of General Terms. It is proposed by this article to supplant twenty-seven or twenty-eight judges sitting at General Term in review of *nisi prius* courts, by twenty-two, and they are expected to do the work, more effectually and more perfectly than the twenty-eight or nine. My view of this is that the trouble with the General Term, which has arrested the attention of the profession and of the people, grows out of the fact that the judges are not elected for that duty, that they are drawn from the courts for which they are elected and set apart to this duty at General Term. This proposed amendment does not remedy that difficulty. We are making an appellate division in place of the General Term, the whole of the personnel of which is to be drawn from the justices of the Supreme Court elected in districts for district work. When set apart in that way there is no limitation here as to how many shall be taken from any particular district; and we will find some districts denuded, as the third district is at this time, of its judges by their being set apart for appellate division work. At the proper time, I propose to offer an amendment, which in effect shall require that this Appellate Division of the Supreme Court shall be composed of judges who shall be elected in the separate departments for that particular work; that the men shall be chosen because they are, in the judgment of the people, suited to belong to courts of review; and I am not at all sure, Mr. Chairman, that when we are making a new court of last resort — because that is what this is in many respects — I am not at all sure that the judges of it should not be elected as the judges of our present court of last resort are elected, by the whole people of the State. By this method

we would have, it seems to me, organized in the State new courts of last resort if we need them, with judges selected for that particular duty, and not made up by the Governors elected for a different purpose and with different views, and influenced by different motives, to select courts for the whole State. It seems to me as if, instead of reorganizing out first Court of Appeals, this proposed article is affording rather simply a new deal, a readjustment of the judges that are to be the General Term judges or the Appellate Court judges — call them what you please. It is substantially the same thing that we have now, and we will have the same difficulty; we will have the same dissatisfaction with the work. Therefore, having said what I have simply to develop one branch that will probably be a part of this discussion, as was suggested by the Judiciary Committee, I withdraw my motion to strike out the second section.

Mr. I. S. Johnson — Mr. Chairman, I move to amend section 2 by adding, at the end of line 6, page 4, the following: "At least one Special Term for the trial of equity cases shall be held in every county of this State each year."

It is a fact that in a great many counties of the State we are obliged to try almost all of our equity cases before referees at an immense expense. It is a fact that while these judges are willing to sit in some of the cities and try cases, they dislike very much to come out into the country and try cases, and hence as soon as we get through with the trial of jury cases, the judge suggests that he cannot stop any longer and that we must refer our cases, and we have repeatedly asked them to hold equity terms, at least one in each of the counties; but we find it difficult to get them to do so. I think if we are to reorganize the judiciary article we should do it in the interests of the people, and we can have nothing which will be more in the interest of the people than by providing that the judges shall try the cases. It is a difficult and expensive thing in the country to try cases before referees. Take a long case, which is to involve a long account and take two or three days to try. The judges say to the litigants, "You must refer this case." It may involve $400 or $500. What is the result of a reference? In the first place, we have to pay the referee fifteen to twenty dollars a day. We then have to pay the stenographer ten dollars a day and then pay him for writing out his minutes; while in the cities, the more fortunate litigants have an opportunity to have the officers of the courts try cases and have an official stenographer furnished and paid for by the State or county. I submit, Mr. Chairman, that it is proper that these judges should go into each county, and they should

be compelled to go into each county and hold at least one Special Term every year.

Mr. Cassidy — May I ask the gentleman a question, Mr. Chairman? How would he arrange in Hamilton county, where they have no court-house and hold their Supreme Court in conjunction with Fulton county?

Mr. Johnson — I would have no objection to placing Fulton and Hamilton in the same arrangement as exists with respect to Members of Assembly.

Mr. Cassidy — Then your amendment would not be proper, would it?

Mr. Johnson — There might be a change, perhaps, in this, and if the gentleman wishes to change it in that regard, I do not care; but I say that we should have some rights, Mr. Chairman, enabling the people to try their cases in the courts and by the officers of the courts, and by the use of the stenographers paid for by the people, and not by individual litigants.

Mr. Foote — Mr. Chairman, I would suggest to the gentleman from Wyoming that the clause which he proposes to add seems to be unnecessary as the ground seems already to be covered. The section provides that the justices of the Appellate Division shall fix the times and places for holding Trial and Special Terms, and designate the justices to hold such terms. Now, if in Wyoming county, for instance, it is proper that at least one term for the trial of equity causes should be held each year, it will become the duty of the justices of the Appellate Division to appoint such a term for that county and to assign the justice to hold that term; and, further, I may say that if the justice appointed to hold the term shall be anxious to return to his home, I do not think any constitutional provision will prevent his suggesting to counsel that the case is a proper one to be tried before a referee, and ought to take that disposition.

Mr. Cady — Mr. Chairman, the suggestion made by Mr. Foote covers very largely the point that I was about to bring to the attention of the Convention when he was recognized. It was confidentially believed by the Judiciary Committee, in the course of the preparation of this article, that the mass of minute detail should be avoided as far as possible, and that the judiciary article should be composed as largely as possible of declarations of the organic law, and should establish a framework and a judicial system upon which the court, by its rules, and the Legislature, by its statutes, might build up a system of jurisprudence. This is largely a matter of detail. The justices of the Appellate Division in any department,

as it seemed to us, might safely be trusted to provide terms of court for the transaction of all the business in all the counties and all the districts composing a given department; and, as Mr. Foote has already stated, the second section, at lines 3, 4 and 5, on page 4, expressly provides that the justices of the Appellate Division in each department shall have power to fix the times and places for holding the Special and Trial Terms therein, to assign the justices to hold such terms and to make the rules therefor.

The Chairman put the question on the adoption of the amendment proposed by Mr. Johnson, and it was determined in the negative.

The Chairman — Are there any further amendments to the second section of this proposition? If the Chair hears none, the secretary will read the third section.

The Secretary read section 3 of the amendment proposed by the committee as follows:

§ 3. No judge or justice shall sit in the Appellate Division or in the Court of Appeals in review of a decision made by him or by any court of which he was at the time a sitting member. The testimony in equity cases shall be taken in like manner as in cases at law; and, except as herein otherwise provided, the Legislature shall have the same power to alter and regulate the jurisdiction and proceedings in law and in equity that it has heretofore exercised.

The Chairman — Are there any amendments to the third section of this proposition? If the Chair hears none the Secretary will read the fourth section.

The Secretary read the fourth section of the amendment as follows:

§ 4. The official terms of the justices of the Supreme Court shall be fourteen years from and including the first day of January next after their election. When a vacancy shall occur otherwise than by expiration of term in the office of justice of the Supreme Court the same shall be filled, for a full term, at the next general election, happening not less than three months after such vacancy occurs; and, until the vacancy shall be so filled, the Governor by and with the advice and consent of the Senate, if the Senate shall be in session, or if not in session the Governor, may fill such vacancy by appointment, which shall continue until and including the last day of December next after the election at which the vacancy shall be filled.

Mr. Pratt — Mr. Chairman, I move to amend section 4 by striking

out the word "fourteen" in line 16, and inserting in place thereof the word "ten."

Mr. A. H. Green — Mr. Chairman, I move to amend that amendment by putting in the word "eight" instead of "ten."

Mr. Baker — Mr. Chairman, years ago, when I practiced law, I made up my mind that fourteen years was too long for any man to sit as a circuit judge. There is a natural stupidity that grows upon a man who sits upon the bench for so long a time. The term of fourteen years is remarkable. I have a case in point, and perhaps it was the last case that I attempted to try. It was this: a very clever gentleman had been on the bench some twelve years. I thought I gave him the proper reference to the law; at all events, I thought I spoke the law to the court. The court contradicted me and I asked the court to adjourn over until morning, when I would try to convince it. In the morning I carried in a decision of the Court of Appeals, read the head notes to him, and after a little deliberation, he inquired of me if the case bore out the head lines. I told him it did. "Well, sir," he says, "who wrote that opinion?" I replied, "Your honor, while sitting in the Court of Appeals, and all the rest of the judges agreed with you." Well, I made up my mind from that little circumstance that after a man had been on the bench for ten or twelve years, it was time he got off and let some other fellow on. Now, it is my observation, Mr. Chairman, that our judges are kept upon the bench too long. I believe when a man had served ten years he is past the day of his usefulness as a circuit judge. He gets careless. There are exceptions. He becomes somewhat indifferent to the duties devolving upon him and he should either be transferred to a higher tribunal or else he should give way for some other gentleman; and there are enough men, younger than I am a good deal, ambitious of being called "judge." Why, Mr. Chairman, ten years' duration of the term of a judge of the Supreme Court is glory enough for anybody. He ought then to retire and without pension, too. Now, I think I have said about all I ought to say, and I believe that this amendment, which I meant to have made, ought to pass.

Mr. Woodward — Mr. Chairman, I think that eight years is long enough. If a man who has been on the bench for eight years proves to be a good judge, he will stand a chance to be re-elected, and if he is not a man of ability, a man that ought to sit there, eight years is long enough for him to remain there. When he has been on the bench eight years he has been there long enough, if he is not a fit judge, and if he is a fit judge and goes off the bench, he is very likely

to be re-elected, and then he may sit, perhaps, eight years more. And then there is another thing, it helps a man once in a while to bring him back to the people and let him know that he is one of the people, that he is not above the people so far that he can look over them and disregard their rights and everything of that kind. He should once in a while be brought back to the people, particularly our Supreme Court General Term judges. They are sometimes pretty arbitrary. I have found them so. I have found instances in which it was very difficult to be heard by them because they were so arbitrary. In one case I was obliged to pitch into the decision that they had made because they would not let me argue the case until I had attacked it. They kept thrusting a previous decision of theirs in my face. I asked them to let me argue the case that I had before them, and not have it settled by the prior case. I expressed that request to them several times, but they still kept throwing the other case at me. I finally turned upon them, and I said: "Any good lawyer that examines that case that you refer to will see that it was incorrectly decided." I said the first authority quoted was not in point at all; it was not analogous at all, and for certain reasons — I went on and told them the reasons — the second authority cited was not analogous at all, for such and such reasons, and I stated the reasons, and so Judge Talcott, who wrote the opinion turned to me and said: "Wasn't that last case analogous?" Said I, "No, sir, for another reason;" and I went on and gave him the other reason, and it shut the court up (laughter), and they said I might go on and argue my case. I did argue it, and I answered every point that the General Term presented to me, every single point; but they finally went off on a point that neither party raised and they beat me at last. I knew when I attacked their decision that I was likely to be beaten, but I saw that I could not argue my case unless I did pitch into that decision; and I had examined it, and I knew it was not good law, and they knew it when I came to point it out to them and call their attention to it. It was one of Judge Talcott's decisions that he never looked at or examined. He cited two or three decisions to support it which had no analogy whatever to the case; and when I came to point it out to them they had nothing to say; they were quiet so far as this case was concerned. I knew that there was danger, and for that reason I tried all I could to avoid pitching into the previous decision. I had made up my mind beforehand that I would not meddle with the previous decision if I could help it; but when I found I could not do otherwise than to pitch into that decision, I had audacity enough to do so. I once heard a young

lawyer say that there was nothing in this world like a little audacity. I had audacity enough to pitch into their decision, notwithstanding it was made by Judge Talcott, one of the ablest, perhaps, of the Supreme Court judges upon the bench at that time. The next time I argued a case before them, they let me alone till I got through. But subsequently I had a case before them involving $60,000. Judge Talcott took it home with him. I do not suppose the other men, of course, ever looked at it, and there was $5,000 charged twice over in the accounts. I had pointed out in my brief just where those items were, and he never looked at my brief at all. They would not give me time enough to read it or to argue the case; and the result was I had to go to the Court of Appeals with that. They beat me. And the lawyer on the other side said: "The court never looked at your brief. If they had they would have struck out $5,000, because we would have struck it out if you had asked us, it was so plain. I went to the Court of Appeals and I used the same brief that I did for the General Term, and there was not a point in the brief that I used at General Term but that the Court of Appeals referred to, and there were two fatal errors in the decision of the court below — two fatal errors; and they furthermore said that all these irregularities — this $5,000 — should be struck out, and alluded to every single point I had made in the case. I speak of that as showing, perhaps, the necessity of once in a while having a change of judges. I think eight years is long enough to continue a judge on the bench. They get after a while so that they do not care a picayune whether they decide right or wrong; go off somewhere perhaps, and without looking at the case or allowing you to go through with your brief and argument. Now, in this case, there were some seven or eight hundred pages in the printed case, and I could not have reduced it without the consent of the lawyer on the other side, and he would not consent. I could not reduce it to any smaller compass. I had a lengthy brief upon the case; I was obliged to have it in order to cover a case of that magnitude — the claim was for $150,000, but they got a judgment of some fifty or sixty thousand dollars. I asked the court to give me a little additional time. They occupied half of my time in interrogating me with reference to the case and why there was so much of it, and used up half of my time and so I had but half an hour in which to present a case of 800 pages. When they said my hour was up I asked them for a little more time; I told them it was an important case involving $60,000, and I ought to have more time. Oh, they said, they could read my brief. Well, they never read it; they never read it. The attorney on the other side said they could not have

read it or they would have struck out at least $5,000 from that judgment. Now, for that reason, among other reasons, I am for limiting the term of the judges to eight years. I think that is long enough. If they are good judges and attend to their business and do their duty fairly, re-elect them. I would go for re-electing them every time if they did their duty. If they did not do their duty; if they did as this court did, I do not think I should go very strongly for re-electing them. I should not be very fierce at all events.

Mr. Pratt — Mr. Chairman, I had intended to urge this amendment upon the consideration of the Convention. After the extended remarks of the gentleman who has just taken his seat, I deem it entirely unnecessary.

Mr. Marshall — Mr. Chairman, I should consider any change in the tenure of office of the judges of the Supreme Court, such as that which has been suggested by the motions which are now before this committee, as most unfortunate. There is no good reason why there should be such a change. When we consider the tenure of office of the judges of the high courts of other countries and of other States in this country, and of the federal courts, we find that we have a rule established there in favor of even a longer term than that which was adopted in our Constitution by the Convention of 1867. The tenure of office of all the English judges is for life, or during good behavior. The tenure of office of the judges of the Supreme Court of the United States is for life, or during good behavior; so also that of all the judges of the various district and circuit courts of the United States, and I believe that the same is also true of the judges of the Supreme Court of Massachusetts. In the Convention of 1867, there was a strong movement in favor of giving a life tenure to the judges of our Supreme Court. There was, on the other hand, a party which advocated a shorter term of six or eight years; and the result was an agreement upon the term of fourteen years as a compromise among the various persons who were advocating one or the other of those two rules. Now, the experience in this State has been one of great satisfaction among lawyers and among the people generally with the terms of office that have been given to our judges. Times, I think, have changed since the day when my friend from Oswego county tried his case before the judge with the experience which he has noted. Our judges now have a different policy, pursue a different rule in the determination of cases which are submitted to them. The fact is that we very frequently elect judges to the Supreme Court who have had very little experience as trial judges, who have even

had very little experience in the trial of causes, who, after the lapse of a number of years, with the valuable experience which they have gained upon the bench, become valuable and able judges. They become, practically, experts in the law and in the determination of differences and controversies which are presented before the judicial tribunals. Now, the people, who have to some extent paid for the experience which has been obtained by these judges, are entitled to the benefit of it, and, therefore, it would be a most unfortunate thing if a man, after he had acquired the ability to dispatch causes, to promptly decide questions which are submitted to him, should have his career terminated that another might be selected to take his place, or should be required once more to go into the cauldron of politics for the purpose of procuring at the polls an endorsement or a second term. The term of eight years is a very short term. It is too short a term in my judgment. Before the expiration of the eight years, if any judge who is upon the bench has any pride or any love for the duties which are assigned to him as a judge, it is most natural that he should seek a re-election. Now, the result of that is that he is at once converted from a judge into a politician, and the evils which will result therefrom are very manifest and require no discussion at my hands.

With a term of fourteen years a judge is kept practically out of politics. He will, by that time, either have reached an age when a re-election is no longer desirable; or, at all events, if he is a good judge, he will have merited a renomination, and there will not be such a scramble for the office as there would be, and usually is, in the case of judges serving but short terms. Now, that was one of the difficulties under the old system, when judges of the Court of Appeals held their places but for six years. Such men as Judge Comstock were unable to obtain a re-election because the matter was at once submitted to the politicians, and the result was there was a scramble among those who had ambition to serve upon the Court of Appeals to take the position occupied by such judges. Under our present system we have, by the unanimous vote of the people of the State, re-elected such judges as Judge Rapallo, Judge Andrews and Judge Earl after they had served fourteen years; and the same thing has been true of judges of the Supreme Court. They, therefore, have been re-elected upon their merits, without being required to resort to appeals to politics. I very much fear that if we shorten the terms of judges we should find that our judiciary would be brought into politics; while on the other hand, if we retain the present system they will be kept out of politics, and that in itself is a blessing which cannot be prized too highly.

Mr. Moore — Mr. Chairman, I am heartily in favor of the term for ten years. I do not believe that my learned friend, Mr. Marshall, ever knew anything about judicial conventions in the Fourth Judicial District if he thinks that fourteen years is long enough for any judge. The term was made fourteen years principally upon the ground that the term was so long that no judge would attempt to get a re-election; and my experience is that after he has had it fourteen years the bite of the cherry is so wonderfully sweet to him that he wants two bites of the cherry; and I do not see that the term of fourteen years keeps the office out of politics. The biggest political scrambles I have ever been in — and I have been in some — have been over this very question of a renomination of a judge after a term of fourteen years. There are some special cases, Mr. Chairman, where a judge like Judge Andrews or Judge Earl, or some of those men would properly be re-elected after a long term; but I believe that if we are to have the judges scrambling after a fourteen-year term for a renomination and re-election, we can just as well begin to shorten up the term. I do not believe, myself, that eight years is long enough; but I do believe that ten years is long enough; and then if a judge wants the office again let him scramble for it again; and if he be re-elected he will then have sat upon the bench twenty years, which in this great State ought to be honor and emolument enough to satisfy any ordinary hungry judge. I am in favor of ten years.

Mr. Bowers — Mr. Chairman, I had supposed until I heard the remarks that have been dropped this evening by some of my associates from the northern and western part of the State, that we were attempting to revise a judiciary article from the standpoint of benefit to the public and not from the standpoint of what was good enough or long enough for a particular judicial officer. I am quite in accord with the suggestion that ten years of judicial service is enough for any man as a man, and that the salary that he receives during that period is all, and perhaps more, than he has a right to ask from the State; but if you deal with the question from the standpoint of the people's interests, all that you have to consider is, on what basis will justice be best administered? I am not acquainted with some of the methods that have been referred to this evening in relation to scrambling for renomination. I had supposed from the character of the judges from the northern part of the State, whom I have met, and those from my own part of the State before whom I practice, that when they were renominated they were renominated because of meritorious service; and if a man has served the people well for fourteen years, he is better fitted to

continue to serve them; and it is perfectly proper that he should be renominated if such be the case. Now, I regard this proposed amendment as of very grave moment to the success of this article. I had not heard until to-night that any one criticised the administration of justice since we have had the term for fourteen years. It was a good compromise between those who claimed a superiority for an elective judiciary and those who claimed a superiority for an appointive judiciary. It was a term so long as to place the judge beyond the control of politicians and it left him free simply to administer justice. It was not so long but that he was called upon to render an account of his actions to the people within a reasonable period. It has worked well in the State. It would be most unfortunate for us to change the judiciary article in any particular where there is not a crying need for a change; and I sincerely hope that this amendment to reduce the term to ten or to eight years will fail, and that the present term of fourteen years for all the justices will be maintained.

The Chairman put the question on the adoption of the amendment moved by Mr. Green, providing for a term of eight years, and it was determined in the negative.

Mr. McKinstry — Mr. Chairman, I did not propose to take any part in the discussion of the judiciary article, not being a lawyer, but I do feel that as to this matter of the term it would be, I might almost say, a mistake, not to reduce it to ten years. I well remember when the term was shorter, and I have yet to learn that we have had any better judges or any better service with the longer term and the higher salary than we had before. I have heard a great many lawyers say that the character of the judiciary has decreased; that the court does not stand as it might, as it did under the old system. I do know this, that this long term and high salary, making the office a princely fortune, has led to a great deal of scandal in the nomination for judges. A man can well afford to put in a great deal of money to get the office, or the nomination. I heard two lawyers talking confidentially to-night about a judge that paid $65,000 to get a nomination. Well now, that is no improvement. I would say, further, that the warning given by Mr. Brown this afternoon has a great deal of force in it. The people object to multiplying offices, to multiply expenses, and their prejudices in the beginning are against this article on that account, or will be. I hear some say that there is no fault found with the present condition. I have heard more fault found with this judiciary article of the present Constitution than anything else in it. The people

at large feel, if I may use the expression, that they were "buncoed" in that operation. They feel in the first place that there was hardly a voter in the State that supposed he was voting that any judge in the State could by any possibility get over four years pension out of that article, and it was felt, I think ——

Mr. Marshall — Mr. Chairman, may I ask the gentleman a question?

The Chairman — Will the gentleman give way for a question?

Mr. McKinstry — Certainly.

Mr. Marshall — Do you mean to say that the provision with reference to pensions is contained in the judiciary article as originally carried? It was only an amendment passed some twelve years afterwards, was it not?

Mr. McKinstry — Well, whenever it was passed. They supposed it was only four years pension that was allowed at the most, and now here comes a proposition to put in thirty additional Supreme Court judges, twelve more to be paid. Now, I am not going to oppose that. I concede the superior judgment of the Judiciary Committee that that is a good thing; but I will say that if you reduce this term to ten years it will be so popular that it will put the adoption of this article beyond all question. It would be the best thing you could do.

Mr. C. B. McLaughlin — Mr. Chairman, I desire to say but a word upon this proposed amendment. I agree with what the gentleman from New York, Mr. Bowers, said. I supposed we were here to amend and revise the Constitution in the interests of the people of the State. I have yet to hear of any serious complaint that has been made from any portion of the State that the term of office of the justices of the Supreme Court is too long. What is to be gained by shortening this term? What interest is to be derived by the people in shortening it? Now, it certainly does not remove the office. It seems to me it would be a great mistake, a serious mistake, to shorten this term to ten years, because during the time that this term has been what it is now, there has gone up from no portion of the State, so far as I know, any demand for shortening it. I hope that the article will be adopted as is proposed by the committee in this respect.

Mr. A. H. Green — Mr. Chairman, I have listened to the remarks of the gentlemen that have spoken here. By one gentleman we are told that the perpetuation of the judges during these long terms leads to indifference — and I do not recollect whether he used the word "stupidity" or not, but something equivalent. On the other

hand, Mr. Marshall thinks that the public derive great benefit from the experience of judges. Now, sir, my observation on this subject has been this, that the longer the term and the higher the salary the worse judges you get. It becomes a matter of political scramble, and any man that knows anything about these matters down at the other end of the State, the end that I live in, knows that that is the fact. I am totally opposed to these long terms either in the judiciary, the executive or the legislature. I think it is a most wholesome provision that men should be returned frequently to the people; and every man here knows that if a judge performs his duty faithfully he will be re-elected. I regret that the term of eight years has been rejected. I think if my friend from New York has not heard of any talk about shortening the term anywhere, his ears must have been very much stopped. I hear it everywhere, all around; and I believe it is a most unpopular measure to continue the terms of these judges for fourteen years. It is about time to put a stop to the whole paraphernalia that surrounds these men, and the state and the arrogance that they have developed in the conduct of their offices in so long terms. I hope, as the eight-year amendment has failed — I am sorry it has failed; it is full long enough; if anything it is too long — I hope that the ten-year amendment will prevail.

Mr. Griswold — Mr. Chairman, I think that there is a mistake in speaking of a compromise between a term for life in the judges and a term for fourteen years. At the time when the judges were first provided for by the Constitution, the provision was for six years, and not for fourteen, and that was the term of office for a number of years, I could not say how long; and afterwards, and when I thought at the time there was considerable influence exercised by the judges then in office, who expected to be candidates, the provision was adopted making the term fourteen years. Now, according to my observation, I think that when good men are elected as judges, experienced always, as they ought to be, those judges during the first period of their term, have been as good judges as those, as they themselves were, who had served a long period of years; and I think we have all observed on many occasions that the new judges, if competent men were elected, men that were good, practical lawyers, were the best judges that could be had. They did more work; they were vigorous. There may be a slight objection perhaps that with the shorter terms the judges may be a little influenced by politicians; but on the whole, if a judge is elected for eight years, if he is a good judge, I think it will very seldom be found that he will be interfered with by the proposition of his being

elected the second time. I have thought this thing over a good deal, even before this Convention met, and I admit that they may possibly be a little affected by looking toward re-election; but, notwithstanding that, if you have a good judge elected, the people will nearly always indorse that judge for a second term. On the other hand, the judges now being elected by political influence — and there are a good many according to my observation — are not the best and the most competent and fit judges; and when they are elected they have to remain there; you cannot get them out, and they have to stay there for life. I believe it is better to give the people a chance of trying their judges for eight years. If they are good, keep them; if not, at least get rid of them after you have been aggrieved by them for eight years.

Mr. Smith — Mr. Chairman, ten years is a long time — a decade. Time is measured by decades. A decade is a very long time. A judge should be honest, learned, courteous, patient, painstaking and industrious. He should be free from prejudice and passion and indulgent to the natural weaknesses and infirmities of human nature. He should give the same attention, and display equal patience in the hearing of cases involving comparatively small amounts, as in cases involving millions. I have had a long experience at the bar. I commenced studying law when I was a mere boy. I have occasionally been wounded by infirmity of temper on the bench, and when I am confident I was not guilty of any want of courtesy and respect. If a judge is a good judge, if he posseses the qualifications and characteristics I have enumerated, the members of the bar will be glad of his continuance, but if he is not a satisfactory judge, and does not possess the desired qualifications and characteristics, they will be only too glad of an opportunity for his retirement. I repeat that ten years is a long period. It is long enough for a trial at least. I am in favor of limiting the term of judges elected in the future to ten years and doubt not that such a change would meet popular approval.

Mr. Cookinham — Mr. Chairman, I hope the Convention before adopting the amendment will consider this one thing. Do they now desire to curtail the terms of office of every Supreme Court judge in the State? For I believe, should this amendment prevail, and this Constitution be adopted, there would be no constitutional provision making the term of office fourteen years, and, therefore, the justice of the Supreme Court who was elected to serve for fourteen years would only serve for ten years. I do not believe this Convention desires to perpetrate upon those gentlemen that

act, and shorten their terms, as I believe it certainly would shorten their terms, if this amendment should prevail.

Mr. Smith — We understand this relates only to the judges who are to be elected in the future, and does not apply to those who are now in office.

The Chairman then put the question on the adoption of the amendment offered by Mr. Pratt, and it was determined in the negative by a rising vote.

The President resumed the chair.

The Secretary read the notices of committee meetings.

The Convention adjourned until to-morrow morning at ten o'clock.

Tuesday Morning, August 21, 1894.

The Constitutional Convention of the State of New York, met in the Assembly Chamber at the Capitol at Albany, N. Y., Tuesday morning, August 21, 1894.

President Choate called the Convention to order at 10 A. M.

The Rev. R. H. Shirley offered prayer.

The President — Mr. O'Brien moves that the reading of the Journal be dispensed with.

Mr. Cookinham — Mr. President, I have received a communication from Mr. Gilbert, who was excused for yesterday, saying that it is impossible for him to reach here until this evening, and he asks to be excused from the morning and afternoon session.

The President — If there is no objection, the reading of the Journal is dispensed with.

The President put the question on granting leave of absence to Mr. Gilbert and it was determined in the affirmative.

Mr. Ackerley — Mr. President, I rise to a question of personal privilege.

The President — Mr. Ackerly wishes to state a matter of privilege.

Mr. Ackerly — Mr. President, when this Convention adopted the rule that if a person was absent without excuse he should not collect his pay for that time; from that time forward when I had any business of a personal nature I stayed out of the Convention without being excused, and I have so certified. I have understood from the President of this Convention, stating here on the floor,

that that was a proper course to pursue. Last Saturday afternoon I was absent with that understanding from the sessions of the Convention. Now I want to know whether I am right or wrong; whether I am to be blacklisted with that understanding, which I supposed was in accordance with the rules of this Convention. There was no other punishment or condition, as I understood it, of any kind, to be imposed by the Convention. If there was, I am perfectly willing to comply with it.

The President — The rules are perfectly explicit if a man stays away.

Mr. Maybee — Mr. President, I desire to be excused from attendance at the session of next Saturday afternoon and next Monday forenoon, on account of the condition of my health.

The President put the question on granting leave of absence to Mr. Maybee, as requested, and it was determined in the affirmative.

Mr. Campbell — Mr. President I desire to be excused from attendance here on Monday next as I have been subpoenaed as a witness in the probate of a will.

The President put the question on granting leave of absence to Mr. Campbell, and it was determined in the affirmative.

Mr. T. A. Sullivan — Mr. President, I desire to call attention to the fact that Mr. Putnam's absence to-day is due to his continued illness.

The President put the question on granting leave of absence to Mr. Putnam, and it was determined in the affirmative.

Mr. Sandford — Mr. President, I desire to be excused from attendance on the twenty-fourth and twenty-fifth of this month.

The President put the question on granting leave of obsence to Mr. Sandford, and it was determined in the affirmative.

Mr. Lyon — Mr. President, I have a petition asking that an amendment be provided for regarding the yearly inspection of charitable institutions.

Referred to the Committee on Charitable Institutions.

Mr. Francis — Mr. President, I have a petition from the manufacturers of plumbing materials in the city of New York in reference to prison labor.

The President — That was received yesterday and referred. This is a duplicate of it. To-day, by a special order of the Convention, final reports are to be submitted by the various committees. That business is now in order and the Secretary will call the list of the committees.

The Secretary proceeded to call the roll of committees.

Mr. J. Johnson — Mr. President, on behalf of the Committee on Cities, I ask unanimous consent to submit the article on franchise later in the day. The Clerk is detained at home by sickness, and the report has been delayed.

Mr. Vedder, from the Committee on Legislative Powers and Duties, to which was referred the resolution offered by Mr. A. H. Green, with respect to the divergence of the water of the Niagara river, submitted a report accompanied by a proposed amendment to the Constitution.

The President — The report of the Committee on Legislative Powers and Duties, in regard to the waters of the Niagara river, is a somewhat lengthy document. Will the Convention have it read or order it to be printed?

Mr. Barhite — Mr. President, the report of the committee contains a proposed amendment to the Constitution. My personal opinion is that it should go to the Committee of the Whole and that the report need not be read until that time, as it is a somewhat lengthy document. If it is read now it will take considerable of the time of the Convention.

The President — The proposed amendment accompanying the report will have to be read the first and second time and referred to the Committee of the Whole.

Mr. Barhite — Mr. President, in order to save any question, I move that the report of the Committee on Legislative Powers and Duties, in respect to the obstruction of the waters of the Niagara river, be printed and placed on the desk of the members.

The President put the question on the motion of Mr. Barhite, and it was determined in the affirmative.

The President — The Secretary will read the proposed amendment accompanying the report.

The Secretary read the proposed amendment and it was referred to the Committee of the Whole (O. I. No. 390; P. No. 442).

Mr. Vedder, from the Committee on Legislative Powers and Duties, to which was referred the proposed amendment introduced by Mr. Gilbert (introductory No. 385), entitled a proposed amendment to amend section 6 of article 10, in relation to the time when the Legislature shall assemble, reports in favor of the passage of the same, which report was agreed to and the said amendment committed to the Committee of the Whole.

Mr. Root, from the Committee on Judiciary, to which was

referred the proposed amendment introduced by Mr. I. S. Johnson (introductory No. 158), entitled a proposed amendment to amend section 1 of article 10, relating to oaths of office, reports in favor of the passage of the same, which report was agreed to and the said amendment committed to the Committee of the Whole.

Mr. Root, from the Committee on Judiciary, reported as a substitute for No. 334, introduced by Mr. Foote, and No. 223, introduced by Mr. Lauterbach, a proposed constitutional amendment to amend article 2, by adding new sections relating to the use of money for political purposes, which report was agreed to and the said amendment committed to the Committee of the Whole (O. I. No. 391; P. No. 443).

Mr. M. E. Lewis — Mr. President, the Committee on Banking and Insurance are ready to report that all matters referred to that committee have been disposed of. There is nothing now pending in that committee.

Mr. Lauterbach, from the Committee on Charities and Charitable Institutions, presented a report and a proposed amendment (O. I. No. 392; P. No. 446).

The President — The report will be read unless the chairman desires to have it printed and laid upon the desks of the members.

On motion of Mr. Lauterbach, the report was ordered printed.

The Committee on Charities and Charitable Institutions reported as follows:

It has carefully considered the subjects affected by or referred to them in the various amendments and in the numerous petitions referred to it, and in place of such amendments numbered respectively by their introductory numbers 197, 259, 268, 294 and 168, it presents herewith a proposed amendment to article five of the Constitution by adding thereto five new sections (O. I. 392 above), which amendment has for its purpose the creation of a constitutionally recognized State Board of Charities, a State Board of Lunacy, and a State Board of Prisons.

The Board of Charities shall take the place of the existing State Board of Charities; shall be endowed with its functions; but shall have additional powers, the exercise of which it is believed will serve to check whatever abuses may have existed in the administration of the public or private charitable institutions in the State and all abuses which might arise in the future.

Among the new powers delegated to it will be the important and radical right to check the increase of additional institutions, to

revoke the authority of existing agencies or those hereafter to be created, to receive money, to remove inmates from one institution to another, and, except in reformatories, to discharge inmates, and to put a check upon the power of the Legislature to appropriate the moneys of the State or to direct or authorize any civil division of the State to appropriate moneys to any charitable or correctional organization or corporation whatever without the sanction of the State Board of Charities, to be created.

The powers of the State Board of Lunacy are somewhat amplified beyond those possessed by the present board, and a separation of the functions devolving upon it from those devolving upon the State Board of Charities is provided for, and the jurisdiction of each board is clearly defined.

The State Board of Prisons has no existing counterpart, and is intended to provide supervision and inspection, not only of the State prisons, but of the county jails and penitentiaries.

Of the various amendments which have been referred by the Convention to your committee, the ones calling for the most serious consideration were those which sought to prevent the payment to any institution, society or undertaking, wholly or partly under sectarian or ecclesiastical control, of any public moneys for any educational, charitable or any other purpose.

Upon these amendments, which were referred to the Committee on Education, the Committee on Taxation, the Committee on Legislative Powers and to this committee, many public hearings were had and elaborate discussions of all the questions involved took place before committees in joint session.

The questions involved, so far as they affected the appropriation or payment of moneys for educational purposes to any institution under sectarian or ecclesiastical control, have been fully considered by the Committee on Education.

The effect of the amendment submitted to your committee upon the relation of the public to the various private charitable organizations has been more especially considered by this committee.

It is understood that the Committee on Education have formulated an amendment which is intended to prevent the appropriation or payment of any moneys by the State or any civil division thereof to any parochial, denominational or sectarian school whatever, without affecting charitable institutions where education is an incidental element in the general care of its inmates.

With this determination of the Committee on Education we are unanimously in accord. The same unanimity exists in believing that it would be unwise to prevent the State or its civil divisions

from aiding and supporting its dependent poor and unfortunate through the instrumentality of any appropriate agency or from entering into contractile relations in that behalf with private institutions under whatever control the same may be.

Your committee recognizes, however, the necessity of providing the most stringent measures by way of proper supervision and full control of all such institutions against any misuse of these relations between the public, on the one hand, and private charitable organizations on the other.

Hence the proposed amendment, which, if adopted, together with that suggested by the Committee on Education, will secure in its full sense a separation of church and State in all matters, political and educational, without, however, preventing the State from securing the services of the magnificent charitable organizations of all denominations which have done so much to lessen the burdens of the State and to secure the economy and perfection which has characterized the eleemosynary work so enormous in its extent which has devolved upon this community to perform.

No demand of the character referred to for a change in the methods which have prevailed in regard to the poor and needy seems to have come from any of the great host of men and women in this State whose devotion to charitable work and whose familiarities with all the details have been the greatest. But the criticism against prevailing methods was so widespread, the character of those who made them so high, and the interest of the people at large so great, that your committee felt called upon to give the subject more than usual investigation and examination. Not content with the public hearings which were accorded to those interested in both sides of the question, with conferences with members of the State Board of Charities, with the representatives of the State Charities Aid Association, and with all who might be presumed to be thoroughly familiar with all the questions involved, your committee entered upon a thorough investigation of the various charitable, correctional and educational institutions which receive State or local aid, of the methods which prevail in respect to the distribution of such aid, of alleged abuses in such distribution, visited many of such institutions of every grade and nature, those under control of the State, counties, cities and other public management, as well as those under private management, including sectarian institutions of almost every denomination.

As a result of these investigations, the committee is unanimously of the opinion that the public has received adequate return for all moneys paid to private charitable institutions; that the expenditures

made have been, in most instances, far less than if the institutions had been conducted by the public; that the religious training which is insured for the young by the methods now pursued is of incalculable benefit; that the care of those in private institutions is better than that received in those under control of public local officers, and is at least as good and fully on a par with the institutions, fewer in number, directly under the control of the State itself; but the public moneys expended under the prevailing methods are supplemented by the expenditure of enormous sums from private sources; that, to a large extent, the buildings and accessories of these organizations have been supplied at private cost; and that the method upon the whole is certainly the most economical that can be devised, and will be still more economical when some comparatively trifling abuses, such as the too long retention of inmates or laxity in their admissions, shall have been remedied.

If the amendments proposed by the earnest people who submitted them were carried out to their legitimate conclusion, and if the partial support from public sources to orphan asylums, foundling asylums and kindred institutions which are necessarily under denominational control, were withdrawn, it is to be feared the State itself or its civil divisions would be called upon at infinitely greater cost to endeavor to perform a service which it could never adequately render and which would tend to deprive the orphan, the foundling, the sick and the other unfortunate dependents upon charity of the advantages afforded through the aid of thousands of volunteers, many of whom now devote their lives, without compensation, to co-operation with the State in this, its noblest, work, inspired thereto by praiseworthy religious impulses, and which bring to these institutions, not the perfunctory service which would be rendered by paid public officials, many of them qualified only by political service, but a sincere devotion of officers, directors, managers and subordinates engaged in their work as a labor of love and not of emolument.

Probably the noblest sectarian charities in the world are hospitals in the city of New York. They are supported entirely by private sectarian contributions and endowments, but they extend their benefits without regard to race, creed, color or religion. In former years they occasionally required and received local assistance, which, however, at present they do not require or receive, but the occasion might arise at any moment calling for the use of these hospitals by the city for public purposes, and the establishment of contractile relations between the city and some one or more of these institutions. If the prohibitory amendment were adopted such

arrangements would become impossible, and the city would be deprived of what might be an indispensable facility in its charitable work.

The proponents of the amendments against which your committee reports, in substance, point to the Constitutions of other States as establishing precedent in their favor. But the situation of the Empire State, and especially of the Empire city, is unique. We are called upon to render charitable work not only for those born within the boundaries of the State, but for hundreds of thousands coming to us from every nation, from every clime, and from every other State. Should our facility to continue the methods heretofore employed be terminated, it would be impossible for us to cope with these burdens.

These conclusions have been arrived at by your committee, not hurriedly, but only after the most patient examination of the whole subject, both generally and in its details; an examination, which, while it served in the case of some few of the members of the committee to strengthen existing impressions, in the case of the majority of the committee causes the adoption of these opinions, despite contrary views which had been entertained before investigation.

To properly respond to the demands which charity makes, the hand of the State is not the only requisite; the heart of the individual must also be made to respond. But clear as is the opinion of the committee in this respect, it is equally clear that these private institutions which expended during the fiscal year ending the 30th of September, 1893, nearly $13,000,000, of which probably $9,000,000 were derived from public sources, should be subject to the most thorough investigation, supervision and control by properly organized public bodies, the powers of which extend even to the withdrawal of all authority to be the recipients of these funds should any abuses manifest themselves.

In addition to this large disbursement nearly $4,000,000 was expended during the same period upon State institutions and over $500,000 by county and city institutions, aggregating in all an expenditure for charity in the State of New York of at least $20,000,000. These enormous amounts are irrespective of large private benefactions, of which no public record is made. These expenditures ought to be under State surveillance and control. The field covered by the vast expenditures referred to is divisible into three parts, correction, lunacy and charity, and affected during the year 1893 a daily average of 80,543 individuals, as follows:

Insane	18,379
Idiotic and feeble minded	1,561
Epileptic	619
Blind	718
Deaf	1,414
Dependent children	26,359
Juvenile offenders	4,935
Reformatory prisoners	1,713
Disabled soldiers and sailors	959
Hospital patients	5,735
Aged and friendless persons	8,074
Ordinary poor-house inmates	10,077
Total	80,543

To which may be added the inmates of prisons, penitentiaries and jails, in which there was a daily average of some 10,000 persons.

It is important to note as indicative of what the future increase in the extent of this great burden may be that the average number of beneficiaries grew from 47,000 in 1880 to 80,000 in 1893, and the expenditure from $8,000,000 in 1880 to $20,000,000 in 1893.

Under section 10, article 8 of the Constitution, neither the credit nor the moneys of the State can be given, loaned to or in aid of any association, corporation or private undertaking, except as far as may be proper for the support and education of the blind, deaf, and dumb and juvenile delinquents.

Under section 11 of the article, counties, cities, towns and villages are forbidden to loan their money or credit to or in aid of any individual association or corporation, except for the aid or support of its poor as may be authorized by law.

Excepting a few institutions directly managed by the State, no funds are expended by it except to institutions caring for the blind, the deaf and dumb and juvenile delinquents.

The rest of the 80,000 dependents are supported by cities, towns and villages as authorized by the Legislature, out of funds raised generally by taxation and from licenses and excise fees, and either institutions managed by the local authorities, or as is universally the case with orphan children and generally the case with foundlings, by arrangement with private institutions upon a per capita basis, which has in no case been found to be excessive.

Up to 1875, orphan children were largely lodged in poor-houses throughout the State. But in response to the almost general demand of the community, laws were enacted that made it com-

pulsory upon the local authorities to contract either with families or with orphan asylums, with proper provisions for a commitment of orphans to denominational orphan asylums of the religious faith of the parents of the orphan, and similar methods have prevailed, not so universally with respect to foundlings.

The attention of the Convention, as to the deliberate character of this arrangement and the necessity therefor, the wisdom of the course which has been adopted and the injury which would result from any change of method, is called to an admirable paper prepared by William P. Letchworth, LL. D., Commissioner of the New York State Board of Charities, read at the national conference of charities and corrections, held in Chicago, June, 1893, and embodied in the report of the committee on the history of child-saving work of the United States.

The charitable institutions of the State have not been without supervision and inspection of some character. The existing State Board of Charities, in 1875, succeeded the Board of State Commissioners of Public Charity, created in 1867, and they were and still are authorized to visit and inspect any charitable, eleemosynary, correctional or reformatory institution in the State, excepting prisons, whether receiving State aid or maintained by municipalities or otherwise. This board now consists of eleven persons and is intended to be superseded by a constitutional board, to consist at the outset of the same number.

In 1889 a commission of lunacy, consisting of three persons, succeeded to the single commissioner, whose office had been created in 1873. The power of this commissioner extends to visiting and supervising all institutions for the insane. The membership of the constitutional board, which is to succeed the present commission, is intended to be increased to five, three of whom shall be the members of the existing commission.

The Superintendent of State Prisons has, by the existing Constitution, duties that are solely executive, and with them there is no design in a proposed amendment to interfere. The power intended to be conferred in respect to State prisons on the Board of Prisons to be created not being of an executive character, and is to be exercised over all institutions in which are confined adults who are charged with or convicted of crime, including county jails, the deplorable condition of which had been emphasized by the prison association, but excluding the inmates of reformatories, who are to be placed under the jurisdiction of the State Board of Charities.

Briefly then, a State Commission of Lunacy would have juris-

diction over all institutions, public and private, for the care of the insane. These include at present nine State hospitals, six county asylums, seventeen private asylums and one hospital for the insane criminals, containing in aggregate a total of 18,154 inmates.

The State Board of Charities would have supervision over seven reformatories, eight institutions for the deaf, two for the blind, one for epileptics, three for idiots, one for Indian children, one for soldiers and sailors, fifty-eight county poor-houses, 141 orphan asylums and homes for the friendless, 112 hospitals, forty-five dispensaries, a population of 62,154, together with the supervision of a number of charitable and benevolent societies not included in the above list.

This would leave for the jurisdiction of the State Board of Prisons four prisons, six penitentiaries and sixty county jails.

The proposed amendment submitted by your committee results in part from conferences with the representatives of the State Charities Aid Association and the State Association of New York, whose vast experience in all matters connected with State charities and the management of State prisons, has been placed at the service of the committee, which has had the benefit of many important suggestions from the officers of these associations.

Your committee recognizes the objection that exists to the creation of further State officers, and is in full accord with the sentiment that their number should not unnecessarily be increased; but so great is the expenditure of public and private moneys for the charitable works of the State, so enormous is the responsibility for caring for these dependent and criminal characters, so susceptible of abuse may be the administration of the affairs of these institutions, so much of hostile criticism has been indulged in, that your committee feels that it is justified in urging the Convention to adopt the proposed amendment as the only method of securing to the State the advantages which co-operation with private institutions afford, while securing it against the possibility of any injury while pursuing that policy.

EDWARD LAUTERBACH,
Chairman.

The President — The Secretary will read the proposed amendment accompanying the report of the Committee on Charities and Charitable Institutions.

The Secretary read the proposed amendment of the committee to article 5 of the Constitution.

Mr. I. S. Johnson — Mr. President, it would appear that this was

a unanimous report of the Committee on Charities. Unexplained by the report which accompanies it, it might be misleading. This report was agreed to upon the express condition and the express understanding that there was to be and was nothing in the report of the Committee on Education which should suffer any appropriation to be made to any institutions controlled by sectarians. It appears that the Committee on Education have attached to their report a section, or a portion of a section, which would permit, in the judgment of some members of this committee, such appropriations. It was not in accordance with the understanding. It was not in accordance with the promise that was made in this room that there was nothing of the kind, and it is for the simple purpose of allowing the minority, if such it be, to have it understood that they do not agree to this report, if it is to be established as a means by which appropriations can be made to sectarian institutions.

Mr. Lauterbach — Mr. President, in order to throw light on the matter, it is the understanding of the Committee on Charities that the proposed amendment submitted by the Committee on Education, if adopted, will operate to prevent the payment of any money by the State, or any civil division of the State, either directly or indirectly, to any parochial, denominational or sectarian schools whatever. It is understood at the same time that it is the design of the Committee on Education not to prevent the payment of moneys to charitable institutions which support, maintain and care for orphans, if education in those institutions is simply an incident of its general management. Whether the phraseology adopted by the Committee on Education, which, while prohibiting the payment of moneys for educational purposes, permits the payment to institutions that shall be under the care of the State Board of Charities, goes further than to permit the payment of such moneys as may be necessary for the incidental education of orphans in orphan asylums, it is not within the understanding of all the members of the committee and of every one connected with it, and I so understand it, and, if there is any reason why that phraseology should be made clearer in the amendment proposed, not by the Committee on Charities, but by the Committee on Education, I think we will all act in unison to accomplish that end. It is distinctly understood that in agreeing to this report, with substantial unanimity, I may say, with absolute unanimity, that it was the feeling of some members of the Charities Committee that under no circumstances should any of the funds of the State be used for school purposes or for educational purposes in any sense, except as an incident of general training in orphans. I think that explains it, Mr. Johnson.

Mr. A. B. Steele — Mr. President, that there may be no misunderstanding, as I understand the purport of Mr. Johnson's remarks, or the position of the minority, that the unanimity of the report was brought about upon the understanding that the Educational Committee was to report that no part of the common school funds should be used for sectarian or private institutions, I, for one, while concurring in the report upon that understanding, do not want it understood that this report gives control to the State Board of Charities of all these institutions, and then that they shall participate in the common school funds.

The President — The Secretary will proceed with the call of the committees.

Mr. McKinstry — Mr. President, in the absence of the chairman I would submit a report from the Committee on Printing.

The President — The Secretary will read the report from the Committee on Printing.

The Secretary read the report, as follows:

Mr. President and Gentlemen of the Convention.—Your Committee on Printing, to which was referred a resolution for printing extra copies of the suffrage debates, respectfully reports:

We find quite a number of delegates and that number not confined to those who made speeches upon the subject, who would like the debates upon the question of woman suffrage compiled and in convenient form for mailing to constituents who are especially interested. Fortunately, those debates were all comprised in four evenings' proceedings when no other business was transacted. We deem it best to order only a limited number at this time. If more should be desired more can be ordered hereafter at the same rate of cost. Each of the four evenings' debates made a form of only ten or twelve leaves, and since the type has already been set for the regular record, the cost of this order will be insignificant. We recommend the adoption of the following:

R. 180.— " Resolved, That one thousand copies of the debates of Wednesday evening, August 8th; Thursday evening, August 9th; Tuesday evening, August 14th and Wednesday evening, August 15th, be printed, and each four numbers, comprising four evenings' debates, be stitched together with paper cover and these bound copies be proportioned among the delegates desiring them by as nearly equal division as is practicable.

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

Mr. Goodelle, from the Committee on Suffrage, to which was referred the proposed amendment introduced by Mr. Roche (introductory No. 186), entitled "Proposed constitutional amendment, to amend section 4 of article 2, to designate the courts in which persons may be naturalized, and providing for the holding of such courts at stated times," begged to be discharged from the further consideration of said amendment and recommended that it be referred to the Committee on Judiciary.

The President put the question on agreeing with the report of the Suffrage Committee, and it was determined in the affirmative.

The President — The special committees are expected to report to-day.

Mr. Hottenroth — Mr. President, in connection with the report of the Committee on Canals, in reference to several amendments of that committee, I desire to submit a minority report. Two of those members are not present to-day, and, as I understand it, a minority report may be submitted at any time.

The President — A minority report may be submitted at any time before the matter affected is disposed of.

Mr. Smith — Mr. President, I am informed that this is the last day for committees to report without leave of the Convention.

The President — Such is the order of the Convention.

Mr. Smith — I would like to ask for an extension of one week's time for the Committee on Preamble and Bill of Rights to report upon two proposed amendments (No. 234 and No. 376, introductory). I have spoken to the chairman of the committee and this is agreeable to his wishes.

The President — You are not a member of that committee?

Mr. Smith — I am not a member of that committee. I proposed these amendments. They have not been reported or acted upon.

The President — You make the motion?

Mr. Smith — I make the motion.

The President — How long a time?

Mr. Smith — One week.

The President — Mr. Smith moves that the time of the Committee on Preamble and Bill of Rights, to report on proposed amendments Nos. 234 and 376, be extended one week.

Mr. Root — Mr. President, would it not be appropriate for the Committee on Preamble and Bill of Rights to be consulted as to whether they wish more time?

The President — They are present.

Mr. Hottenroth — Mr. President, I ask to amend the motion by also including amendment No. 352.

Mr. Francis — Mr. President, I have assented to the suggestion of Mr. Smith that there may be consideration of his proposed amendments, and suggested to him that a motion would be necessary in order that we might entertain and report upon them.

The President — This is a matter which may be established as a precedent. Gentlemen will please give their attention to it. Mr. Smith and Mr. Hottenroth also desire that the time of the Committee on Preamble and Bill of Rights, to report on three amendments proposed by them, and referred to that committee and not yet acted upon by it, be extended one week.

The President put the question, and it was determined in the affirmative.

Mr. Holcomb — Mr. President, I would like to ask that Mr. Tekulsky have leave of absence until he shall be able to return. He handed me a telegram last night informing him that his wife was ill and he was obliged to go to New York. I have the telegram in my hand.

The President put the question on granting leave of absence to Mr. Tekulsky, and it was determined in the affirmative.

Mr. McClure — Mr. President, by reason of the lateness of the day when the suggestion for the appointment of the Committee on Forestry was made in this Convention, and the committee actually appointed, we have been able to hold but one meeting and one public hearing. So many people interested in the matter desire to appear before the committee, and there was so much difficulty in getting them together at an early day by reason of summer vacations, that the committee thought it wise to have another meeting on Wednesday. I, therefore, desire to ask that the committee be allowed until Thursday on which to report.

The President put the question on granting further time to the committee, and it was determined in the affirmative.

The President — The Convention will now proceed in Committee of the Whole on the judiciary article.

Mr. Root — Mr. President, before doing that I ask leave to bring up the report of the Committee on Rules, which was made on Saturday and laid over.

Mr. Osborn — Mr. President, I heard the name of the Select Committee on Civil Service just now. That committee has agreed

upon its amendment, and it should be presented to the Convention, but in the absence of Mr. Gilbert, the chairman, I ask that the time of the committee be extended until the return of Mr. Gilbert.

The President put the question on granting further time to the Select Committee on Civil Service, and it was determined in the affirmative.

Mr. Davies — Mr. President, I was absent from the chamber when the Committee on Railroads was called, and I have a final report from that committee. I have one other report on an amendment, which I have been requested by the introducer to hold. I now present the final report of the Railroad Committee.

The President — The Secretary will read the report.

The Secretary read the report as follows:

To the Honorable the Constitutional Convention:

The Committee on Railroads, Transportation and Electrical Transmission begs leave to report that they have considered all propositions by way of proposed amendments and resolutions referred to them, and have passed on the same, and there is no further business before the committee.

All of which is respectfully submitted.

The President — Mr. Root, from the Committee on Rules, has something to report.

Mr. Root — I move the adoption of the resolution reported by the Committee on Rules to amend rule 7.

The President — The Secretary will read the amendment proposed by the Committee on Rules to rule 7.

The Secretary read the amendment as follows:

"To amend rule 7, by inserting after the word 'request,' the following: "Or any member may explain his vote for not exceeding three minutes."

The President — The object of this amendment is simply to relieve gentlemen from the now obsolete necessity of asking to be excused from voting, when, in fact, they do not wish to be excused, but merely wish to explain their vote.

Mr. Veeder — This amendment comes after the word "request," in which line?

The Secretary — The amendment does not state.

Mr. Veeder — The word "request" occurs twice in rule 7.

Mr. Root — It is after the "request" in the fifth line.

The President — Will Mr. Root please explain where this amendment comes in — whether after the word "request," in the third line, or after the word "request," in the fifth line?

Mr. Root — I have here Document No. 15, and this amendment comes after the word "request," in the fifth line, so that the rule, as amended, will read:

"Any member requesting to be excused from voting may make, when his name is called, a brief statement of the reasons for making such request, not exceeding three minutes in time, and the Convention, without debate, shall decide if it will grant such request; or, any member may explain his vote for not exceeding three minutes."

The President — Then the amendment comes in after the word "request," in the fifth line? The question is on the adoption of the amendment.

The President put the question on the adoption of the resolution, as moved by Mr. Root, and it was determined in the affirmative.

Mr. Root — I move the adoption of the resolution reported by the Committee on Rules to amend rule 29, by striking out the last sentence.

The President — The Secretary will read the proposed amendment to rule 29.

The Secretary read as follows:

"Strike out the last sentence of rule 29."

Mr. W. H. Steele — I take it, Mr. President, that it is the object of the chairman of the Committee on Rules, by this amendment, to make that rule so that every member of the Convention will clearly understand its purport. There has been a serious misunderstanding, not only by the Convention, but also by the President of the Convention, in reference to the rights of members, under the operation of that rule. It is the blindest of all the rules. It leaves the question where it is natural and often necessary for any one to ask: "What next?" It is impossible for any member of the Convention to understand his rights or privileges, without referring to authority and precedents, unless he has had a fair parliamentary practice or experience. I, therefore, offer this amendment, which will require adding but two more lines to the rule, and will show each member of the Convention plainly and concisely just what his rights are, when he is to be governed by that rule of the Convention.

The President — The Secretary will read Mr. Steele's proposed amendment to rule 29.

The Secretary read as follows:

"Strike out the last paragraph, and in place thereof add as follows: 'This question may be superseded by the motions to lay on the table, to commit or recommit, to postpone or to amend. If leave to sit again be refused, the question is lost.'"

Mr. Veeder — Do I understand the report of the Committee on Rules to be to strike out entirely or abrogate the last sentence of rule 29?

The President — That is the report of the Committee on Rules.

Mr. Veeder — I understood that the amendment proposed was that if leave be refused, the effect is to reject the proposed constitutional amendment?

The President — The actual amendment offered by the Committee on Rules is to strike out the last clause entirely.

Mr. Veeder — The result of that is that we are left entirely without any determination of the condition of affairs in the event it is refused. By the proposed amendment of the Committee on Rules it will be left then to the decision of the Chair what is the parliamentary practice in such case. I submit that the amendment proposed by Mr. Steele, as I heard it, and as I recollect it, is in conformity with parliamentary law. But that there may be no mistake as to what is parliamentary law or practice, I submit that it is better to incorporate it in that rule and have an interpretation there of that parliamentary law, as to what motions will properly follow in the event that the Convention refuses leave to the Committee of the Whole to sit again. We were in this difficulty the other day. Then the President held that a motion to reconsider was the only motion in order.

The President — He probably made a mistake.

Mr. Veeder — I thought so at the time, although the President was a little ungracious in replying to me. However, to avoid mistakes in interpreting the rule in the future, let us declare in the rule itself what procedure can follow after the Convention has refused leave to sit again. Therefore, I am decidedly in favor of the proposition of Mr. Steele.

Mr. Vedder — I understand, by striking out the last sentence of rule 29, that it will leave the question as it always has been in parliamentary law. If a motion for leave to sit again, or if a report asking leave to sit again is defeated, the effect of that is to affect the question under consideration. That always has been the rule, and by striking out this sentence it will remain the rule; and there

can be no doubt in the minds of anybody then, with regard to its effect. Now, the amendment which the gentleman from Oswego (Mr. Steele) desires to have incorporated leaves it, as I understand, parliamentary law, as it now is. He simply wishes to put in black and white plainly before the Convention just what they may do, if those words are not in the rule. It is a thing very frequently done in legislative bodies, in order, when in Committee of the Whole, to shut off debate, to move progress of the bill for the purpose that when it gets before the body itself a motion may be made to disagree with the report of the committee, if it be for leave to sit again, order it to a third reading, send it back to the committee, or to do anything with it that you might do at any time when the bill or proposition is before the Convention itself. Those words in the last sentence of rule 29 have been confusing all the way through. It is the only rule, I believe, which the Convention could not fully understand, because it attempted to qualify parliamentary law, which is simply the perfection of reason in governing parliamentary bodies. Now, whether Mr. Steele has got in his amendment all that might be done, if it were not in at all, I do not know, because so many different things can be done by the Convention upon the report of its Committee of the Whole, as well as of any other committee. It might be well, if it has ever been in, to have it put there as a rule, so that you could read and understand it, and know precisely at the moment what would be the effect if his amendment does not include all that may be done under parliamentary law now. I do not know whether it does or not.

The President — The Chair will state that if it were put in the form that Mr. Steele proposes, by specifying certain things which can be done, it would preclude the exclusion of others.

Mr. Vedder — Yes; it would preclude the exclusion of others.

Mr. W. H. Steele — I have inserted in that amendment every motion given in any parliamentary work, of which I have any knowledge, and liable to be used in this Convention, which is permitted to supersede the question of granting or refusing leave to sit again. The object of these motions is for this purpose; if, in Committee of the Whole, as is often the case, a multitude of antagonistic amendments are offered, and the party who has the bill or proposition in charge desires to stop the wrangling, and to get it back to the standing or special committee for amendment, he has no power in Committee of the Whole to do so, but by asking leave to sit again, by which, if granted, it is brought back into the Convention; and then, before the Speaker of the House, or the President of this

Convention puts the question of granting leave to sit again, he has the right to ask the Convention to lay it upon the table. That is the first proposition. That is undebatable. That gives him the chance to consult with members of the Convention, and to do whatever he sees fit to perfect his proposition. He also has the right to ask to have it committed to a special committee. He also may ask to have it recommitted to the committee from which it came. He has the right also to ask to have it postponed, or he may ask to have it amended. Those are the five privileged motions which are allowable before the question of leave to sit again is put to the Convention. Now, following out the regular legislative law, if leave to sit again be refused, the proposition is lost. I should have added one more motion to that list, in order to make it plain, positive and absolute — and that is the right to have the final vote reconsidered, as on any other vote. If leave to sit again is refused, the question has no place upon general orders, and, in effect, has no place in the Convention. It has been decided and acted upon by the Legislatures of this State for many years, that a proposition so lost can only be taken up and revived again by reconsidering the vote refusing leave. That is a motion allowable on nearly all propositions, and, therefore, I thought it was not necessary to add to it this rule. I think the amendment I have offered is a very material part of the rule, because every member of the Convention will know precisely under that rule just what he can do with a proposition, and just what he is prohibited from doing.

Mr. Root — I did not hear the gentleman in his enumeration mention the motion to discharge the Committee of the Whole and order the bill to a third reading.

Mr. W. H. Steele — That is something that should be very rarely done, if ever, in a Convention of this kind. It is considered " sharp practice in the Legislature ——

Mr. Root — But it is the very way by which the Convention, if it wishes to adopt the amendment, may adopt it — by just taking it out of the incubus of a great number of amendments which the Convention does not wish to spend time in considering separately. That illustrates the difficulties of attempting to condense into a rule, which we are to adopt here, the whole of any branch of parliamentary law. For that reason the committee thought it was better to simply strike out this clause which interferes with the application of ordinary parliamentary law and leave the result of the report of the committee to the operation of that law. The rule which is laid down in Croswell's Manual is that " if the committee

report progress and ask leave to sit again, the question of granting leave may be superseded by a motion to discharge the Committee of the Whole and to order the bill to a third reading, or to discharge and commit, or to lay on the table, or to postpone, or to grant leave to sit again, and make the bill a special order. If leave to sit again be refused, the bill, having no place in any order of business, or on the table, is beyond reach and virtually lost, unless revived under a motion to reconsider." I understand that if this clause is stricken out from rule 29, and we are left to the ordinary working of parliamentary law, the President of the Convention will rule that this declaration of law in Croswell's Manual is the law of this Convention; and, unless the Convention overrules that ruling, that will be the law for the Convention, and we will not have tied our hands by endeavoring to state the law, so that we will exclude the application of general rules, if any new or unforeseen situation arises.

Mr. Veeder — What authority has the gentleman from New York (Mr. Root) to tell us how the President of the Convention is going to rule?

Mr. Root — The gentleman from New York has authority to state to this Convention that that is what he understands, and that is all that he is undertaking to state.

The President — The Chair will state that it will endeavor to administer the rules as he understands them, and to the best of his capacity.

Mr. Veeder — I am quite sure of that, and I am quite sure that the Chair has not, in advance, advised Mr. Root how he will rule on any particular proposition; and I fail to understand how the gentleman from New York can have any such understanding, as he states, without some information on the subject.

Mr. Root — Mr. President ——

Mr. Veeder — The gentleman from New York declined to allow me to interrupt him, and I desire to extend to him the same courtesy which he extended to me. Mr. President, I am perfectly well satisfied with either position the Convention may take on this question, leaving it to the Chair to interpret the parliamentary law or establish it by positive rule. That will do very well in this instance, but, if there is anything more uncertain in this life than the rulings of the presiding officer of a parliamentary body, I do not know it. If the President will guarantee that he will occupy the chair during every session of the Convention until it finally adjourns, I am perfectly willing that such a disposition shall be made of the matter. But, if it is to be left to other officers, or to parties occupying the

chair at different times, we may get into confusion. We may not all agree. For that reason I think that the adoption of the suggested amendment is decidedly better.

The President — Does the gentleman desire that guarantee in writing?

Mr. Veeder — No, sir; there would be no consideration for it.

Mr. Dickey — I think we have taken time enough for the discussion of the rule, and I move the previous question.

The President put the question: Shall the main question be now put, and it was determined in the affirmative.

The President then put the question on the adoption of the amendment offered by Mr. Steele, and it was determined in the negative.

The President put the question on the adoption of the amendment to rule 29, submitted by the committee, and it was determined in the affirmative.

Mr. Cornwell — I have received a telegram from home requiring my immediate attention, and I ask leave of absence to-morrow.

The President put the question on the request of Mr. Cornwell to be excused from attendance to-morrow, and he was so excused.

Mr. Putnam — I understand that the Convention excused me from attending to-day on account of illness. In explanation of that, and at the same time thanking the Convention for their courteous action, I wish to state that yesterday I sent a telegram to Mr. Sullivan, my colleague, stating to him that I was ill and unable to attend yesterday. But, as I am able to attend to-day, I ask that the Convention accept my presence.

The President — Those in favor of revoking the leave of absence given to Mr. Putnam for to-day and permitting him to sit, will say aye; opposed, no. It is carried.

Mr. Johnson presented the report of the Committee on Cities on Franchises.

The President — The Committee of the Whole will now proceed with the judiciary article, and Mr. Acker will take the chair.

The House resolved itself into Committee of the Whole, with Mr. Acker in the chair.

The Chairman — Are there any further amendments to section 4? The Chair hears no further propositions, and the Secretary will read section 5.

The Secretary then read section 5 as follows:

"Sec. 5. The Superior Court of the city of New York, the Court of Common Pleas for the city and county of New York, the Superior Court of Buffalo and the City Court of Brooklyn are abolished from and after the 1st day of January, 1896, and thereupon the seals, records, papers and documents of or belonging to such courts shall be deposited in the offices of the clerks of the several counties in which said courts now exist, and all actions and proceedings then pending in such courts shall be transferred to the Supreme Court for hearing and determination. The judges of said courts in office on the 1st day of January, 1896, shall, for the remander of the terms for which they were elected or appointed, be justices of the Supreme Court; but they shall sit only in the counties in which they were elected or appointed. Their salaries shall be paid by the said counties, respectively, and shall be the same as the salaries of the other justices of the Supreme Court residing in the same counties. Their successors shall be elected as justices of the Supreme Court by the electors of the judicial districts in which they respectively reside.

"The jurisdiction now exercised by the several courts hereby abolished shall be vested in the Supreme Court. Appeals from inferior and local courts now heard in the Court of Common Pleas for the city and county of New York and the Superior Court of Buffalo, shall be heard in the Supreme Court in such manner and by such justice or justices as the Appellate Division in the respective departments, which include New York and Buffalo, shall direct, unless otherwise provided by the Legislature."

The Chairman — Are there any amendments to section 5?

Mr. Platzek — I offer an amendment.

The Secretary read the following amendment:

"To amend section 5 by inserting after the word 'court,' in line 22, page 5, the words 'except the City Court of New York.'"

Mr. Woodward — I wish, in line 21, page 5, to insert an amendment preventing the justices from hearing a case after they have once passed upon it, and it has been sent back for a new trial.

The Chairman — Will the gentleman please give way until the question now before the committee is disposed of?

Mr. Woodward — I will.

Mr. Platzek — The object of the amendment is to except appeals which were made from the City Courts from being treated in the same manner as appeals from a District Court in the city of New

York and other smaller and inferior courts. The City Court of New York, if the statutes were examined, is probably one of the oldest courts in the State, the statutory enactments beginning in 1797 and coming down to 1870, so that we are not speaking about anything that is new, but about something that is ancient. The City Court has a jurisdiction of $2,000, and in actions for tort its jurisdiction is unlimited. The labor performed in the City Court of New York is, probably, not entirely understood by the lawyers who are not residents of that city, and that court ought not to be classed with the smaller and inferior courts upon questions upon appeal. Under section 5, if it is left as it is, the appeals from the City Court of New York may be heard by one justice assigned by the Appellate Division of the Supreme Court. The City Court has a General Term of its own, composed of three of its judges, where their errors are largely corrected, and their decisions are usually sound.

Mr. Deady — I would like to ask Mr. Platzek a question, whether he understands the full import of this amendment which he now seeks to amend? It does not provide for an appeal to the Supreme Court from a judgment in the City Court, but from a judgment of the General Term of the City Court.

Mr. Platzek — That is my complaint, and I am trying to explain it. The City Court, as I have stated, has its own General Term of three judges, and heretofore an appeal was taken, and now an appeal is taken from the General Term of the City Court to the General Term of the Court of Common Pleas, where three judges sit in review; and, so far as the appeal is concerned, the Common Pleas virtually is the Court of Appeal for the City Court General Term, and you cannot appeal, except by the assent of the General Term of the Common Pleas. Now, the Common Pleas goes out of existence. That court is merged into the Supreme Court, and under the provisions of the previous section, section 2, already passed upon here, the Appellate Court of the Common Pleas goes to the Supreme Court. The provision as to these inferior courts, in which the City Court of New York is included, unless excepted by my amendment, is that the Appellate Division can assign one judge of the Supreme Court to sit in review of the appellate devisions of the City Court of New York. That, I consider, an insufficient safeguard for a court of such important jurisdiction.

Mr. C. B. McLaughlin — Will the gentleman give way to permit me to ask him a question? In every county of this State, outside of New York, Kings and one or two others containing larger cities, how are appeals taken, to what court from the inferior courts?

Mr. Platzek — They are taken to the Supreme Court.

Mr. C. B. McLaughlin — They are taken to the county judge, one person sitting in review. Now, why should there be an exception made in the county of New York?

Mr. Platzek — For the reason that the business is larger and the amounts involved are larger and the causes are of more importance. Recently a verdict was rendered in that court for $25,000, which was sustained by its General Term and afterwards reversed on appeal.

Mr. C. B. McLaughlin — Will the gentleman permit me another question? Does he mean to say that the causes litigated in the City Court of New York are more than all the other inferior courts of this State?

Mr. Platzek — Not if you take them all in an aggregate, but in answer to that I will merely make this statement, that the number of notes of issue filed in the City Court of New York in 1893 was 2,862; the number of judgments that were entered in the clerk's office in the city and county of New York for 1893 was 10,722. It is the people's court, it is the tribunal to which the people resort, because a summons is returnable in six days and a trial is reached sooner than in the Supreme Court, and, if people resort to that court, and they have a right to an appeal within that court to a General Term and they desire to go further on appeal, I say that the litigant ought to have the opportunity to appeal to the Appellate Division of the Supreme Court directly, and not be limited to having his appeal heard by one justice. If, on the other hand, provision is made here that such appeal shall be heard before more than one justice assigned by the Appellate Division of the Supreme Court, I should not raise the objection that I do now. I know that the answer will be made, among other things, that we are consolidating courts, and that we do not want to create another constitutional court, because the words "City Court" is named in this amendment. If there can be any way to avoid that, I have no desire of imposing any such suggestion upon this Convention, although they have as much right to be named in this court as a justice of the peace. All that I say is this, that, if a litigant goes to court, and, if he has a right to an appeal, he should have every facility to be heard; and because the City Court has not general jurisdiction, that is no reason why litigants in that court should not have a right to get a final hearing upon appeal before a full bench. I say, too, that the criticism that by doing this we create a constitutional court, will be of very little avail, because there is another section of this very pro-

vision which prohibits the increasing of the powers or jurisdiction of inferior courts, so that, after all, the adoption of this amendment will only mean the naming of the court in this particular subdivision to distinguish it from the smaller inferior local courts, and would give the litigants in that court the right to be heard in the Appellate Division in the Supreme Court in an appeal from the General Term of the City Court, and not be compelled to have that appeal heard by one justice, as is permitted by this section.

Mr. J. Johnson — Mr. Chairman, I should be very unwilling to see any further or any recognition of the City Court of New York in the Constitution. A court that has but six days for the return of a summons, and yet has jurisdiction to an unlimited amount in damage cases, is a court that is not created or arranged on any proper lines of policy. There is this further proof about that court, it is treated as a local court in the strictest sense. Formerly it was the case, and I understand it is now, that any person doing business in the city of New York, or having his goods and chattels there, if he resides outside the city, is treated as a non-resident, and his property is liable to attachment. That, certainly, was so until recently, and I have understood that it is so now. But, at any rate, a court that assumes general jurisdiction to give judgment for any amount on a six-days' summons, and I believe now it can be three days in certain cases, it seems to me should not be dignified or helped at all by any recognition in the Constitution of the State.

Mr. Root — Mr. Chairman, there is a widespread opinion that the City Court of New York ought to be abolished. Its jurisdiction is an illustration of the vicious legislation which continually enlarges the jurisdiction of local and inferior courts. I should be very sorry to see the Legislature prevented from dealing with that court in the exercise of its wisdom hereafter, either to abolish it or to reduce its jurisdiction by putting it into the Constitution. I do not believe that the court should be treated differently, in any particular, from any other inferior and local court, and I think the Appellate Division of the Supreme Court can dispose of appeals from its judgments to the satisfaction of the people of the city of New York, and I hope this amendment will not prevail.

The Chairman put the question on the amendment proposed by Mr. Platzek, and it was determined in the negative.

Mr. Woodward — Mr. Chairman, I have an amendment to offer to this section.

The Secretary read the amendment proposed by Mr. Woodward, as follows:

"I move that in section 5, commencing at line 21, page 5, after 'court,' insert as follows: 'No justice of the Supreme Court who has once tried a case upon the law in fact without a jury, and his decision has been reversed and the case sent back for a new trial, the case shall go before another justice of such court for a new trial."

Mr. Woodward — The object of that amendment is that a justice, who has once tried a case and has formed an opinion in reference to it, shall not sit in judgment upon the same case again. When we reverse the finding of a jury we never send the case back to the same jury, and why should we not, if men are just as well prepared to try a case the second time after they have decided it once as they are the first time? We do not send it back to the jury because the jury have formed their opinion, and it is difficult, with evidence, to get over their opinions. So with referees. A referee who has once tried a case is not in a proper situation to try it again, and the courts do not send it back to that referee. They send it to some other referee. Is not the referee's mind as clear as many of our judges? We have able referees appointed by every court. Sometimes they have been judges upon the bench, and come back and sit as referees in cases. I have had trials a number of times before referees who have been upon the bench, in some cases, twenty years, and yet, if they made a decision and it was sent back for a new trial, it would go to another referee. Why? Because he has formed an opinion, and nine times out of ten the judge has formed such an opinion as disqualifies him from hearing the case again on a fair trial. Nine times out of ten our judges, if you appeal a case that they have decided and spent some time in trying, are mad because you do appeal, and they will beat you, if they can. I have seen that many times, and I say that you should not send the case back to the same judge to try again after you have appealed from his decision, for the reason that you have created a little feeling, perhaps, but whether you have or not, if he designs to act conscientiously, if he has formed an opinion in reference to the case, it is a little difficult for him to go back and try it over again, qualified, as he should be, without any predisposition on the side, calculating, when he tries it the second time, to decide the case upon the evidence, without prejudice, fear or favor. Our judges are just as apt to get one-sided in such cases where they have tried a case once as referees or juries. They are men, they are nothing but men. They are not gods that we put up, that can discard all previous feeling, and for that reason the case that has once been tried by a judge upon the facts and law, without a jury, should not go back to the

same judge to be tried over again. What is the reason that we do not allow a judge who has once had a case and tried it to sit in judgment in the Appellate Court upon the same case? Why, it is because he has formed an opinion and because he would not, perhaps, look at the case in the same manner in which a dispassionate judge ought to look at a case, and would look at it if he had not been employed in that case. It is for this reason, among others, and I might urge a good many others, that we should have such an amendment. I know

They struggle against fearful odds,
Who strive against the people's gods.

It is true that this report, having been made by a large number of men on the committee, has become such that it is almost impossible to make any improvement on it. Of course, it is so nearly perfect that we can almost, perhaps, pronounce it perfect. But I say there may be some things about it that will improve it, notwithstanding all the wisdom of the seventeen men who have made this report, and for that reason I think this, among other things, should be introduced into that amendment. There are other things that I would favor. As a general rule, I am in favor of that report. It contains a large number of very excellent provisions. I like the report for the most part. But this is a point that should have been regarded by them, and should have been embodied in their report.

The Chairman put the question on Mr. Woodward's amendment, and it was determined in the negative.

Mr. Mereness — For the purpose of making an inquiry, I move to strike out the first line of section 5. I see in line 14 it says: "Their salaries shall be paid by the said counties, respectively, and shall be the same as the salaries of the other justices of the Supreme Court residing in the same counties." I would like to inquire of the Judiciary Committee whether the effect of this article will be to transfer from the counties of Erie, Kings and New York, after the expiration of the terms of the present eighteen judges, who are transferred to the Supreme Court, all of the expense of those additional eighteen judges to the whole State, including the three counties?

Mr. Marshall — It would. The salaries which are paid by the State to other judges would be paid out of the State treasury to the successors of the judges now in office.

Mr. Forbes — I would like to ask where this provision, in regard to the salaries of the present justices, is? I do not find it. As I

read the amendment, the salaries will be continued, not as they are at present, but as salaries of the Supreme Court justices.

Mr. Marshall — That is correct. The salaries were to be paid by the counties, respectively, and the amount is to be the same as that paid to the Supreme Court justices residing in the same counties. There is no provision in the Constitution as to what those salaries are. That is provided for in the judiciary act of 1870, as amended.

Mr. Mereness — Mr. Chairman, I will withdraw the motion which I made for the purpose of making an inquiry, and submit an amendment.

The Secretary read the amendment offered by Mr. Mereness, as follows:

Insert in line 14, page 5, after the word "salaries" the following: "And the salaries and allowances of their successors."

The Chairman put the question on Mr. Mereness's amendment, and it was determined in the negative.

Mr. Forbes — Mr. Chairman, I offer an amendment to this section.

Mr. Forbes's amendment was read by the Secretary as follows:

Mr. Forbes moves to strike out, at page 5, lines 15, 16 and 17, as follows: "And shall be the same as the salaries of the other justices of the Supreme Court residing in the same counties."

Mr. Forbes — The object that I have in introducing this amendment is to anticipate another amendment which I propose to offer, in regard to this same section. I desire to have it understood whether the judges who are now in office and who, in the city of New York, are serving the Supreme Court at the same salaries that they receive as judges of the Common Pleas and Superior Court, and who are willing to do that, are to have their salaries increased by this section of the Constitution; whether gentlemen who have not been elected as judges of the Supreme Court by the people are to be transferred to the Supreme Court with increased salaries?

Mr. A. H. Green — Mr. Chairman, I would ask Mr. Marshall if he would be kind enough to inform me and the Convention what the salaries now are of the judges of the Supreme Court in the city of New York, and what the salaries now are of those gentlemen who are supposed to be injected into the Supreme Court? I think that is rather an important matter for us to understand.

Mr. Marshall — The salary of the Supreme Court judges, paid out of the State treasury, is $7,200. There is an additional allow-

ance made by the county of New York, to the amount of $10,000, making the salary of the Supreme Court judge, as I understand it, $17,200. The salary of the judge of the Court of Common Pleas and of the Superior Court is $15,000 per annum.

Mr. A. H. Green — I understand, then, that the salaries of the Supreme Court judges, as proposed, is $17,200, and the term is fourteen years, and that the salaries of the judges of the Court of Common Pleas and Superior Court are $15,000. Then, as the gentleman has remarked, persons elected to serve that term under the article of the Constitution cannot have their salaries increased or decreased during their term of office, but the salary is to be increased by the operation of this article. I have been, I will not say, deluged, but I have had several treatises on the great importance of not combining these courts together. I have had the pleasure of looking them over and they have impressed themselves very deeply upon my mind. I have come to the conclusion that they should not be united, but here is another proposition that seems to have pacified the judges that are to take their places as judges of the Supreme Court, and that opposition seems to be exceedingly faint as to their now changing their office. I desired that the Convention should be informed upon this particular matter. It is about as I supposed it was. I do not see how the measure can very well be carried to give them a salary beyond that which they received when they were elected.

Mr. Bowers — Mr. Chairman, this question was very carefully considered by the Judiciary Committee, and it seemed impossible to arrive at any other conclusion and do justice. The question of consolidation of the courts was one which seemed to meet a large public sentiment. These gentlemen who are now justices of the Superior Court and Court of Common Pleas in the county of New York, for example, are not particularly pleased with having their courts abolished, and they are compelled to yield to the public good in acceding, if they do accede, to the proposition. In order to do it at all they had to be made justices of the Supreme Court, and it would have been very absurd to make them justices of the Supreme Court and not give them the same compensation that their associates received. It was an act this Convention could not afford to ratify, had the committee thought for a moment of doing otherwise. It will be recollected that the city of New York has continued to pay the salaries of these gentlemen until the expiration of the term for which they were elected as local judges, and then, and not till then, is the State to bear any portion of the cost, and to then only bear the same proportion of their salaries that it pays to-day to all the

rest of the judges in the State. It was felt, in determining this question, that these judges of the City Court gave up and are compelled to give up a great deal, and no man seemed to consider seriously the proposition that we could afford to make them less than Supreme Court judges, when we placed them there, excepting that they are not allowed to be selected to sit in the Appellate Division of the court for reasons which seemed controlling, and those are, that the Appellate Division hears cases from other counties than the counties in which these gentlemen were elected. It was the desire of the Judiciary Committee to do everything possible to elevate these gentlemen to the same position as that held by their new associates on the Supreme Court bench. That has been done, and it would be an unjust discrimination which left them with less salary than those gentlemen received. I hope the amendment will not be adopted, and the article will stand in that regard as presented.

Mr. Root — Mr. Chairman, before that question is put, may I make a statement of figures? The dividing line of the population of this State is the north line of the city of Yonkers. One-half of the population of the State resides south of that line, one-half resides north of that line. South of the line is the whole of the First Department and the greater part of the Second Department. After all the changes and transfers which are proposed in this article, and after the lapse of fourteen years has brought the judges of these Superior City Courts one by one into full fellowship in the Supreme Court, there will be more judges north of that line by from ten to twenty per cent than there are south of it, although half the population is south, although more than one-half of the judicial business is done south, although more than half the taxes are paid south, and although, in order to secure the services of the judges south of the line, the local subdivisions of the State, the cities of New York and Brooklyn, are obliged to pay to their judges additional salary far greater than the entire salary that is paid by the State. So that for less than half of the judicial service of the State, half of its people paying more than half its taxes, and having more than half the judicial business, are obliged to pay double the price for judicial service, more than double the price for judicial service, that is paid by the other half of the people. That, certainly, is not discrimination in favor of the people of the cities of New York and Brooklyn.

Mr. A. H. Green — Mr. Chairman, I would like to ask a single question, what the reason is, if the city of New York and its adjacent territory pay more than one-half of the taxes of the State, if that burden is imposed upon them, as matter of economy, what reason there is for imposing larger salaries upon those who have

undertaken to serve their term for a specific sum? This question is exactly appropriate to one that was up in the Convention the other day, about increasing the salaries of officers during their term of office. I do not see any logic in the argument of my friend from New York (Mr. Bowers) about keeping up these salaries, that because New York is already burdened with half the taxes of the State she should be additionally taxed for her judicial service.

Mr. Mulqueen — Mr. Chairman, I have but a single word to say, and that is, that if this Convention assigns the judges of the Court of Common Pleas and the Superior Court to the Supreme Court and compels them to do the same work as Supreme Court judges must do, it seems to me only fair to insist that they should receive the same compensation. They must do the same work that the judges of the Supreme Court must do, and they ought to be paid, in my judgment, the same compensation.

Mr. E. A. Brown — I would like to ask the chairman of the Judiciary Committee one question, and the reason for my asking is this: I understood the gentleman from New York (Mr. Bowers) to say that the salary of these judges transferred from the New York local courts to the Supreme Court bench would be paid by the counties, respectively, during the balance of their term. Now, in lines 14 to 17, in article 5, page 5, there occurs this language: "Their salaries shall be paid by the same counties, respectively, and shall be the same as the salaries of the other justices of the Supreme Court residing in the same counties." The question I desire to ask of the chairman of the committee is, whether that is intended to continue for all time, or is it simply for the balance of the term of these transferred judges?

Mr. Root — That is not intended to continue, except for the balance of the term of the transferred judges. I suppose when those terms expire the whole matter is under the control of the Legislature to do as it sees fit.

Mr. E. A. Brown — Then it seems to me that the language contained in lines 14 to 17, on page 5, is misleading. It seems to be general in its terms; and, if the salary of those judges transferred from those local courts is not to be paid in the future, as in the past, I am opposed to this article in that form.

Mr. Roche — Mr. Chairman, I find on lines 14 and 15 the following: "Their salaries," referring, of course, to the salaries of the judges named in section 5, "shall be paid by the several counties, respectively." Now, what are the counties that are meant? There is but one county mentioned in that section, namely, the city and

county of New York. The other courts mentioned are the Superior Court of Buffalo and the City Court of Brooklyn, but neither Buffalo nor Brooklyn is a county.

Mr. Marshall — You will see by reading lines 13 and 14 that the section says: "That they shall sit only in the counties in which they were elected or appointed." That defines the counties.

The Chairman put the question on Mr. Forbes's amendment, and it was determined in the negative.

Mr. Forbes — I offer the following amendment to this section.

Mr. Forbes's amendment was read by the Secretary as follows:

Mr. Forbes moves to strike out, page 5, lines 1 and 2, the words "the Superior Court of the City of New York, the Court of Common Pleas of the city and county of New York."

Mr. Forbes — Mr. Chairman, the courts in New York city proposed to be abolished have existed for many years, and have in times past been presided over by men of national reputation. No reason is given for their abolition, except that of economy, caused by the abolition of their respective clerk's office; but the amendment provides that the judges shall receive in future "the salaries of the other justices of the Supreme Court," i. e., $2,500 each a year more than now, or a total of $30,000 a year. This is the economy proposed. It is to be presumed that the care of papers and routine work after the closing of the clerks' offices of these courts will entail on the office of the clerk of the Supreme Court additional labor, and, therefore, requires additional employes about equal in number to those displaced in the offices abolished.

It is said also that a plaintiff should not have a choice of tribunals. Why not? If a court is behind in its calendar, should a plaintiff who desires to get a speedy trial, be compelled to go to it? If, in the shifting personnel of the courts, one has an abler personnel than another, should not the plaintiff be permitted to choose the abler tribunal?

The objection that a corrupt plaintiff may bring his case before a corrupt judge, happily, does not apply, or the committee would have got rid of the corrupt judges and not transferred them, with all their power of evil, to the Supreme Court. The committee propose an experiment in which enter these uncertainties — the approval by the people of a scheme which transfers judges elected to local courts, with a salary of $15,000 a year, to the Supreme Court of the State, with a salary of $17,500. Will the people of the State impose this upon the people of the city of New York? Is this home

rule? Are we to pass upon the fitness of the twelve judges proposed to be transferred for the new position which they are to hold?

Another uncertainty is the action of twenty-two independent judges. The experiment of so large a body of judges forming one court has never been tried. What personal incentive to work is there among so many? So large a body of judges has been well characterized as a mob. This was conceded on the argument, in regard to striking out the clause giving power to the justices of the Appellate Division to assign the other justices to positions. But will this power of the Appellate Court prevent men from shirking their work? We think not. They do not belong to a body of men so small that the condemnation of the body is the condemnation of each of its members, but to a large body which is the only court, and which, as such, is not subject to an attack which will affect either its separate members or its existence. But who are the justices of the Appellate Division who have this great power? They are not elected to that exalted position by the people, but are appointed by the Governor. If the appointment is made on the recommendation of the remaining judges, it is apparent that the discipline exercised over the less fortunate trial judges will not be harsh. Let us, as a Convention, enter into no experiment when there is no reason for a change, except, perhaps, dislike to the personnel of the court which will soon pass away.

The Chairman put the question on Mr. Forbes's amendment, and it was determined in the negative.

The Chairman — If there are no further amendments to section 5, the Secretary will read section 6.

The Secretary read section 6 as follows:

"Sec. 6. Circuit Courts and Courts of Oyer and Terminer are abolished from and after the last day of December, 1895. All their jurisdiction shall thereupon be vested in the Supreme Court, and all actions and proceedings then pending in such courts shall be transferred to the Supreme Court for hearing and determination. Any justice of the Supreme Court, except as otherwise provided in this article, may hold court in any county."

Mr. Dickey — Mr. Chairman, I propose an amendment to this section.

The Secretary read Mr. Dickey's amendment as follows:

Amend section 6 by adding thereto the following: "Whenever, and as often as there shall be such an accumulation of causes on the calendar of the Court of Appeals that the public interests

require a more speedy disposition thereof, the said court may certify such fact to the Governor, who shall thereupon designate seven judges of the Supreme Court to act as associate judges for the time being of the Court of Appeals, and to form a Second Division of said court, and who shall act as such until all the causes on the said calendar at the time of the making of such certificate are determined or the judges of said court, elected as such, shall certify to the Governor that said causes are substantially disposed of, and on receiving such certificate the Governor may declare such division dissolved."

Mr. Nicoll — Mr. Chairman, I rise to a point of order. The gentleman evidently intended this as an amendment to section 7.

Mr. Dickey — I will withdraw it now, Mr. Chairman, and will renew it when we reach section 7.

The Chairman — Are there any amendments to section 6? If not, the Secretary will read section 7.

The Secretary read section 7 as follows:

"Sec. 7. The Court of Appeals is continued. It shall consist of the chief judge and associate judges now in office, who shall hold their offices until the expiration of their respective terms, and of two additional associate judges, and of their successors. Such additional judges shall be chosen by the electors of the State at the first general election after the adoption of this article, and at said election each elector may vote for only one judge. The official terms of the chief judge and associate judges shall be fourteen years from and including the first day of January next, after their election. After the additional judges are elected any seven members of the court shall form a quorum, and the concurrence of five shall be necessary to a decision. In the meantime any five members shall form a quorum, and the concurrence of four shall be necessary to a decision. The court shall have power to appoint and to remove its reporter, clerk and attendants."

Mr. E. R. Brown — Mr. Chairman, I desire to offer an amendment to that section.

Mr. Bowers — Mr. Chairman, I make the point of order that there is already an amendment before the Convention, that of Mr. Dickey.

The Chairman — Mr. Dickey withdrew his amendment.

Mr. Bowers — I understood he withdrew it as applying to section 6, and left it as applying to section 7.

The Chairman — The point of order is not well taken. The Secretary will read the amendment.

The Secretary read Mr. Brown's amendment as follows:

Strike out line 14, and all after and down to the word "judge," as it first occurs in line 18, page 6. Also, strike out the sentence beginning with the word "after," in line 20, and all following down to and including the word "meantime," on page 6.

Mr. E. R. Brown — The effect of this amendment is to strike out that part of the section which provides for an increase of the Court of Appeals. As I understood the chairman of the Judiciary Committee, that committee had made provisions in this article which would largely reduce the duties devolving upon the Court of Appeals, and provided that the Legislature might further restrict appeals to the Court of Appeals, although they might not fix a money limit. Now, with the duties of the Court of Appeals largely decreased, with ample provisions made for still further decreasing them, it does not seem to me that it is consistent for this Convention, at the same time, to increase the judges in the Court of Appeals. Furthermore, with those who are well acquainted with the performance of duties in the Court of Appeals, I have become satisfied that it is very doubtful if nine judges would do more work than seven judges; I noticed in the argument that was presented to this Convention by the chairman of the Judiciary Committee, that the opinion of the committee was that it would somewhat increase the capacity of that court. The inference from the remarks, as he made them, was that the efficiency of the court would not be increased in proportion to the number of judges that are added to it.

Mr. Parmenter — Mr. Chairman, I have an amendment I desire to offer to this section.

Mr. Choate — If Mr. Parmenter will allow me, I would like to ask a question of the Chair on a question of order. I desire to know whether the vote on this amendment will be final, or whether the same question can be raised again after the sections have all been read, because it is a very important question on which, I think, many members would like to be heard, and whether our rule 55 that equivalent motions, resolutions or amendments shall not be entertained, will apply to such a proposition as this, by way of amendment to an amendment, proposed by the standing committee? That is to say, whether we have now to decide this finally, or whether, after all the sections have been read, a similar motion, if this should now be defeated, can be made?

The Chairman — The Chair will hold, under the authority of rule 55, that a similar or equivalent motion could not be made.

Mr. Choate — And will that ruling apply to all amendments that are proposed in the course of its consideration, section by section?

The Chairman — The ruling will so apply.

Mr. Choate — I think the committee ought to know that, because, for one, I had been under the impression that such a question as this might be considered after the whole had been gone through with.

Mr. Parmenter — Mr. Chairman, I desire to offer an amendment now which I would like to have read.

The Chairman — Does the gentleman from Rensselaer (Mr. Parmenter) offer this as an amendment to the amendment?

Mr. Parmenter — I offer it as an amendment to the whole section.

The Chairman — In that respect it is not in order. There can be but one amendment pending at a time, and the committee must first dispose of Mr. Brown's amendment.

Mr. Hotchkiss — Mr Chairman, I sincerely trust that the amendment proposed by the gentleman from Jefferson will be adopted by the Convention. Although one proposing an amendment to this article may, perhaps, take warning by the chorus of ominous growls that go up in the negative when a vote is taken, I think we have at last struck something by which the rule which seems to have prevailed heretofore may be properly reversed in the interest of old and established and well-tried forms and institutions, and that the people of the State may derive a distinct benefit from the adoption of the amendment.

We have had, I believe, twenty-five years' experience with a Court of Appeals, established with seven judges. So far as I know, it has worked well, and I think the Convention should hesitate, and hesitate long, before it abandons, not simply a form, but a principle in the organization of our great court of last resort. If any good is to come from it, if we can accomplish a reform, so much the better, but let us first determine whether it will accomplish any measure of good and whether it will not accomplish a very considerable measure of harm.

I conceive that the only point in seeking to increase the number of the judges must be either to increase the amount of business which the court can transact with the same level of excellence which pertains to-day, or else increase the capacity of the court. I fancy that no one would suggest that by increasing the number

of the court to nine we should get any better law than we have with seven. Therefore, the only question that can be pertinent is, will nine judges enable that court to do more work than it has done in the past with seven? It has already been suggested by the gentleman from Jefferson (Mr. E. R. Brown) that it is anticipated that by the changes which have been made in the organization of the General Terms, the amount of work crowding upon the Court of Appeals in future will be somewhat less than what it has been in the past, and, therefore, we may reasonably expect that a court composed of seven judges will be able to transact more important business of important causes, those causes which are permitted by the new article to go to it for review, than it has been permitted to pass upon in the past. And, judging from the number of decisions which that court has been able to make and of the highest character in the past, it seems to me that a court of seven will certainly be able to take care of the business which comes to it in the future.

But will a court of nine judges increase the capacity of the Court of Appeals? I fancy that it will not. It will not, unless we strike into and destroy the homogeneity of the court as it has prevailed in the past. Now, the system which has obtained in the past of seven judges sitting in that court for the hearing of all causes, unless from some circumstances of necessity some had to be absent, when five might constitute a quorum, is a system which has been pursued with a purpose of having each individual member of the court a constituent part of every decision that has been rendered, so that we get a decision, not of five judges, not of six judges, but of seven judges, as a rule, and save where this rule has been infringed upon from necessity in the manner I have suggested. There can be no object gained in increasing the number to nine, unless we are to have two men taken out of that court continually for the purpose of writing opinions, leaving the number of the court for the performance of its daily work at seven.

Now, therein, in my judgment, comes the evil of the plan. We shall always have a shifting court. The homogeneity of the court, as it has prevailed in the past, will be broken in upon. We shall have an entirely different system from that which we have had in the past. We shall have a court composed of nine judges with only seven sitting, and we shall never know who those seven will be.

Now, I am proposing simply to suggest these difficulties, because I fancy the preponderance of lawyers in this Convention makes it almost assured that there is at present a sentiment well grounded in the minds of the majority of us, which will, perhaps, make debate somewhat unnecessary.

But certainly the article itself, as it comes from the Judiciary Committee, bears internal evidence of some strife. I notice the provision is made that in voting for these additional judges no elector shall be permitted to vote for more than one. There has evidently been a trade made there, the result of which will be to give to each political party one of the proposed new judges, or rather to each political convention, because the members of that party represented by the electors in the State, will have little or no choice in the matter.

When the Democratic convention meets and nominates its candidate, and when the Republican convention meets and nominates its candidate, we of the Democratic faith will want to vote for our candidate, and you will want to vote for yours, and you will have nobody else to vote for. The result will be that the whole thing will lie in the hands of the nominating convention. Now the suggestions which I have made in regard to the impropriety of increasing the number of judges from seven to nine, and the inadvisability or the inexpediency of so doing for the purpose of obtaining any increased amount of work from the judges, seems to have obtained recognition from one of the very able members of the Judiciary Committee, and those views apparently have been abandoned by him, or it would seem as if they had been abandoned, when he joins with the majority in approving of this increase in the members of the court. While I recognize the fact that any man of independent views may abandon those views and take others upon him, when moved by better arguments and more cogent than those which have gone before, the expressions which I hold in my hand were given utterance to at so recent a date that I should imagine some explanation from the gentleman was in order. I read from a very able address delivered by the Hon. Louis Marshall at the annual meeting of the State Bar Association. In speaking of the proposed organization of the new courts to be made by this Convention, my friend, Mr. Marshall, said:

"What is to be gained by establishing a court of nine judges? They will all be present at the argument. If it is desired to have a homogeneous court, each judge would express his opinion in consultation, as already stated. A very good illustration of the fact that nine judges cannot do more work than seven is presented by the Supreme Court of the United States. Although the questions that come before that court are not more difficult, as a general thing, than those that come before the Court of Appeals, the nine judges of the Supreme Court of the United States dispose of anly 400 cases in a year, while the seven judges of the Court

of Appeals disposed of 600. Hence, if expedition in the attainment of justice is of so much importance as is argued by some, it is certainly better to continue with a court of seven judges. If the other alternative is pursued, of permitting only a part of nine judges to sit at one time, to be relieved by the others while engaged in writing opinions, it will be impossible to know exactly of what members the court will be composed at any given time. It would be a shifting court and not a homogeneous court, so much to be desired. Counsel would begin to speculate as to whether their chances of success are best if their case is argued at one time rather than another, and a very unsatisfactory situation is sure to result from these conditions. The very strength of the Court of Appeals, as of any court of last resort, lies in confining its personnel to a reasonable number. Seven have been found to be admirably adapted to the proper transaction of business in this State. These judges sit together at all times, live together, think together, act as a homogeneous body of men from a homogeneous system of law, and thus we attain in a measure a uniformity of decisions so essential to any system of law."

I could not have repeated it better if I had drafted it myself. I can only say, "Ditto, Mr. Burke." Mr. Marshall has expressed in those lines, to my mind, the most cogent reasons why the court should be retained at its present number, and why, in this respect, the very able article framed by the Judiciary Committee might well be disagreed with by the Convention.

Mr. Marshall — Mr. Chairman, the gentleman from New York has honored me by quoting remarks which I made, in January last, before the State Bar Association, and has apparently challenged me to state whether or not I have undergone any change of heart since that time upon this very important subject. I wish to state for the information of the gentleman that I have not changed my views upon that subject in the slightest degree. Further observation has only strengthened me in the opinions which I then expressed, and I take the liberty now to state, and I am not divulging anything which is desired to be kept secret by the members of the Judiciary Committee, that upon this subject there was a very strong difference of opinion in the committee; that in reality the vote of the committee consisted of nine votes in favor of an addition to the number of judges of the Court of Appeals, as against eight who were in favor of retaining the court as a court of seven judges, and I was one of the eight.

I do not think that an increase in the number of judges will in any way facilitate the transaction of the business of the court, will

in any way make the court a more useful one, or will in any way add to the working power of the court. On the contrary, I now believe, as I believed last January, and as I believed in 1890, when I was a member of the commission, that an addition to the number of judges of the Court of Appeals would in reality detract from the working powers of the court, and would prevent the court from transacting as much business as a court of seven judges can perform. And there is nothing to be gained in any other direction, because the Court of Appeals, as it has existed since 1870, has been justly regarded as one of the ablest courts this country has ever had. The opinions of that court have been recognized as models by all the courts of the Union, are more frequently cited than the opinions of any other court, except those of the Supreme Court of the United States, and to add two more judges to the court at this time, especially when we are reducing the jurisdiction of the court, is, it seems to me, an absolutely unnecessary thing. There is no demand by the judges of the court for any increase. They state that they are entirely able to transact the business which is submitted to them, and the calculation which I have made of the business which will come to the Court of Appeals leads made of the business which will come to the Court of Appeals leads me to believe that the court will not at any time during the next ten or fifteen years have upon its calendar in the course of a year to exceed 500 cases, provided the limitations which have been suggested in section 9 of this article are adopted.

Mr. C. B. McLaughlin — Mr. Chairman, will the gentleman give way for a question?

Mr. Marshall — Yes, sir.

Mr. McLaughlin — I understand the gentleman to say that the Court of Appeals say that they are able to keep up with their work.

Mr. Marshall — Yes, I do.

Mr. McLaughlin — Well, a document which was filed here shows that they are not keeping up with their work.

Mr. Marshall — I say with the limitations here suggested.

Mr. McLaughlin — The question I wish to ask is, how much are they behind to-day with their work?

Mr. Marshall — The Court of Appeals disposes of within 125 cases of the number of cases which come before it, including all the appeals from orders and all the business which will be shut off by the limitations proposed by this ninth section.

Mr. McLaughlin — Mr. Chairman, I will state for the gentle-

man's information that I argued a case at the last Saratoga General Term, in September, 1893, appeal was immediately taken to the Court of Appeals and filed two days after the calendar was made up. That case is not yet upon the calendar, and it cannot be argued for at least a year and a half.

Mr. Marshall — Is it a preferred case?

Mr. McLaughlin — No, sir.

Mr. Marshall — I think, Mr. Chairman, that the gentleman is mistaken when he says that the case cannot be argued within a year and a half. I have frequently argued cases in that court within six months from the time the appeal was taken, and I have frequently found that they were reached in the Court of Appeals much sooner than I was ready to prepare my argument in those cases. The fact is that there must necessarily be some interval of time between the time an appeal is taken and the time when a case is finally disposed of in the Court of Appeals. That must be so in every court.

Mr. Bowers — Mr. Chairman, I would like to ask the gentleman when it was that the judges of the Court of Appeals stated that they could transact their business?

Mr. Marshall — That is, with the limitation of the amount of business?

Mr. Bowers — When and where was that stated?

Mr. Marshall— Before the Judiciary Committee, as I understand it.

Mr. Bowers — The only time they have been before the Judiciary Committee was weeks and weeks before we reached this question.

Mr. Marshall — The question was asked whether or not, if appeals from orders were shut off, and if cases of a certain character were removed from the jurisdiction of the court, the court would then be able to transact its business; and I understood the judges who appeared before the committee to say that they would then be able to dispose of the business without any increase in the judicial force.

Mr. Bowers — Then the statement you refer to is limited to the one that was made before the Judiciary Committee?

Mr. Marshall — It is.

Mr. McClure — Mr. Chairman, I hope this amendment will not prevail. I noticed by the judiciary article that the Appellate Court of the Supreme Court judges is to consist of seven judges in the first department, and five in each of the other departments, four to constitute a quorum in each. That being so, it will appear at once,

I think, to the gentlemen of this Convention, that the number of judges who can override a decision rendered by the Appellate Court in the first department, in which seven justices concur, should not be four judges of the Court of Appeals.

Mr. Marshall — Mr. Chairman, may I ask the gentleman a question? Has Mr. McClure observed that under the provisions of the article, as framed, only five judges are permitted to sit at any one time in that department; so that there will never be seven judges sitting together in the first department?

Mr. McClure — Yes. There will be seven judges sitting in the Appellate Division, and it is fair to assume that there will be conference with the others.

Mr. Marshall — No more than five shall sit is the language?

Mr. McClure — That is the language, but the decision of the five will carry the concurrence of the other two forming part of the Appellate Court. But even if it is five, Mr. Chairman, it certainly is not proper that the decision of the Supreme Court, General Term judge, affirmed by five judges of the Supreme Court, Appellate Court, can be reversed by four judges sitting in the Court of Appeals, as that court is now constituted. Let me illustrate it by a case within my own experience. I went to the Court of Appeals once with a unanimous decision of three judges of the General Term. Six judges of the Court of Appeals heard the appeal, divided evenly, called in a justice of that court who was ill and unable to read, and he, judging with three, reversed the decision of the four judges below, and successfully opposed the decision and views of the three judges sitting with him. In other words, practically, three judges of the Court of Appeals reversed four judges of the Supreme Court and disposed of the views of three of the judges of their own court. Now, in any view of the case, even if the Supreme Court, General Term, was not enlarged, as is proposed to be done by this judiciary article, the Court of Appeals should be a larger body. Under their rule, four judges only are necessary to concur in a decision, and we have constantly had it happen that four of them have sat and reversed the decisions of unanimous General Terms, composed of three judges, which decision affirmed the decision of one other Supreme Court judge, from whose decision the appeal was taken to the General Term.

I do not see, Mr. Chairman, how the business of the court will be interfered with at all. It seems to me that it will be better done. We have a great many cases decided by the Court of Appeals where the decision runs four to three, great and important cases.

Gentlemen will probably remember the case in which first the question of damages to be awarded to property owners in the city of New York by the taking of easements and interfering with easements by the elevated road, came up, and the court had to wait until Judge Tracy was taken into it, and he actually made the decision of the Court of Appeals upon that important question. The question of the decision on the will of Mr. Tilden was disposed of by a court which divided four to three. I think, Mr. Chairman, the chances are that if the court is larger, composed of nine judges, the majority will not be so small in any decision that is rendered. Of course, it can be five to four, but the chances are that the majority will be greater in deciding a case and that better justice will be done in the disposition of causes heard before the Court of Appeals. How will it retard business? Not at all, in my judgment. In my own experience it took one judge of the Court of Appeals, as at present constituted, and it was the last opinion that he wrote, nearly a year to write the opinion in the case, because it required such careful examination of the law of all the countries in the world that he had not time to take from the active duties of the court, to sit down in a law library and delve into the abstruse questions which were presented to him.

Now, if the court is composed of nine judges, one judge having a case requiring so much examination could devote himself to it, and the result would be that the litigants in that particular case and the counsel employed in it, would sooner reach a decision than as the court is now fixed and settled. I am in favor, sir, of the provision as reported by the Judiciary Committee. Something has been said about the dignity and completeness and standing of the Court of Appeals. I do not think that the fact that the Supreme Court of the United States is composed of nine judges, and has been composed of nine judges for so many years, has detracted at all from the dignity or the force, or the power or the honor of that court, and I cannot see how the Court of Appeals of the State of New York, if standing on a par as to numbers with the Supreme Court of the United States, will either be injuriously affected as to their individual standing or as to the influence of the court. I hope the amendment will not prevail.

The question as to the limitation of matters to be heard by the Court of Appeals is yet in embyro. We do not know how it will result. We do not know but what the Legislature and the people will amend this section so as to carry more questions to the Court of Appeals. I, myself, am not enthusiastic about the limitation of questions that shall go to that court. I think every man ought to

have an opportunity to have the Court of Appeals hear and dispose of his case finally, and it may be that this provision, limiting the powers of the Court of Appeals and enlarging those of the Appellate Court and Supreme Court, will not even prevail here.

Mr. Cassidy — Mr. Chairman, I offer the following amendment to the amendment offered by Mr. Brown.

Mr. E. R. Brown — Mr. Chairman, the amendment offered by the gentleman has been shown to me. It contains one verbal change in the amendment offered by me, and I think it is a more accurate amendment than mine; therefore, I accept it. It is merely one verbal change, and no change in the meaning whatever.

The Chairman — Do you withdraw your amendment?

Mr. Brown — I accept Mr. Cassidy's as a substitute.

The Secretary read the amendment as follows:

"The Court of Appeals is continued. It shall consist of the chief judge and associate judges now in office, who shall hold their offices until the expiration of their respective terms, and of their successors. The official term of the chief judge and associate judges shall be fourteen years from and including the first day of January next after their election. Five members of the court shall form a quorum, and the concurrence of four shall be necessary to a decision. The court shall have power to point and remove its reporter, clerk and attendants."

Mr. Cassidy — Mr. Chairman, I am in favor of retaining the Court of Appeals as it now exists. The two things the people demand are economy in the management of their affairs and dispatch in the management of their business. I do not believe that any more business can be done by the Court of Appeals with nine judges than with seven. On the contrary, I think that less business will be done. I believe, as has already been suggested, that it will take a longer time to consult with nine judges than with seven. And, inasmuch as the Judiciary Committee has reported adversely against a kaleidoscopic court, it seems to me there is no necessity of adding two other judges. However honorable these positions may be, they are only sinecure positions, and the amendment is not offered in the interest of economy. It is not offered in the interest of dispatching business with speed. I cannot understand why the Court of Appeals should be increased to nine judges. For these reasons, I hope, Mr. Chairman, that the amendment will prevail.

Mr. I. S. Johnson — Mr. Chairman, I hope the amendment will pass, and one of the reasons for that wish is the fact that the people

are watching this Convention. They are to pass upon the acts of this Convention, and, although it has been the custom frequently, when that matter has been suggested, to sneer at what the people may think, I believe it is time that we should consider what they will think. When we come to this question of adding two judges to the Court of Appeals the question will be asked by the people, why do you add the two? Is there any necessity for it? Is the business or will the business of that court be in such a condition as to require additional judges? The answer will come from the report of the Judiciary Committee that there will be no increase of business. The answer will come again that there will be a decrease in business; and when you come to say to the people that for the purpose of doing a less amount of business you are going to increase the court by two members, they will see to it that no such amendment is finally passed. And it is because I hope the action of this Convention will meet with the approval of the people that I am in favor of the amendment.

Mr. Barhite — Mr. Chairman, I am in favor of the substitute offered by the gentleman from Schuyler (Mr. Cassidy), and one reason why I am specially in favor of it, is because it does away with what appears to me to be one of the most pernicious provisions in the report of the Judiciary Committee, as it is presented to this Convention, and that is the provision which provides for minority representation in the Court of Appeals. Since my attention has been called to that matter I have spoken to several members of that committee as to that point, and each and every one of them has said to me that it is a matter about which he cares nothing at all. It is, sir, a matter about which they should care, and that provision which says that every elector only should vote for one judge should never go into the Constitution of this State. If there is one court above all others, which should be separate and apart from all political or other improper influences, it is the highest court of this State, the court whose decisions are final. It is a court which should look only to the people, from which it springs and from which it derives its power. But it is possible, under this provision, as it has been presented by the Judiciary Committee, for any political party to nominate a man who is objectionable to the great mass of the people, or who, through the influence of what is commonly called the machine, might carry the strict party vote at the polls, and it would be almost an impossible thing to defeat the election of a judge of that character. Every voter of the State of New York should not only have a choice in one judge, but he should have a choice in the selection of every judge who may be called upon to pass upon his rights.

If, at the next election, under this provision, the Democratic and the Republican parties should each nominate only one judge, then, as a matter of course, they would both be elected. If, on the other hand, the conventions of each of those two parties should nominate each two judges, then it would be almost impossible to defeat the vote of any one party, although it was in the majority between its two candidates, so that the people might be sure that those two candidates would be elected. It is for this reason, sir, that I am in favor of the substitute that has been offered, and I believe that it should prevail upon that point alone, if upon no other.

Mr. Dean — Mr. Chairman, I move to strike oue of section 7, page 6, in line 17, all after the word "article," to and including the word "judge," in line 18.

If it was the intention of this committee to pave the way to the election of Isaac H. Maynard to the Court of Appeals, it could not have adopted a more certain way of accomplishing that end than is afforded in the words which I propose to strike out. It does not in any manner affect the principles of this report; it simply preserves the right of the people, by a majority vote, to elect the judges of the Court of Appeals. The article, as it is reported, proposes that two additional judges of the Court of Appeals shall be elected at the first general election following the adoption of this Constitution, and that at such election "each elector may vote for only one judge." This, in effect, makes the nominating conventions of the two great parties the absolute dictators as to two of the members of the Court of Appeals. Suppose the Democratic State machine, still anxious to pay its debt of gratitude to Isaac H. Maynard, should decide to place him in nomination in 1895. Under this provision it would be absolutely impossible to defeat him. The same thing might be done by the Republican party, through the force of the political machine, and the people would be powerless. The terms of judges of the Court of Appeals are for fourteen years, and we cannot afford to take such chances. Personally, I am a partisan; I believe that partisanship is an essential element of patriotism, but I would much rather two Democrats be chosen by a majority vote of the people, than have Isaac H. Maynard, and any Republican who could be mentioned, chosen by this cowardly make-shift. If it is necessary to violate the principle of the rule of majorities for the sake of securing Republican representation in the Court of Appeals, then that representation is purchased at too high a price, and, for my part, I am opposed to it. We have no right to assume that the people of this State are not competent to choose their judges, and the question of their party affiliations, and especially

under the operations of this amended article, are of only the most incidental importance. As a rule, the people have jealously regarded the candidates presented for judicial offices, and we ought not to prejudice our case before the people by denying to them the right to sit in judgment upon the action of the nominating conventions. I am opposed to increasing the Court of Appeals; I do not believe that the working efficiency, or the strength of the court, will be improved by the addition of any two men, and certainly not by men chosen in the ordinary State convention of either party, if that choice is not to pass in critical review before the voters of this State. This is minority representation in its most vicious form, and I trust that this magnificent judiciary article will not be marred by this blemish, which can have no other excuse for existence than a very petty conception of devotion to party. The absolute integrity of the judiciary is of far greater importance than any question of political opinion which a candidate may entertain, and we cannot afford to violate a great principle for the sake of electing a very small partisan to the court of last resort in this State.

Mr. C. B. McLaughlin — Mr. Chairman, it seems to me that we should treat this question, one of the most important ones, as I view it, contained in this report, with much care. It has been the experience of ever practicing lawyer in this State for the past ten years that the present Court of Appeals, as now constituted, is not able to do the work which is sent to it; and, in order to relieve the present Court of Appeals, it is also within the knowledge of every practicing lawyer in the State that the Governor lately called to the aid of that court seven judges of the Supreme Court, under the demand that was made by lawyers and litigants. Now, how do the gentlemen that are proposing these amendments seek to relieve the court and give to lawyers and litigants the relief which was then and is now demanded all over the State? Why, we are told that a limitation has been placed on appeals to the Court of Appeals. What will be the practical result of such limitation, how many appeals it will prevent from going to that court is a mere matter of conjecture. I, for one, care not what the people of the State say as to seven or nine judges, if I have performed my duty in this body according to my judgment. I care not what the court itself says upon that subject. My experience has been that there is seriously demanded at the hands of this body some relief for the Court of Appeals of the State, so that appeals taken to that court can be decided with care and with dispatch. Why, just look at the situation. According to a report made to us by the clerk of the Court of Appeals a calendar was made up in that court on the 2d of Octo-

ber, 1893, and there are now 184 causes undisposed of. There cannot be a calendar made up in that court now until the first day of January, 1895. Appeals taken to that court, after the 2d day of October, 1893, cannot be argued until after the 1st day of January, 1895. I say that is a condition of affairs which ought not to exist. It is practically a denial of justice. A delay either in the trial of a cause or in the argument of it in the Appellate Court is as bad as injustice itself. The relief proposed by this committee, I believe, is wise and practicable, nine jurors instead of seven. It has been a very serious question with many lawyers whether the court ought not to be increased to fourteen, so that there could be two courts sitting to dispatch business. But the method proposed by this report is to increase it to nine. Now, gentlemen need not stand upon this floor and argue that nine judges cannot do more work than seven, because we know that it is not true. Seven men can sit in that court, two of them can retire to-morrow, if you please, after having heard arguments, two more can take their places upon the bench to-morrow, the two that have retired can be considering the causes which were argued to-day.

Mr. Cassidy — Mr. Chairman, I would like to ask the gentleman whether that would not make it a changing court, and have not the Judiciary Committee reported against any such thing as that, a kaleidoscopic court, " now you see it, and now you don't," changing around all the time.

Mr. C. B. McLaughlin — Mr. Chairman, it is with the greatest pleasure that I answer the gentleman's question. It would make it no more of a sliding court than you have with seven. I have argued causes before that court when only six or five members were present. Was that a sliding court? We can argue causes there with seven, and the two additional justices will help dispatch the business there. Now, it has gone out, whether true or false, and this is no reflection upon this committee or upon members who advocate the seven members of the Court of Appeals; the sentiment has gone forth in this State that the Court of Appeals does not want but seven. It was claimed that the Court of Appeals practically controlled the commission that was appointed a few years ago upon that subject, and we went before the people of this State with seven judges, and what was the result? I say to the members of this Convention that I believe and it is my serious conviction, that the report of the committee upon this proposition should be adopted, and that the amendments and the substitutes offered should be defeated.

Mr. Choate — Mr. Chairman, I am exceedingly loath to differ in any particular from the report of the Judiciary Committee, because I think that if you look over the whole history of legislative bodies since their work was done by committees, it would be impossible to find a more masterly piece of work than this has been. At the same time, on this particular point, I do not deem that the report is sustained by the full authority of that committee. As one of its members has said, they are divided almost equally upon it. It is one that this Convention ought now to determine fully from their own point of view, and upon the consideration that it is one on which the committee was finally only united by a majority of nine to eight, and, I believe, arrived at that vote after very serious dissension and controversy among themselves. I was in hope that all such important questions as this might be deferred until all the articles have been read through, and I, therefore, raised the point that I did, upon which the chairman has so properly ruled, that it must be decided now, once for all. Now, from experience and observation, I believe, directly contrary to what has been asserted by the gentleman from Essex (Mr. C. B. McLaughlin), that you will get more work and better work out of a court of seven judges than out of a court of nine; that they will decide more causes and decide them better, if you adhere to the system which experience has shown to be so nearly satisfactory. It is true that it is necessary to relieve that body of some of its work, whether it is constituted of seven or nine, and the true remedy for that has been found by the Judiciary Committee, as it was found by the commission that sat here in 1890, to be so to strengthen, enlarge and fortify the intermediate Appellate Court that it should be a satisfactory court even for the final termination of many forms of controversy, so that the proportion of causes which should reach the Court of Appeals should be very much diminished. I asked the presiding judge of the first department not long ago how many of its controverted decisions, as the law then stood and now stands, reached the Court of Appeals, and he told me, to my surprise, not over two-thirds. I believe that if this intermediate appellate system, so skillfully and scientifically devised by this committee, is sustained by the Convention and the people, that the proportion of the appeals which will drift through to the Court of Appeals will be very much diminished. The people ought to be, and, in my, judgment, will be, in a very much larger proportion of ordinary causes, satisfied with the decision of the court at first instance, especially when it is affirmed unanimously by this intermediate Appellate Court of five judges, as established by the articles already passed upon. Now, it is

certainly true that in determining a question like this, we ought not to make any change, unless clear, cogent and overwhelming reasons can be pointed out for it, and I have not heard any proposition yet stated which satisfies me that the change from seven to nine is an improvement. It is only a change. We have tried a court of seven now for twenty-four years, and I think it will be difficult to find in any jurisdiction any court that has better maintained the uniformity of the law than that has done, or given better laws to the community over which it presided, no matter where you search, among the States, in the federal tribunals, or in courts abroad. There will be vastly more dissension, vastly more dissent in a court of nine judges than there has been found to be in a court of seven; and I think it is demonstrated, if you will compare the frequency of dissent in the Supreme Court at Washington, which is a court that we all admire and revere, with the history of our own Court of Appeals for the last seven years. It has been said and urged here, with a good deal of force or a good deal of earnestness, for it seemed to me that there was not much force in it, that it is a good reason for increasing the number to nine, that your intermediate Appellate Court is increased, and it is not the proper thing for a court of seven to be permitted to overrule a court of five, because they may by a vote of four to three overrule the unanimous decision of a court of five. Well, Mr. Chairman, that is one of the inevitable results of allowing a majority to rule in any or either court. In my opinion, judges, like witnesses, should be weighed and not counted, although they have to be for the purpose of making a quorum. Now, I do not state that at all in reference to any of the judicial members of this body, because if it were applied to them they would all feel very much flattered and would be placed at the head of the judiciary. But, truly and seriously, what you want and what you have a right to expect is, that the judges of the Court of Appeals, elected by the electors of the whole State, will be a body of men the best that can be found; that they will upon the average and as a general rule be superior, a superior tribunal in fact as well as in name.

It has been well said by the chairman of the Judiciary Committee that the only object of the Court of Appeals is to settle the law and keep it settled, and keep it uniform, so that not the suitors only, the litigants only, that are a very small part of the population of this State, but those who are not suitors and never want to be, and never mean to be, shall know what the law is, and guide their conduct accordingly and keep out of litigation. That is the great service, or one of the great services, that this Court of Appeals has

always done and will always do. Now, we are going to have four great departments, independent, and if there were not this Court of Appeals to rule over them, it would be like four independent States, so far as the law went, and my opinion is that the past has demonstrated that the work done by these seven judges, as they have been seven always, changed from time to time, has demonstrated that for the purpose of maintaining the uniformity of the law, of keeping the citizens of this great State informed as to what their rights are and what their conduct should be, it has been a tribunal that could not be exceeded in quality. There is something, no doubt, in seven men sitting cheek by jowl around the same table, from the beginning to the end of the year, and so on from year to year, through ten years, fourteen years, and, as we have it in the Court of Appeals now in several instances, for twenty years, by which they understand each other's minds, and are enabled to work together more satisfactorily than any strangers could, or, as I believe, than any larger number of men could. I do not say there is any magic in the number of seven, not even if each of the seven was a seventh son of a seventh son, but experience has demonstrated that in that which is their peculiar work they do it amazingly well. And so, as it seems to me that no good reason has been shown for this change, so radical a change, so wide a departure from the established system, for one, I am opposed to it, and I hope the Convention will adopt the amendment offered by Mr. Brown, by which we restore the original number of seven.

And then there is an incidental matter, which apparently is essential to this development of the seven into the nine, which to my mind is almost as objectionable as the change itself, and that is the change, the manner in which the seven are to be increased to nine at the first election. (Applause.) I do not mean here to say anything to the detriment of minority representation, because I think that in certain matters that will come before this Convention it will be entirely worthy of the consideration of the committee, but I do say that for the particular emergency into which the people of this State will be brought by this amendment, if adopted in this form, raising the seven to nine, and at the coming election, at which the two additional judges are to be elected, each voter to vote only for one, nothing more disastrous could be presented to the electors of this State. Why, Mr. Chairman, what would be the inevitable result?

Mr. Becker — Mr. Chairman, will the gentleman permit me a question?

Mr. Choate — Certainly.

Mr. Becker — Were not the original judges of the present Court of Appeals voted for in that identical manner, Judge Folger being one of them? There being four to elect, was it not the provision that no elector could vote for more than two.

Mr. Choate — Yes, and I beg that my friend will not press that matter to the point of unmasking the entire history of that election. (Applause.) What I say is this, if each voter is to vote only for one of the two in this emergency, each party will nominate but one, and there is nothing to restrain each party from nominating its worst man, and the nominees of both parties would inevitably be elected. Now, I do not suppose there is any possible answer to that. We have had some experience where the feelings of the people of the State were hotly excited on the subject of the character of the nominees for the Court of Appeals. No man's character could be so bad, no man's reputation could be so bad, but that if he were nominated on this plan, as proposed by this particular clause to which I object, he would necessarily be elected. Where both parties have to nominate all the judges, both of the judges, both parties are challenged to put up their best men, and they will put them up. Do not let us get into the predicament of leaving it at the tail end of a State convention of either party for the name of some obscure and unworthy man to be thrust in as the candidate of the Court of Appeals, and his election thereby guaranteed. I hope, Mr. Chairman, that Mr. Brown's amendment will be adopted. (Applause.)

Mr. Bowers — Mr. Chairman ——

Mr. Bowers was recognized by the Chair.

Vice-President Alvord took the chair and announced that the hour of one o'clock having arrived, the Convention stood in recess until three o'clock this afternoon.

AFTERNOON SESSION.

Tuesday Afternoon, August 21, 1894.

The Constitutional Convention of the State of New York met, pursuant to recess, in the Assembly Chamber, in the Capitol, at Albany, N. Y., Tuesday, August 21, 1894, at three o'clock P. M.

President Choate called the Convention to order.

Mr. Cochran — I ask leave of absence for to-day for Mr. Meyenborg, who is unexpectedly detained at home.

The President — I have a dispatch from Mr. Towns, making the same request.

Mr. Rowley — In consequence of having been ill last Saturday, I ask to be excused for absence on that day.

The President put the question on the requests as stated, and the delegates were severally excused.

The President — The Convention will be in Committee of the Whole, and Mr. Acker will resume the chair.

The Convention resolved itself into Committee of the Whole, Mr. Acker in the chair.

Mr. Acker — The Convention is still in Committee of the Whole under general order No. 45, and at the time of taking the recess was considering section 7. Mr. Bowers, of New York, has the floor.

Mr. Bowers — Mr. Chairman, the situation in which the Committee of the Whole finds itself now in discussing the judiciary article is probably the most serious one that has yet been reached. A very strong expression of feeling has been manifested upon the floor of the House in favor of striking out the two additional judges proposed to be given to the Court of Appeals by the judiciary article. When the committee finds itself attacked in the House of its own friends, and finds the President of the Convention in accord with the gentleman from Schuyler (Mr. Cassidy), those favoring the article as reported must appreciate that the clause in question is in serious danger. Some reference was made this morning by the gentleman from Onondaga (Mr. Marshall) to the proceedings in the Judiciary Committee on this question as to whether the Court of Appeals should consist of nine or seven judges. It is impossible to verify accurately the statement that was made that the division was only by one vote, or rather that the proposition was carried by a majority of only one, because it was frequently discussed, and more than once an expression of opinion was taken, and some of the records show a larger vote in favor of the nine than was stated to the Convention this morning. When that article was finally adopted it was understood that, with the exception of two or three expressed reservations, the article embodied the views of the committee. It is true, Mr. Chairman and gentlemen, that during the weeks that the article was undergoing preparation many of us advanced views and supported propositions which we afterward yielded; and that some of us opposed views and propositions that are now contained in the article. But we finally reached the conclusion that the article as a whole would be of benefit to the people of the State and would

improve the administration of justice. And, as I understood it, such being the views of a majority of this committee, we came into this Convention intending to sustain it. One of the most vital points connected with the entire article was that portion which applies to the Court of Appeals. You cannot reduce the nine judges to seven without interfering more or less with other propositions which were accepted by many of the members, because of the fact that there were to be nine judges. It could be justly claimed by members of that committee that, while they had expressed their opinions as favoring the article as a whole, and were therefore in common honesty bound to stand by it until some serious error was pointed out on the floor of this Convention, when there was once a break, and an integral part of the proposition was broken, that no man would complain if each of us went to work to try anew to get into the article the pet provision we may have lost. It may very well be argued, if the provision for nine judges is to be stricken out, and we are to have but seven, that then there should be incorporated into the article a provision for a second division of the Court of Appeals; because many of us voted finally to strike out that provision in the belief that the article as a whole would enable the Court of Appeals to do its business. We may be in error in the views we held, but, for my own part, I do not consider that the Court of Appeals can transact all the business it ought to transact if we reduce the number to seven. And yet, Mr. Chairman and gentlemen, and particularly I say this to you, my associates on the Judiciary Committee, while I exceedingly regret that the gentleman from Onondaga (Mr. Marshall) has seen fit this morning to renew the discussion so ably carried on in the committee for many weeks, whereby he would seem to justify the rest of us in again presenting the propositions we fought for there, but finally yielded, still, for my own part, and in the hope that we will adopt this article as a whole, or at least succeed in holding its main features, I shall yield any relief which I may feel should come to me from such views, and I shall continue to sustain the whole article from beginning to end, in the belief that we have done a good work, and a work which will be considered good by the people of the State. (Applause.)

Now, I ask you to bear with me for a little, while I point out the reasons which led us to adopt the provision with respect to nine judges. It is proper that I should say at the outset that I went into the committee firmly convinced that seven judges was the proper number. I listened to the arguments of my associates, and it is a true saying that I make now that that article represents the views

of no one man, or of no five men, or of any other part out of the whole seventeen members of the committee. We listened, and we learned; we yielded views, and we gained knowledge, and the whole work is the work of the whole seventeen. We knew at the outset that the greatest difficulty in the administration of justice in this State was because of the blocking of the calendars in the court of last resort. We knew that in the courts below the people could add to the judges to any extent to enable them to do the work that might come before the courts. We knew that in the Appellate Division we could afford to have differences of opinion so long as there existed a final tribunal to determine questions of law for the guidance of the courts beneath them. We all appreciated that something must be done to relieve the Court of Appeals. It was a piece of legislation that might well try the broadest minds. It has been worked upon time and again, and all sorts of expedients have been suggested. And so it was that after long consideration it was concluded that the Court of Appeals should be limited to the decision of questions of law; that court is in practice so limited now, for that is to-day the assumed rule in that court. We proceeded to strike out appeals from interlocutory orders. But that will give very little relief. After long discussion and at the very close of the proceedings, we also put in the clause intended to, and which we believe will, give relief, providing in certain classes of cases that the Court of Appeals shall not be called upon to determine whether there was sufficient evidence to justify a finding. We felt that with these provisions (which are substantially all), that by increasing the force of judges to nine, thereby relieving them somewhat in their work and enabling them to perform, as we felt, better and more substantial work, we had offered to this Convention a solution of the problem, and that we could afford to dispense with the second division. Now, the main argument that has been made against the continuance of the nine judges, which we propose, was based upon the theory that nine men will not do any more work than seven. We have heard many speakers upon that question, but they have discussed very little the more controlling proposition, and the one which led me to adopt the views of the majority of the committee. Whether seven or nine could do the most work may possibly be a matter of doubt, but the chances are certainly in favor of the nine doing the more work. It prevents the court, by reason of the sickness of one or two members, being practically cut off from sitting; it enables better and more extended conferences, and permits rest sometimes to members of the court. But when the gentleman from Erie (Mr. McMillan) called our attention to the fact

that if we should make courts of appellate jurisdiction with five judges, who could sit and could join in the decisions, and left four judges in the Court of Appeals (against a minority of three) to overrule the five appellate judges, it would present to the people of the State the spectacle of four judges determining a proposition antagonistic to eight judges who in all human probability would be quite the equals of the four, it seemed impossible to present it to the Convention or to the people of the State. It is true that, even with nine judges, five may differ with the other four, and the same result to a great extent be reached, but it would happen much less frequently, and at least we would be able to say that there was not the power in four men to reverse five men. I think this argument cannot be brushed aside. I do not think that the great regard we have for our present Court of Appeals justifies us in adopting a judiciary article which provides for any such result. I do not believe that there is to be found a single precedent where a less number of judges can reverse those whose decisions go up to them for review. We had brought before us the precedent of the Supreme Court of the United States. They sit with nine judges, and I am bound to say that it is the court that stands the highest in the land. There has been much said about the ease with which the Court of Appeals does its work. Perhaps they do it too easily. I understand that the system of procedure (and this was laid before us in the Judiciary Committee) in the Court of Appeals is for certain judges to be designated to write the opinions in the cases as they come along in rotation, and without an assignment after discussion, the assignment being made before discussion. I doubt if that is the best system. In the Supreme Court of the United States the cases are heard, discussed and determined, so far as they can be determined in advance of the opinion, and then a judge is assigned to write an opinion. Of the two courses I prefer the latter, even though it does lead to some discussion. It has been said upon the floor of this Convention that the bare majority in the Judiciary Committee, who reported this part of the article, cannot be treated with the same force and effect as if it had been a unanimous report. Perhaps that may be so; and yet it was the judgment of the committee as a whole, and quite as good a judgment as the vote of the four judges in the Court of Appeals who shall overrule their associates. That is treated as a final judgment. That judgment we are to make binding forever upon litigants, even though they have had five appellate judges with them in the court below, to say nothing of the judge who sat at Circuit or at Special Term, as the case may be.

I have thus stated, as briefly as I am able, some of the controlling arguments which led to this report in this regard. I cannot pass, aside from the article, without a reference to the provision which seems to be more controlling upon members of the Convention than any other, and that is the provision for minority representation. That particular provision, as I recall it, was inserted in the article in the belief that it might lead the people of the State to more readily accept the article. No one of the committee was specially strenuous for it, and I do not think it would be fair to dispose of the more serious question as to the number of judges by considering the two questions at the same time. We should separate them. I believe that a majority of the members of the Judiciary Committee will be quite willing in consideration of the views which have been enunciated here to-day to assent to that particular clause being stricken out; and yet I could not but think this morning as I listened to the plea of our President, in which he called attention to the wrong and disorder that might come from the nomination of unfit men for those places on any such a principle, that he was to some degree in error in some of the other pet theories in which he endeavored at the time to protect himself. We now feel that his declaration was the death blow to minority representation, for it must be conceded that you get no better class of men to divide up the offices when you go into the wards to nominate aldermen. I cannot imagine that our gifted President, our fair-minded President, made that proposition because he had any idea of its working to the political advantage of any party. And, therefore, taking his proposition as it distinctly comes, let this Convention then understand that we will do away with all propositions as to minority representation, and let all men stand upon their character when they go before the people asking office at their hands. I am most willing that this should be stricken out at this particular point because it will enable us to vote upon the more serious question which is involved, as to the number of judges that are to be given to that court.

I trust that the question of expense is not to enter into these deliberations. The salary of these additional judges will be but a very small matter. It is not a matter that can or will affect the people. Those questions of expense are better addressed to the question of the new Supreme Court judges whom we propose to elect.

It is not my place to make criticism upon the present Court of Appeals. It is a good court — doubtless quite as good a court as the language of the gentleman from Onondaga (Mr. Marshall), or the language used by the President of this Convention, justifies you

in believing; and I listened with great pleasure to the President's suggestion as to the manner in which the decisions of that court are received by the people of this State, because I had in mind that a few years since he took part in the argument of some political cases before that court, in the decision of which they very largely divided upon political lines, and I have waited until to-day for a certificate from a man so prominent in the councils of his own party that in all cases they gave us good law.

There may be other questions discussed concerning this court. There may be others in this Convention who will bring to your attention some curious decisions that have been made there at times, as having some bearing upon our judiciary article; and I am by no means prepared to say that that court will be at all injured by the infusion into it of some new blood, even if we take that new blood from members of the bar in the State at large.

I could not understand the President's reference this morning, when speaking with Mr. Becker, as to his not wishing to be pressed further on some particular question. Is it not true that members of that court, or at least those who were originally elected, are still sitting and adorn the bench? Certainly he could not have intended a criticism upon that court after the magnificent tribute he gave it.

And now to you, gentlemen of the majority, let me say that this report has been as honest a piece of work as was ever presented to a body. There has been no effort except to get a good judiciary article. It rests largely with you whether you will break it down in any integral part, or whether you will send it out to the people of the State as one of the good pieces of work which you intend to give them.

And to my associates in the minority, while undoubtedly there will be differences of opinion, I beg them to give to this question some part of the careful consideration that was given it in the Judiciary Committee, before they strike this blow which will break up the symmetry of the entire article. (Applause.)

Mr. Becker — Mr. Chairman, long before I came to this Convention I saw it discussed in the legal periodicals of this State, and heard it discussed among the profession, as to what was best to be done to relieve the Court of Appeals from the pressure of business upon it. It was stated (with how much truth I am not here to determine, for the facts concerning it are known to all the members of the bar, who perhaps are a very large majority of this Convention), that the expediency of providing what has been termed a safety-valve in the way of a second division of the Court of Appeals to take care of the surplus work that accumulates on the calendars

of that court was not entirely satisfactory. For my part, I do not join entirely in that feeling. I think one of the principal objections to that came from the fact of the method in which the judges of that court were selected, which took away from districts of this State a part of their working force of judges. I heard it discussed also to a considerable extent as to what was the best remedy. I read with care what I could gather in the public prints of debates and work of the commission, and was very much surprised to learn at the close of its discussions that its debates and discussions were not to be printed, but were (as our distinguished President has, from time to time, characterized certain propositions and documents which came before this Convention), to go into the archives. I found on an examination somewhat of the personnel of the commission that it was composed of those who were no doubt the ablest practitioners and lawyers of this State, or among the ablest. And yet it was largely composed of those whose business was centered in the great cities, and of ex-judges, and of — may I say it with bated breath — those who, perhaps, were more or less supposed to be under the domination and control of the judges of our highest appellate court. That was evidenced by the fact that a judge who had but just then retired from the bench of the court was immediately chosen the president of that commission. This subject was discussed there very fully. The commission divided itself, as I think members of the profession in this State divide themselves, into two lines or branches upon this question. A very considerable number of the members of that commission, no matter what the final vote was, were of opinion that the sole remedy and the best remedy to apply to lift the great burden was to put on more men to lift it; and that the best way to reorganize the judiciary system, or the Court of Appeals, at least, was to make a large court, or a comparatively large court, and then let everybody, from the highest to the lowest, go there with their cases. That view, however, did not prevail in the commission and they decided to keep the numbers of the Court of Appeals substantially as they were, and to attach to the right of appeal limitations which would have diametrically the opposite effect to that of permitting suitors to go there with their cases, to wit, of limiting the appeals. During the pendency of that discussion, and afterward through the medium of the State Bar Association, a vote was taken by postal card of a very considerable number of the members of the bar of this State — the simple question suggested on the card being: "Are you in favor of increasing the number of judges of the Court of Appeals?" The answers came back in a vote of almost two to one that they were not in favor of

such an increase. So that when I came to the consideration of this matter personally, charged with the responsibility of my duty as a delegate here, I was myself very strongly of the opinion that the remedy for the existing evils was to increase by a considerable number the members of the Court of Appeals. My own preference was not to have a divided court, a double-headed court, as the expression has been, although I do not think that in practice, if upon a dissent, a question were submitted to the whole court, there would be any breaking down in the efficiency of the court, or any lessening of the respect in which its decisions would be held by the bar or the people; but I was of the opinion that what has been so aptly termed here a kaleidoscopic court would perform all the work to be performed adequately, if there were a sufficient increase of members of the court, so that a part of the court could be sitting and hearing arguments, and the other part be writing opinions, and then keep the court in practically continuous sessions, and without the recesses which now take place from time to time, of a month or so, to permit the judges to go home and get into their libraries and write out their opinions. I thought that in that way the work would be done efficiently and well, and that the homogeneity of the court would be preserved, and the unity and force of its decisions maintained. This matter was discussed in the Judiciary Committee from almost the first day to the last day in its consideration of this question. I was very strongly opposed to the limitations suggested, except the limitation of the right to appeal from orders involving solely questions of practice. But after hearing arguments *pro* and *con*, and after giving the matter earnest, conscientious and careful consideration, it seems to me that if a moderate limitation could be imposed so that the court would be preserved as the final appellate tribunal on questions of law (which I hope the provision inserted in the article by way of limitation will bring about), that was, perhaps, the proper means for relief in the long run. But there are other considerations still existing, notwithstanding the fact that this limitation has been placed in this article, and which limitations may or may not work as we believe, and as we hope they will. You all know what judge-made law is; you all know how these statutes are construed, and especially in interpreting the jurisdictional right to consider cases how apt it is to occur, and how often it does occur, that such a construction is placed upon a statute that its scope and effect is very much broadened. It may be, and I am now inclined to hope that it will not be, that these limitations may work as successfully in restricting appeals as the framers of them hope; but such as they are they are practically the united judgment of

the committee; and, for my part, I have accepted them in the committee and am willing to accept them here. But, in view of the fact that they may not do what they are expected to do, the question still exists whether some moderate increase of the members of the Court of Appeals should not be made. I want to take my stand here boldly and courageously (for I know that the members of this Convention who are lawyers, as well as those who are not lawyers, will respect one who has the courage of his convictions) side by side with my friend, Mr. Bowers, upon the proposition that that court needs new blood. It seems to me that in the current of its decisions upon some of the greatest and most important questions of the day I can read the crystallizing around one or more members of this court (one or two members better expresses it) of the other members of the court, in certain very marked lines of differentiation of opinion. It is not necessary, and perhaps would not be proper, to cite particular cases in which this has occurred, but it seems to me it is likely to continue to occur in the future; but I recognize in the remark of our distinguished President that these gentlemen, living together and practically existing as a unit, each mind rubbing against mind — I recognize the invariable condition which will occur under such circumstances; namely, that one or more of the stronger wills and stronger minds become the dominant and controlling forces of the body in which those minds are acting. It may be that that is a consideration for good, as is contended here, in some directions, at least, in the unification and preservation of a system of law interpreted by the highest court; and it may work to the very best advantage to our citizens and of our State. But I am inclined to think that with the judges who we are now making in the Constitution of the Appellate Court — or are endeavoring to make — and with the new and modern questions which are constantly coming before that court for interpretation and final adjudication, no harm can occur, but much good may occur if some new blood be infused into its organization.

That ought to be a controlling consideration in this connection. I yield to no man in the respect which I feel, and which I am proud here and now to express, for the integrity of that court. I am pleased to state, in answer to the remark made by Mr. Bowers, that on some of the political questions at least which have come before it the court has not divided on strict lines of partisanship. But on other questions, on questions relating to the rights of the great corporations, which practically control the legislation of this State, questions arising upon the rights of the laboring men which are to come up very soon before that court for its ultimate decision, ques-

tions, affecting the right to combine on the part of laboring men, and the equal right on the other hand of organizations of capital to combine, and on questions, such as were raised in the grain elevator cases, of the right of this State to step into the arena of business and declare what rights shall be vested in corporations which are not essentially public in their functions, it is for the settlement of those and kindred questions that I for one am desirous that new and entirely uncontrolled voices shall be heard in that tribunal. I believe that times are changing, as this Convention has evidenced in the matter of amendments which it has either voted on or is to vote upon, that the era of reform is at hand in many respects; and that, therefore, it is highly important that the members of this great tribunal, which will have the final decision and the legal construction of these propositions, shall have infused into it some considerable portion of modern ideas, of modern views and of modern training. The members now composing that court have been elected, or re-elected if you please, in such manner that there have been, with a single exception, little or no new additions to its judiciary force for a considerable period of time; and to my mind, considering this matter as carefully and fully as I have, and abandoning as I have my original belief that a larger court for the hearing of appeals upon all subjects was the best for our people, when coupled as was proposed with certain limitations, I hope and pray that this one opportunity for the citizens of the State to increase somewhat the force of that court for the purpose of doing its business, and to change somewhat the control and domination which certain men have exercised over it in certain lines of judicial thought and action, will now be brought about. I, for one, do not agree with the proposition of the President of this Convention in which he says, or intimates, that dissent is not desirable. I think on many of the great questions that come before the court dissent is not only desirable, but is inevitable. As long as human minds differ there will be dissents in tribunals. Under those conditions I believe that in cases of dissent there is a prospect, under this amendment, that a more considerable number of judges may be found in the majority. At present it is not infrequently the case, in fact it is very often the case, that when that court has divided in the past, and as it is now divided from time to time, that you find it divided by a vote of four to three, and if you find out who wrote the opinion of the majority you will be pretty certain to know who wrote the opinion of the minority. I desire to have that broken down to a certain extent, and I do not know of any way in which it

can be so effectually broken down as by the infusion of new and modern ideas into that court.

The argument of economy does not strike me very favorably. As stated by Mr. Bowers the increase in the number of its judges will not materially increase the expense when divided amongst the taxable property of the State. And, gentlemen of the Convention, there is no doubt that the iniquitous system of pensioning these judges will be stricken out. If it is not done by the very section proposed by this committee, it will be done by amendments that have been heretofore proposed in this Convention, and which are now before the committee for its consideration. By striking out that provision we shall save many times more than the additional salaries of these judges will amount to.

I feel, too, that there is a great deal of force and effect in the argument of convenience which has been suggested. Once it was my fortune to go to that court with what I believed to be an important question, a matter to which I had devoted many days or weeks of preparation, only to find five of the judges on the bench, two of whom at General Term had considered the same question. Many times it has happened in my own practice in the General Term, that one or two judges were absent or disqualified. You cannot explain. You are there, and you have got to take what they give you. You oftentimes find, as I have, that that was caused by the sickness of some members of the court, or by the pressing engagements elsewhere of one or more of them. At present the chief justice of the court, worn out by his labors, is taking a well-earned vacation, and he was absent during a considerable portion of the session at Saratoga, leaving only six judges to consider the questions brought before the court. During a very considerable portion of the time one of the senior judges, or a judge who recently left the bench, was very feeble; he did not always hear and understand what was going on; and yet it was so near the time when he would retire by reason of age, and his services were so valuable in many other respects, that it was not deemed advisable, either by himself or by his brother judges, that he should resign. By giving us these additional judges for that court you provide against the contingency, when judges are worn out with labors, or incapacitated by sickness, or have matters to attend to of a pressing character which they cannot forego, of having an inadequate number of judges on the bench, for you will still have a large and substantial court of seven members to do the work. To my mind there seems to be a great deal of strength and force in the argument that two of the judges can be writing opinions while the other seven are

sitting on the bench hearing cases. As I understand it, heretofore in that court, on the arguments of cases there has been an assignment made immediately by rotation of judges to write the opinions. There is a large class of cases coming up, and will come up even under our limitation, where it is not absolutely essential that the whole nine judges should sit, although it may be desirable that seven should be there in view of the fact that they have to review the decisions of appellate tribunals of five, or perhaps in emergencies of seven, as in the first department. Now, in those cases how easy it will be for those judges, after they have heard the argument, for some one or two of them to step aside to the judicial library for the preparation of their opinions. Oftentimes questions come up before that court, as they do before other courts, when, after listening to the arguments of counsel, entirely new lines of thought are suggested upon consultation among the judges themselves, new lines of thought upon which their minds differ, and as to which it is desirable that some one of the judges should be deputed by the rest to examine the question and consult authorities. Under existing conditions that has often to be delayed until after the recess. But now if you give us the additional judges that may take place immediately, and while such things as appeals from certain classes of orders are being heard, or matters which are not of very pressing public importance, as compared with the great questions which come before them and are involved in the discussions and consideration of the court.

I think that an addition to the number of those judges will serve not only to bring about more perfect decisions, more learned decisions, but will also serve to bring about a relief from the pressure of business upon the courts to a very considerable extent.

One further suggestion and I have done. It has been said here that the proposition to permit an elector to vote for but one of the two judges at an election is perhaps the result of a "deal." I am very sorry that any gentleman upon the floor of this Convention should even conceive such a thought, and I am still more sorry that he should express it. There is no fact upon which any such surmise or assertion could be based. This provision, so far as I am concerned, at least, and I think I am speaking for nearly all of the committee, came into it not from any such theories, or any such ideas, but solely for this purpose, for this consideration, and for this reason: It had been noticed by all of us that on political questions the court was apt to divide on party lines, or that sometimes it did; and it was thought well perhaps that hereafter, the

court being now very nearly evenly divided, and as it will not be materially changed in all human probability by the result of the elections this fall, that hereafter that apparent equilibrium should be preserved as nearly as possible. For my part I am like other members of the committee, not tied down to that portion of the amendment. If the objections existing in the minds of members of the Convention are so serious as they seem to be considered by those who have spoken upon this question, I am willing to abandon it. Although political conventions do not always select the very best men for office, yet if this is understood to be the rule for all future time, so evenly is the court now divided it is probable that when the next selection which is made, which will be a year from this fall, able men will be nominated by both parties.

But, as I said before, if this Convention in its wisdom objects to that provision in the article (and I confess that my own views of it have been greatly shaken by the arguments made here this morning), I shall cheerfully vote to abandon it. But I hope that the question will be divided so that it may be first taken on the increase of the number of judges, and then on striking out this provision. For my part if the number of judges remains as it is proposed in this article, to wit, nine, I shall very cheerfully vote to strike out that other provision.

Now, gentlemen of the Convention, this is really a more serious question perhaps than appears upon the face of it. It does not matter much, so far as you and I are concerned, whether we appear as litigants or as lawyers, what decision is made upon our case, if it is a final decision. That is in the abstract. It may matter a great deal as to the fortunes of individual litigants, or the fortune of individual lawyers; but what we want is certainly in the law, so that when we advise our clients, or take action for ourselves hereafter, we can do so advisedly, and with a knowledge of what the law is. It seems to me that so long as we make the General Term of five judges, and in one instance of seven, and so long as the Supreme Court of the United States consists of nine members and is working well and harmoniously, and so long as it is our practice to place upon the bench of our highest Appellate Court men who are liable to sickness, and liable to interruption in their judicial duties, that we would do well to consider long before we limit the number of the Court of Appeals to the present number.

Mr. Vedder — Mr. Chairman, at the suggestion of the remarks made by Mr. Bowers, and that we may have a free field and a fair fight on this proposition as to seven or nine judges of the Court of Appeals, I move to amend the proposed article as follows: On

page six, section seven, strike out in lines seventeen and eighteen, after the word "article," "and at said election each elector may vote for only one judge."

I assure you, sir, that I was more than pleased this morning to hear the remarks of the distinguished President of this Convention, when he denounced the principle which was suggested in this amendment of the judiciary article. I do not know, Mr. Chairman, what Mr. Bowers may have had reference to by saying that that gentleman had changed his mind since some indefinite past time when something occurred with reference to the board of aldermen in New York, when he might have entertained other notions. Any man, Mr. Chairman, may make a mistake, but it requires a brave man and a great man to acknowledge that he has made such a mistake. If, when the distinguished President of this Convention was attending to his law business in the city of New York, and from that pent-up Utica had not looked very far out into the great domain of statesmanship, he had gone a little wrong under those circumstances, it is a grand thing that now, since he is in a place where he must develop statesmanship, he should do it in the manner in which he has.

Mr. Choate — Will Mr. Vedder allow me? I am not entitled to the credit of any of these observations, because I never had or took any such views of any past board of aldermen as Mr. Bowers has suggested. I leave myself entirely free to the consideration of minority representation in general whenever it comes up

Mr. Vedder — Well, I have nothing further, then, to say, Mr. Chairman, in this behalf, than that I was glad to note the unfolding of practical notions, if the President had had any others at any past time; that while he may not have been born into the domain of statesmanship, like Minerva, springing full grown from the brain of Jupiter, yet he is growing, and growing very prodigiously here, and I have marked it day by day. My friend, Mr. Becker, of Erie, seems to think that, with only seven judges of the Court of Appeals, being, as was suggested by the chairman, cheek by jowl, day by day, that one would become the seven and have the minds of all the others; that by the trick of the magician which I have seen, the two rabbits rubbed together, would soon be rubbed into only one. Now, Mr. Chairman, we have seen this exhibition here this summer; that probably the two best legal minds — two of the best, I will say, legal minds of this Convention — have been cheek by jowl, and have been rubbed together all summer; that they are rubbing together now upon this proposition, not with each other,

but against each other. One has not lost his identity by being rubbed against the other, and I think there is no possible danger of either being rubbed into the other. This scheme of these gentlemen from the Judiciary Committee, as a whole, cannot, I think, be bettered; and I do not believe that a better scheme has been proposed by any Convention of this State or of any other State since jurisprudence began. It is a splendid thing from beginning to end, and, as I have discovered, there is only one thing that ought to be changed, and that is the one that I have suggested here; that seems to be the fly in the sacred ointment. If that is stricken out all the rest may remain, and it will be the most matchless and peerless system of jurisprudence, in my opinion, that ever came from the brain of man, and one that cannot be equaled in this or in any other State, or in any other country. I hope with this exception, that the article will stand substantially as it is.

Mr. Root — Mr. Chairman, the gentleman from Cattaraugus has said that only the great can acknowledge a mistake. I shall now lay my first, last and only claim to greatness upon the confession to this Convention that the presence in this judiciary article of the clause that at the election for the proposed additional judges of the Court of Appeals, each elector may vote for only one judge, is a mistake. It is a survival, sir, of the similar provision which we found in the existing article, and was left here by the fault of too little consideration, and perhaps a desire to make as little change as possible in the numerous and important modifications which we were making. I hope that the motion made by the gentleman from Cattaraugus will prevail. I shall certainly vote for it, and I know from personal consultation that a large majority, if not all, of the Judiciary Committee, will vote for it.

Mr. Dean — Mr. Chairman, may I ask the gentleman a question?

Mr. Root — Certainly.

Mr. Dean — I want to ask the chairman of the Judiciary Committee if he regards the election of two more judges of the Court of Appeals as absolutely essential to this magnificent article.

Mr. Root — Mr. Chairman, I will proceed to answer that question in a moment. And while I am up, I will say what little I have to say upon this general subject, if I may be permitted. I put no weight upon the proposition that the addition of two judges to the Court of Appeals is going to injure that court. The Supreme Court of the United States is, to my mind, the most august, and the most respectable, tribunal which has ever declared the law for any nation on the face of the earth, and that great tribunal occupied

with the most important affairs to which judicial intelligence was ever addressed, performing the most important functions and exerting the most momentous influence over the confidence of a great people that any department of any government has ever performed or exercised, has always had nine members upon its bench; at least, it has for many years. I look for no deterioration in the Court of Appeals in this State by the addition of two members. Nor, sir, do I find myself readily yielding to the proposition that nine judges cannot do as much work as seven; nor to the still further proposition that nine judges will do still less work than seven. It seems to me, sir, as I have already said, that the addition of two members to the court will somewhat, at least, increase its effective force.

I will answer the gentleman from Cattaraugus, Mr. Dean, by saying that I do not think that the addition is essential to the scheme of this report. I do not think that the question whether there shall be seven judges or nine judges in the Court of Appeals is a vital question to the maintenance of the scheme. But, sir, there are other gentlemen who have concurred in this scheme, who do think that it is. There are gentlemen whose views were radically opposed to those of a majority of the committee; radically opposed to what I believe to be the views of this Convention, who place the addition of these two judges as the sole condition of their assent to the scheme, and who thoroughly believe that if the court is left at seven it will be incapable of performing the duties which will be assigned to it under the proposed judiciary article. Now, Mr. Chairman, if seventeen men, in any committee of this Convention, were to take their places around the consultation board, for the purpose of evolving a judiciary article, or an educational article, or a charities article, or whatever it might be, a part of this great scheme which we call a constitution, and every one of them were to insist upon his preconceived opinions, refuse to consult, refuse to permit his views to be modified by those of others, what but chaos would come from any committee? And if the same course were to be followed in Convention, every one of the 170 insisting upon his own personal judgment as to every particular, how could the concensus of opinions bring out a symmetrical whole which, while this, and that and the other member may differ upon it as to any detail, all agree — will, as a whole, be better than that which it supersedes. That, sir, is the genesis of this provision, as of many other provisions in this scheme. The rubbing together of minds, long continued discussion, the exercise of good nature and patience and respect for one another and one another's opinions, the candid and sincere desire

that there should be a united plan, that there should be agreement upon a scheme that would really improve the judicial system of this State, has led to our meeting, to some extent, the gentlemen who wished for a great court of fourteen judges, and are asking that the gentlemen who stand upon a court of seven and believe that that would be best, shall consent to this slight modification of the court, this addition which will not bring it below the standard of the Supreme Court of the United States, in order that we may have harmony and united views, and be able to go to the people with an article which, as a whole, will be better than that which it supersedes. I believe, Mr. Chairman, that the addition of these two members, notwithstanding what my learned friend upon the other side of the Convention has said, it will be an improvement in the court; although I do not think it is vital. I believe that nine men of the age which is appropriate to judges of the highest court of the land, will find occasions, as seven men do, when one or two, perhaps, of their number, are not really fit to do judicial work; when temporary rest is required, when a temporary rest would not only relieve the judge himself but improve the deliberations of the court. Opportunity for that will be afforded by nine, when if there were but seven on the bench, the absence of one would be most seriously felt. It is not a question of a rotating court; it is a question of a court in which there is some liberty of action, some liberty for rest, some liberty for a man not to force himself against sickness and fatigue. I think that the due preservation of the relations between the courts make it more appropriate that there should be nine than that there should be seven. We are constituting these great appellate tribunals with five justices of the Supreme Court sitting in each, and appeals are to be taken from their decisions to this court of last resort. If it be a court of seven judges, often it will be a court of six judges, because one will be incapacitated for the time being, from sitting, or it may be a court of five judges; and you will have five judges on the bench, or six judges on the bench, reviewing the unanimous decisions of five judges in the court below. While that is not fatal to having a court of seven, while it is not vital to the scheme, it seems to me, sir, that it is in the line of improvement, that it preserves a more harmonious relation between the tribunal which is reviewed and the tribunal which is to review, if we have nine judges upon the bench; and, sir, with the feeling that it certainly cannot harm the court, that it probably will increase its efficiency and working power, that it makes the court a more harmonious part of the general system, that the addition of the two is a recognition of the fact that, possibly, those who stand for seven

may be to some degree wrong, and that, possibly, those who stand for a great increase, may have some element of right in their views, that we are none of us altogether perfect in our judgment, that all of us are bound to defer to some extent to the judgment of others, and that all of us may learn from others, I believe, that the Constitution of this court with nine members is a proper, prudent, justifiable measure, to be adopted by this Convention; and I hope, sir, that the Convention will stand by it. I do not believe, sir, that the question of economy, important as the question of economy is, should stand between this Convention and the creation of the very best possible judicial system for this State; and I do not believe that such a question will stand between the people of the State and the creation of the very best judicial system for declaring and administering its laws that the wit of man can devise. For these reasons, sir, I am for the report of the committee, as to this section, with the modification which would be made by the amendment of the gentleman from Cattaraugus.

Mr. Mulqueen — Mr. Chairman, I simply want to say as briefly as possible, that in my opinion we should not change the judicial system in any part of the State unless we change the Court of Appeals also. Our present system has the confidence and respect of the people of the State, and it is based largely upon the fact that we have established a system by which, when you overturn the decision of one judge, you must do it with two judges of the General Term, and where you overturn the decision of the General Term, you have to overturn it with a greater number of judges in the Court of Appeals. I believe that the people believe in that system, and I think if we are going to aim, as the President suggested this morning that the aim of this Convention should be, that the Court of Appeals shall make the law so well known to the people that they may keep out of the law, then we should have the highest court with a higher number of judges than seven. For example, on the great question suggested by the gentleman from Erie, soon to come before the Court of Appeals, if five judges of an appellate term had decided one way, and those five had been reversed by four of the Court of Appeals, think you that the people interested in that great movement would be satisfied. Certainly not. They would have to submit, but they would go on agitating, hoping some day to obtain the election to the Court of Appeals of one of the judges of the Supreme Court that favored them, and then getting that judge into the Court of Appeals, the Court of Appeals might overrule itself. So, I believe, Mr. Chairman, that it is wise for us, if we are going to follow in the line which has won for the

judicial system of this State the respect and confidence of the whole people, we must change the Court of Appeals when we change the number of judges who are to sit at General Term. Now I am heartily in favor of the amendment presented by the gentleman from Cattaraugus. I had prepared such an amendment, Mr. Chairman, and I tried to obtain the floor, but failing to do so, I handed it to the gentleman with a number of others that were presented to him. I believe it would be a sad thing for this State to leave it to the State central committee of either party to name a candidate for the Court of Appeals. That should be left to the people. Minority representation has no place in the Court of Appeals. The people should have the opportunity to vote for all of the judges; and I believe in everything that the President of the Convention has said; and I hope, Mr. Chairman, that we, who believe that the Court of Appeals should contain nine judges, will have an opportunity to vote first upon striking out this clause in the article which says, "at said election, each elector may vote for only one judge."

Mr. Baker — Mr. Chairman, in listening to some of the remarks of the chairman of the Judiciary Committee, I was led to think that possibly the Court of Appeals had been modeled after the Supreme Court of the United States. I trust, gentlemen of the Convention, the same necessity does not now exist that existed for the remodeling of the Supreme Court of the United States. Many gentlemen, when I refer to it, will recollect that the Supreme Court of the United States was remodeled, when the addition of two judges was made to it, for a purpose. It was really one of the results of the war. It was a war measure. The legal tenders were likely to be pronounced unconstitutional. I am not disclosing State secrets, I believe, in saying that, that for the purpose of getting a decision that the legal tenders were constitutional, it was necessary that we should have other judges on the bench. The court stood four to three, four against the constitutionality of the legal tenders and three in favor of it. Therefore, Congress remodeled the Supreme Court of the United States for the purpose of affecting their decision upon the question of the constitutionality of the legal tenders, and for no other purpose. That was the only necessity, and I believe there is no such necessity now. I believe that seven judges will preside with as much dignity, look as well, give as good decisions, give as much attention to the business before the Court of Appeals, as would nine. Now, if that was the reason, if that was one of the reasons, why the committee saw fit to increase the number of judges from seven to nine, so that it might compare and

comport with the Supreme Court of the United States, I insist that they have no such occasion.

Mr. Moore — Mr. Chairman, the debate thus far has seemed to me to be based upon the line as to what is the convenience of the members of the Court of Appeals. One gentleman has said, in substance, that the court should not be enlarged because of the learning, the ability, the stability to be desired, and the length of time that the judges have to serve. I regard that, Mr. Chairman, as an exceedingly fallacious argument. I believe that the people of this great State, this imperial State of six millions of people, have a right in this State, a State which is at the head of the commerce of this great nation, which is really the pivotal State of the Union, to have a court in consonance with its greatness. The Court of Appeals, as at present constituted, has not in the past been able to do the business of the people of this State, and we have no expectation and no proof that it will be able to do it, as at present constituted, in the future. The arguments that have been made here, so far as I am able to judge, Mr. Chairman, seem to have put out of sight the fact that this Convention is not going to do the voting, that the *dilettante* lawyers here are not the people of this State, that the masses are going to vote here, and that they are the people whose convenience should be consulted in this great matter. Coming, as I do, from the great Republican district giving the largest majority in this State, I have the interests of my party at heart; the interests of the people first, and my party next; and, in this instance, I believe every man who serves his party first in my district serves his State first. Mr. Chairman, the people in my district want the Court of Appeals increased; they have been disappointed time and time again from the fact that there were not members enough in that court. I do not mean to say by that that the court has not ability. It has great ability or the people of this State would not have elected its judges to those high positions.

Mr. Chairman, I am informed by gentlemen who have studied up this question for the last three months — we, members of the Convention in general, may well be excused if we do not know all the details of this measure — that the seventeen members of this Judiciary Committee, the pets of the Convention, have had this thing for three long months incubating, and I want to say to you that, in my judgment, with the exception of the fourteen-year term and the fallacious idea of minority representation, I think it is the grandest judicial article I have ever read or seen anywheres. With that exception, I am in favor of it. I believe that the Court of Appeals in this State should consist of nine members. I believe that that

theory and that practice put into effect will justify the expectations from this judicial article. Now, as to the economy. I am informed by those who know that the sweeping away of the different courts which are put out of existence by this article, the numerous hangers-on, the clerks and the system of expense which will be dispensed with, will more than compensate for the salaries of the extra judges which it is proposed to elect by this article. Hence, I think, on the score of economy, we who are charged with the responsibility of the conduct of this Convention might well go to the people with this article and ask them to vote for it; and if I am permitted, Mr. Chairman, to take part in the campaign on the hills and valleys of my great district, I shall most cheerfully, Mr. Chairman, advocate this great article, emanating from the great brains of the Judiciary Committee of the Constitutional Convention of 1894, of which I am an humble member. (Applause.)

Mr. McClure — Mr. Chairman, I would like to ask the gentleman a question. When he says that he is with those who have the responsibility of the work of this Convention, to whom does he refer?

Mr. Moore — I refer, sir, to those whom the people have put in here in the majority, who have to account to the people for what they do here; and we are ready, Mr. Chairman, to take and act upon that responsibility, according to our oaths, for the good of the whole people of this State.

Mr. Roche — Mr. Chairman, I have been traveling up in the Adirondack region, in which my friend, Mr. Moore, has resided for several years past. I have found nothing much but trees and rocks. I can see that there is a constantly increasing decrease in the population, and I could not quite account for it until to-day.

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

Mr. Roche — I would prefer the gentleman to refer to the census tables.

Mr. Moore — I only want to ask him a question.

Mr. Roche — After a while, after a while.

The Chairman — Mr. Roche has the floor.

Mr. Roche — And I say I can only account to-day for what the gentleman has said on the theory that the people up in that region have been dissatisfied with not having a sufficient force in the Court of Appeals.

Now, Mr. Chairman, to one who is on the other side of the house

politically, it was very pleasant to hear the certificate of growth, character and availability which the Republican candidate for Lieutenant-Governor — I do not see him in the House at present — gave to the gentleman who may be a possible — and a majority of those here present, without regard to party, might say a hoped-for and probable head of the ticket, even though the nomination should prove to be a barren one, when it comes to be passed upon by the people at the polls.

Mr. Chairman, I think that the work of this committee is admirable in the main. The report which accompanies the article is very explanatory, and to my mind fully justifies the main provisions of this article. I am opposed, though, to section 7 as it stands, and am in favor of the amendment proposed by Mr. Brown. It will be noticed that the committee, in their report, assign good reasons for almost every new provision which they have presented, except this one now before us, and all that is said on that subject that I can see is in the following words: "The Court of Appeals is to be enlarged to nine, the lowest number with which the unity of the court and its consistent declaration and development of the law can, in our opinion, be maintained." That certainly is not an argument for increasing the court from seven to nine. The only thing else that we find on the subject is on page 7, where it is said that "the increase in the number of the judges of the Court of Appeals would slightly increase the working power of the court," and that is so faint a reason, and so faintly stated, for the proposed increase, that it seems to me the Convention should hesitate a long while before adding this number to the present judicial force. This report contains ample reasons for rejecting this proposition. They are in these words, after referring to the reasons why they did not adopt the proposition of Mr. Parmenter, they say: "There remains the plan which we propose. We are of the opinion that the new Appellate Courts will be more efficient, that their opinions will be more highly respected, that their judgments will be less frequently reversed, and that, for all these reasons, there will be fewer appeals from them to the Court of Appeals than there are from the existing General Terms. We are also satisfied that the limitations upon the jurisdiction of the Court of Appeals and the right to appeal thereto, will further very largely reduce the number of appeals to that court."

Now, Mr. Chairman, we go before the people this fall with a proposition to increase the judicial force of the State, the Supreme Court of the State, by twelve in number. We propose to take certain judges who were not elected to certain offices by the people,

and who are receiving certain salaries, and make them judges of more highly important courts with increased salaries. We propose to add to the judicial force of the Court of Appeals. I say, Mr. Chairman, we must give good reasons to the people for this action. If the people of this State get a notion into their heads that this is a lawyers' Convention, held for the purpose of creating positions which the lawyers are to fill, the bell will be rung on the work of this Convention and its work will be defeated at the polls. Now, I am entirely satisfied that the people want all the judges necessary for the transaction of the people's business. They are willing to pay them decent salaries. But, sir, we have given them no good reasons, and none of them have been discussed in this report or in the addresses that have been made on this floor for this increase in the Court of Appeals; and once it gets running in the popular mind that this is a lawyers' Convention, as I have said, which is adding simply to the number of judges, the people will not wait to discriminate or examine this thing with exceeding great care, and we will find that it will all go by the board. It is not a good year in which to present to the people propositions which involve to a great extent the increase of judicial or other public offices, and also increase public expenditures.

During the year that has passed and during the present year, the people have suffered very greatly in their business, in their employments and in their ability to get work. The merchant has felt a material falling off in his trade and business. Thousands and tens of thousands of men in the State have been without work. Many a man owning his little home has found it harder to pay his taxes than he ever found it from 1873 to 1879. The agricultural community has felt this depression. I say, Mr. Chairman, it is unwise to have it go out from this Convention that we are here as a body of lawyers, putting before the people a large and unnecessary increase in public officers and public expenditures.

We go before the people with these reasons, which no man can answer, that we propose to reduce the amount of business that the court, a homogeneous court, is to be called upon to transact, and we are going to increase the judicial force to transact a smaller amount of business. I say, Mr. Chairman, that the people will not accept it with patience or approval.

Now, Mr. Chairman, it has been said that the Supreme Court of the United States is a body of nine. Mr. Baker has anticipated what I meant to say as to how that body came to be increased from seven to nine. But there is no analogy between the cases. The Supreme Court of the United States is the court of last resort for

sixty millions of people, and the character of business which it transacts is unknown in any other tribunal in the world.

The judges of the Supreme Court of the United States, until the Circuit Court or intermediate Court of Appeals was established a few years ago, were not only Supreme Court judges, but they had circuits assigned to them and were compelled to attend them, a class of work which has not been done by the judges of the Court of Appeals of this State. So I say there is no analogy between the two courts.

Now, it has been further said, that it is necessary for this increase to nine, because you may find a case in which five judges would be reversing the decision of five judges in the intermediate division. Well, now that may be all true, but has the committee accomplished all that they meant to accomplish, if they intended effectually to meet that difficulty? You have provided for a quorum of seven, and five would be necessary to render the decision. Suppose that the intermediate court is unanimous and that the intermediate court affirms the decisions of the trial court. Then you have six judges one way, and you certainly have not met that difficulty in this article. To meet it you must create a Court of Appeals of thirteen, with a quorum of eleven, and nine to render a decision. So I say that that falls to the ground; and I submit, further, that it is hardly a good reason in view of the extreme improbability of such a case arising. It is hardly worth our while for that reason alone to make this increase in the judges of the Court of Appeals.

Now, my friend from Erie has spoken of the character of the cases that come before that court, and has referred to the grain elevator case. How would this proposition meet that difficulty? Suppose the grain elevator case was tried by a judge at a trial term, affirmed by the intermediate court of five, and affirmed by five in the Court of Appeals, that would be fifteen. That case should go, to the Supreme Court of the United States, and there the decision of the fifteen might be reversed by five men in the Supreme Court of the United States. So, it is impossible for you to meet the objection, which to my mind is a trifling one, that you must have a Court of Appeals so large that you must have a certain number of judges rendering a decision, and that number must exceed all the judges of the lower courts who decided the other way.

It seems to me that the President of this Convention stated very clearly the best reasons why this article should not be adopted so far as this particular point was concerned.

Now, Mr. Chairman, I admire very much the chivalry of this committee, the admiration of one for the other. I did not know

until this morning that there was a dissent in that committee on the part of any one except Mr. Parmenter. I learned here this morning that the committee have been very sharply divided on this particular, and, indeed, on other points on this amendment, standing on this particular subject nine to eight.

Now my distinguished friend from New York (Mr. Bowers) has given reasons which are undoubtedly very satisfactory to him, and which certainly show loyalty on his part to this committee, even if he does not quite believe in it. It is a sort of "united we stand, divided we fall" spirit. But so far as the rest of us are concerned, we do not have to stand by it because the committee is agreed upon it. If we are going to increase this court, let us have the courage to increase it to the extent proposed by my friend from Rensselaer (Mr. Parmenter), and then we will have some of the work done which has been said could be done by these nine judges. If you are not going to increase it to this extent, do not increase it at all.

Now, my friend from Erie has also spoken of the necessity for new blood in this court, and, according to the proposition which comes from this committee, it was to be equally divided. It was to be Republican blood and Democratic blood, and which was to be the true blood, the gentlemen of the Convention, knowing my opinions, can decide for themselves, which, I believe, would go into the court. But, Mr. Chairman, it seems to me that there is no necessity for any such thing. We renew our Court of Appeals from time to time, and we have within recent years, even so late as last fall. By adopting his idea we impeach the work which has been done by the great political parties of this State in uniting upon and continuing Judge Earl, and again in continuing Judge Andrews in the Court of Appeals; and an examination of the opinions and decisions of that court and of the opinions written by these gentlemen, I think, will convince any unprejudiced mind that there was no want of sturdy blood or good common sense in the opinions that were written by either of these gentlemen.

Mr. Becker — Mr. Chairman, I would like to ask the gentleman if he has not already stated on the floor of this house that the pension question had something to do with that, in substance and effect?

Mr. Roche — I have stated nothing of the kind, sir. I do not believe the pension question decided by the Court of Appeals has had any effect whatever upon the honesty or the soundness of the opinions that were written by either of those gentlemen upon any question of negligence, of real estate and of admiralty, or any of

the great questions, political or legal, that have come before that august tribunal for the last twelve years, and I think it was within that time that the decision to which he refers was made.

Now, it has been suggested further that by making the number nine that we will take care of this court for fifty years. Gentlemen, I think it is a mistake. We are undertaking to do too much by providing for this court for fifty years. Let us take care of it for a few years hence.

Another Convention will have come on before the fifty years will have run by, and if the conditions require it then this number can be very properly increased. If within the next five or eight years, it develops that this system of the Appellate Division, whose decisions will be more respected, whose work will almost of itself limit the number of cases that go to the Court of Appeals, does not work satisfactorily, does not work out the result which we anticipate it will, then the Legislature of the State of New York, answering to the popular demand, answering to the needs of litigants, answering to the representations of the members of the legal profession, can propose an amendment increasing the number, get it before the people and get it adopted, if that will be the true remedy for meeting the difficulty.

It has been further suggested, Mr. Chairman, that we need to increase this court because there are some men in it of strong minds. Now, I believe in the good doctrine that all men are created equal, but I have yet to find that all men are of equal degree of intelligence or will power, and whoever may be elected to this court may be subject to the strong minds, the superior ability, the superior learning and the vastly greater experience of some other men in the court. That is bound to be so. And it is certainly no argument, for adding to the number of the court, that the court may to-day be controlled by strong minds in its body, because that may happen whether the court be nine or fourteen in number.

I wish to suggest further, Mr. Chairman, that we adopted a provision last evening increasing the number of judges of the Supreme Court by twelve. I was satisfied, after Mr. Brown's presentation of the matter and what I heard later, that perhaps we made a mistake in that respect. There are certain portions of the State in which the population is decreasing. I believe there are certain judicial districts in which we do not need any increase in judicial force, and that even with this call for the extra number of judges that will go into the Appellate Division, there is no necessity whatever for increasing the number of judges in certain of the districts, and I was convinced of that by the figures which were on the table and by

the statements which were made by a gentleman of this Judiciary Committee.

Now, gentlemen, I say we may make a mistake in presenting this thing to the people. I said to that gentleman that we should not go before the people and ask for any judges that we did not need, and that I was afraid that it would endanger the adoption of this Constitution. I have heard from two gentlemen this statement, that the people in New York and the people in Brooklyn all want this thing and will vote for it unanimously. Now, gentlemen, the people in New York vote about two hundred or two hundren and fifty thousand in the presidential year, and in view of the candidacy of which I spoke before, the people of New York may come out in large numbers to do justice to a distinguished fellow-citizen, if he should be at the head of the ticket, and at the same time they will be called upon to pass upon this article, and before those people will go the words which were uttered by that gentleman this morning, to the effect that this provision was not needed for our highest court, and I wish to say further to these gentlemen that there are upwards of a million of voters in the State of New York outside the city of New York; that the people are considering these propositions up here in the rural districts to an extent that those living in the city of New York may not understand or appreciate; that they are looking carefully into all the matters that are proposed in this Convention, and that among the things which they are very carefully considering is this judiciary article, and they are looking with more than jealous eyes upon propositions to increase the judicial force and judicial expenditures, unless there is a plain, apparent reason and necessity for the act.

I, therefore, hope that the Convention will hesitate before adopting the report of the committee in this respect, and that the article will be modified as suggested.

Mr. Lincoln — Mr. Chairman, this discussion has been already extended so long that I do not wish to take the time of the committee by going over the ground that has already been thoroughly discussed. But there is one branch of this inquiry upon which little has been said, except that the suggestion has been made that reorganization of the General Terms into these branches of the Supreme Court which are in this article called the Appellate Division, will have a tendency to materially diminish the work of the Court of Appeals. It seems to me, Mr. Chairman, that if we hope for that result we are quite likely to be disappointed. If this article is adopted substantially as presented by the Judiciary Committee, with this provision for the Appellate Division of the Supreme Court, and

the provisions for appeals from that court to the Court of Appeals, with the limitations removed which now exist by statute, even with some added by this provision, I predict that the work of the Court of Appeals will be largely increased and that we will find within the next year or two more cases upon the Court of Appeals calendar than there are now. One important limitation which has heretofore existed and now exists upon appeals to the Court of Appeals is removed, and that is the money limit; now every one who practices law, unless it is the cities, where lawyers are all supposed to have large cases, every one knows that there are cases through the State which would be taken to the Court of Appeals were it not for this present limitation limiting appeals to the Court of Appeals where the amount claimed is less than $500. The Legislature by this new article is prohibited from imposing any money limitation. That would permit the very smallest cases, so far as money is concerned, to go to the Court of Appeals unless the power is restrained by some other provision in this article. Now, I am in favor of removing that money limit and I am in favor of providing a court of last resort of sufficient number and sufficient strength and sufficient ability to dispose of every question, not only a question involving $10,000, but a case involving, if you please, but ten dollars. Now I believe if the members of this Convention who have a general practice throughout the country will recall their own experience, they will agree with me when I suggest a removal of this limitation will open the doors to a larger number of appeals to the Court of Appeals. Now, while I have not been vitally interested in this increase of the Court of Appeals from seven to nine, it is a very serious question for this Convention to determine whether seven judges will be able to do this work, and whether nine or some other number will not be absolutely necessary. Now I do not wish to prolong this discussion, as I said before, but I believe that it is a consideration that ought not to be overlooked. I believe if the Judiciary Committee have come to the conclusion that the work of the Court of Appeals will not be increased they will be doomed to disappointment. I cannot see any serious objection to the increase in the number of judges. It seems to me the number is reasonable. At least, the court still retains its solidity and its unity. I cannot agree with those who say that nine men cannot do more work than seven. I think nine men may do more work than seven.

Mr. Ackerly — Mr. Chairman, I desire the gentleman to give way for a question. I would like to know from Mr. Becker, or any

other gentleman on this floor, whether they can give us any information that the Supreme Court of the United States, after nine judges were appointed, did more business than they did before with seven?

Mr. Lincoln — I have made no investigation of that matter, and I am not prepared to answer it. I think, however, nine judges ought reasonably to be expected to do more work than seven. Now, I have prepared a table bearing upon the increase of the judges of the State in the several departments, which I shall present at the proper time. It has no reference, however, to the point under discussion at present. The question is a very simple one whether we shall increase the Court of Appeals from seven to nine.

I am not in favor of this provision limiting the election of these extra judges one to each voter. I think that that should be stricken out in accordance with the motion already made. I can see no serious objection to increasing the seven to nine, and I think, in view of the increase of the work of the court, some increase in the working force should be made.

Mr. Countryman — Mr. Chairman, if there is any disposition or any combination among the members of this Convention to increase the number of judges of the Court of Appeals from seven to twelve for any ulterior purpose relating to corporations, or to the interests of capital or of labor or of politics, I wish it to be distinctly understood that I am not a party to any such combination. If there was any motive of that kind which prompted the insertion of this provision in the judiciary article while it was before the Judiciary Committee, I wish it to be understood that I was not a party to any such action in the committee increasing the number from seven to nine. The only motive and the only object, I submit, which we can properly have in view in determining the number of judges of the Court of Appeals, is to secure the most efficient and stable tribunal as the court of last resort which it is possible for us to organize. If that is the only motive or purpose which prompts us in our deliberations here, then the simple question now involved is whether the increase of the number of judges from seven to nine will make it more efficient for the purpose for which it is organized; will enable it to turn out more work than it has heretofore done. If it will accomplish that purpose the number should be increased without hesitation. If it will not, then I submit that the number ought not to be increased for any other or any ulterior purpose.

Now, sir, it seems to me, that the matter is hardly worthy of discussion, that nine men acting as one body in hearing cases and in consulting together and in deciding these cases, can do no more

work than seven. They can hear no more cases certainly, and when they come to deliberation among themselves nine only results in unnecessary delay. We had the best possible illustration of that fact in the deliberations of the Judiciary Committee. It was composed of seventeen members, and I assert, without fear of contradiction by any of the members of that committee, that if it had been composed of seven members instead of seventeen, it would have done the same work in seven-seventeenths of the time taken to produce this article.

Now, sir, objection is raised as to the number seven as an improper number to act as a court of last resort in reviewing the decisions of the subordinate tribunal. Why, sir, the Court of Appeals of England for many years consisted of three judges to review all of the decisions of the Queen's Bench and of the Court of Exchequer and of the Court of Common Pleas, composed together of some fifteen or sixteen judges or more, and it is now only composed of five judges. It is for many cases the court of ultimate resort of England, and when they go to the House of Lords the decisions there are all made by from four to six law lords, the only number to take part in the decision of appeals which come from the subordinate tribunal. So that there is nothing in number which should make us fear to continue the Court of Appeals under its present organization, and if it be said, as it has been said frequently in the course of this discussion, that the Supreme Court of the United States is composed of a greater number, of nine judges in all, I simply want to point the members at the bar, who are members of the Convention also, to the decisions of the Supreme Court of the United States as compared with those of our Court of Appeals, and they will find, by an examination of the reports of the decided cases of these courts, that the Court of Appeals has turned out one-fourth more work in the course of a year than the Supreme Court of the United States. So that if you come back to the real, the only practical issue involved in this debate, as to which court will do the most efficient work, I submit that we have a practical demonstration already that seven is a better number than nine for the purpose in view, and, therefore, without proceeding into detail, I submit that this amendment should prevail. (Applause.)

Mr. E. A. Brown — Mr. Chairman, I have just one word to say on this subject, and will make my remarks very brief. I have been waiting to see if some other gentleman would take the floor in regard to this proposed amendment and make some reference to the point I have in mind. I think, Mr. Chairman, we have forgotten for the moment that we represent the great body of the people of the

great State of New York, and, sir, amongst that number are a great many in the agricultural districts, a great many men who have homes only partly paid for and which are largely encumbered, and that we should not pass at this time any act creating two additional judges of the Court of Appeals of this State, which has appeared not only uncalled for, but unnecessarily a burdening of the taxpayers of this State in the added sum of $24,000 per year by way of salaries. This point is more important, Mr. Chairman, when we reflect that by the work of this committee, which I do not desire to trench upon, or cast any reflections upon the increase of salaries by the increase of judges, the payment of the salaries has become so burdensome upon the State and has increased to $216,000 per year. Now, upon that, gentlemen, if you wish to lay the last feather that breaks the camel's back, it is your responsibility and not mine. If, in addition to that sum, you desire to lay upon the backs of the taxpayers of this State $24,000 ——

At this point First Vice-President Alvord took the chair and announced, that the hour of five o'clock having arrived, the Convention stood adjourned until eight o'clock this evening.

EVENING SESSION.

Tuesday Evening, August 21, 1894.

The Constitutional Convention of the State of New York met, pursuant to recess, in the Capitol, at Albany, N. Y., August 21, 1894, at eight o'clock P. M.

President Choate called the Convention to order.

Mr. Jenks presented by telegraph a statement that he is detained at home on account of illness in his family, with the request that he be excused from attendance at the Convention to-day.

The President put the question on the request of Mr. Jenks to be excused from attendance, and he was so excused.

Mr. Hottenroth — Mr. President, I received a telegram this morning from Mr. Fraser stating that he is ill and unable to attend the Convention, and I would ask that he be excused during his illness; also, Mr. Ohmeis desires to be excused on account of illness for to-day.

The President put the question on the requests of Mr. Fraser and Mr. Ohmeis to be excused from attendance, and they were so excused.

Mr. McIntyre — Mr. President, I would like to be excused for Thursday and Friday of this week, on account of a death.

The President put the question on the request of Mr. McIntyre to be excused from attendance, and he was so excused.

Mr. C. B. McLaughlin — Mr. President, I ask to be excused from attendance to-morrow afternoon and Thursday.

The President put the question on the request of Mr. McLaughlin to be excused from attendance, and he was so excused.

Mr. Acker took the chair in Committee of the Whole upon the business pending at the time recess was taken.

The Chairman — The Convention is still in Committee of the Whole on general order No. 45, and Mr. E. A. Brown has the floor.

Mr. E. A. Brown — Mr. Chairman, there is another consideration. The additional judge in Kings county will get $1,300 additional, making $341,300. If the State is to pay the salaries of the justices of the Supreme Court in the first district, then this sum will be increased by the additional sum of $180,000, which will make a grand total of increased expense to the people of the State of $521,300 annually. Be the latter proposition as it may, the increase of the tax levy of the State at this time, upwards of $341,000, is both unwise and inexpedient, and although it be granted that one-half of that amount, or $170,500, is borne by that part of the State lying south of the dividing line, spoken of by the learned chairman of the Judiciary Committee, still $170,500 of this immense increase must be borne by the agricultural interests and home owners of the balance of the State. It has been suggested that the Convention may, by its action, abolish pensions to its judges. That is now in doubt, and even should such action be taken, it will be only a small saving compared with this immense amount of added burden.

Sir, I greatly fear that the adoption of the entire judiciary article will be jeopardized by this unwarranted, as I believe, increase in the number of our judges, as well as inflicting an unnecessary burden of taxation at a time of general and widespread financial depression. It is to be hoped that upon the mature action of the Convention the addition of two unnecessary judges to the Court of Appeals bench will be disapproved.

Mr. C. B. McLaughlin — Mr. Chairman, will the gentleman permit a question? You are opposed to the increase of judges of the Supreme Court?

Mr. Brown — I am.

Mr. McLaughlin — In what part of the State do you oppose that?

Mr. Brown — In my own district, the third district.

Mr. McLaughlin — Why not offer an amendment so that we can vote and excuse your district?

Mr. Brown — Because that point is passed. And I would say, in addition, I am not a candidate for Supreme Court judge in my district. (Laughter.)

The Chairman — The question now arises on the amendment of Mr. Brown, as amended by Mr. Cassidy. Mr. Becker, of Erie, calls for a division of the question, so that you are asked to vote first to strike out, in line 16, beginning with the word "add," down to and including the word "judge," in line 18.

The Chairman put the question on the amendment, and it was determined in the negative.

The Chairman — The question is now upon the amendment of Mr. Brown, as amended by Mr. Cassidy.

Mr. Cassidy — Mr. Chairman, there is no amendment offered by Mr. Brown here. That was offered as a substitute for Mr. Brown's amendment, and Mr. Brown's amendment was withdrawn.

Mr. E. R. Brown — Mr. Chairman, the gentleman labors under a misapprehension. I offered an amendment to the effect suggested by the Chair, and the gentleman offered a substitute, which, upon investigation, I found differed from the amendment offered be me in striking out the word "any," etc. In all other respects it was the same as mine, and I accepted it in that regard.

The Chairman — The question now occurs upon the amendment of Mr. Brown, as amended by Mr. Cassidy.

Mr. Veeder — I would like to have it read, Mr. Chairman.

The Chairman — It provides for striking out all in line 14, down to the word "judges."

Mr. Maybee — Mr. Chairman, I ask that the Secretary read the entire section as amended.

The Secretary read the section as follows:

"The Court of Appeals is continued. It shall consist of the chief judge and associate judges now in office, who shall hold their offices until the expiration of their respective terms, and of their successors, who shall be chosen by the electors of the State. The official terms of the chief judge and associate judges shall be fourteen years from and including the first day of January next after their election. Five members of the court shall form a quorum, and the concurrence of four shall be necessary to a decision. The

court shall have power to appoint and to remove its reporter, clerk and attendants."

Mr. Alvord — Mr. Chairman, I call for a rising vote.

Mr. Moore — Mr. President, I rise to a point of order. My point of order is this, that the motion should be put in two parts. It was agreed that the question should be put separately this afternoon.

The Chairman — The point of order is very well taken, and the motion has already been put and carried on one part. The question is now upon the second part.

Mr. Bowers — Mr. Chairman, I desire to ask if the leaving in of five members to constitute a quorum is intentional?

Mr. Marshall — Mr. Chairman, I will state that that is the present Constitution. It has not been changed.

Mr. A. H. Green — Mr. Chairman, this amendment now before the House, I understand, is as to the terms of judges.

The Chairman — Oh, no; it is upon the number of judges.

The Chairman put the question on the amendment, and it was determined in the affirmative, by a rising vote.

Mr. A. H. Green — Mr. Chairman, I move to amend, in line 14, by inserting the words "seven years" in the place of "fourteen years."

The Chairman — The Chair holds that that motion, having once been voted upon and lost, is not in order.

Mr. Green — I think the Chair is mistaken. That has not been voted upon. The motion voted upon was the Supreme Court. This is the Court of Appeals.

The Chairman — The Chair begs the gentleman's pardon.

Mr. Green — Now, sir, I hope this amendment may be adopted, and that we may have some reduction of these extreme terms that are proposed. I was very much surprised, in the course of this discussion, to hear the criticisms made upon the present Court of Appeals.

Mr. Pratt — Mr. Chairman, I rise to a point of order. There is no question before the House.

The Chairman — There is a question pending.

Mr. Green — One gentleman remembered that when political questions came up, this court seemed to be oblivious of its duty, and decided questions according to their political complexion. Then we find that there is a suggestion here, originating from my friend from New York (Mr. Bowers) and reiterated by the gentleman from

Erie (Mr. Becker), that we wanted new blood in this court; that we needed an infusion of new life. This is the precise language, I think, that those gentlemen used.

Now, when we come to analyze it, what does it mean? What does it mean when we say we want new blood? Does it mean that this court has become so fossilized by long terms that they are not fit to discharge their duties? The criticisms, though somewhat subdued and muffled, are as severe criticisms as I ever heard upon the Court of Appeals, and coming from that side of the House. Now, sir, if this court has become fossilized, as these gentlemen seem to think, I think it is time that we not only reduced it by two, but that we wiped it out and started with fresh blood all the way through.

Now, as to some other criticisms that have been made here, and of which I took a brief note in passing. One gentleman thought, and I think it was my friend from New York, coming from our end of the State, which bears one-half the taxation of the whole State, that the argument of economy was hardly worth considering. Here we are to put nearly a quarter of a million more money into the judicial machinery of the State, and that argument rests as lightly here as the volatile air. Our friend, Judge Moore, thinks that he could go to every valley and hill and talk to his constituency in favor of adding a quarter of a million to the expense of the judiciary here. I am not in favor of any such thing. I think the number we have is adequate and that we want no more additions to the court. I was very much interested when I saw our friend from Cattaraugus (Mr. Vedder), the proposed future Lieutenant-Governor of the State, which chair he will adorn if he gets it. (Applause.) I suppose he is about as good a man as we can get; he delivered a panegyric here on the work of this committee, which has been three months in session, such a panegyric as I rarely ever heard upon a piece of literary construction. Now, sir, what was it? Why, Mr. Chairman, the very first blow of his right arm shattered one of the very foundation stones of this report, and it was stricken out, I think, almost by unanimous consent. What was it? "And at said election each elector may vote for only one judge." Did anybody on the committee attempt for a moment to defend that provision? And in shattering that stone what is to become of the main edifice? I can already see clefts in other foundation stones that are sure to make this edifice fall. Now, sir, that was a most unconscious tribute to the power of the gentleman from Cattaraugus. Eulogizing this structure as the most magnificent work that man ever attempted, he at one blow, knocks it over. What must be his power? (Applause and laughter.)

Now, sir, I am very glad to see and to welcome a change that seems to be coming over the gentlemen of this Convention. It seemed to me for a while that if anybody wanted to succeed in getting through an amendment here, the longest term, the highest pay and the greatest number of judges were the features that were more attractive than any others that could be proposed here. But now, that seems to be fading away and I am very glad to see it. The contrary of that idea seems in some degree likely to obtain here, as I think it ought to obtain. The shortest terms, the least pay, and the lowest number. (Laughter.) Mr. Chairman, this may be amusing to the gentlemen, but I say there is a great deal of truth in it. My observation has been that the higher salaries you pay the judges, the worse men you get. There is logic and reason in that. Does anybody doubt that a man ought to be fairly paid for his services? No. Who doubts that we ought to have an adequate number of judges? Who doubts that there are excellent judges on the bench? Take that typical judge, Charles Daniels, of Buffalo, a man who is an ornament to the bench. Nobody doubts these things, but we do not want the higher pay. All it does is to put the judges into the arena of ward politics. I have seen enough of it in New York, and it exists there to-day.

Now, sir, I trust that in the interests of economy, in the interests of effective public service by the judiciary, and with some regard to the taxpayers of this State, we may be exempted from any increase in the number of judges of this court, any increase of the terms and any increase of the salaries. I move you, Mr. Chairman, that the term be made seven years, instead of fourteen years.

Mr. Moore — Mr. Chairman, I move to amend the amendment, by making the term ten years.

The Chairman put the question on the amendment of Mr. Moore, and it was determined in the negative.

The Chairman put the question on the amendment offered by Mr. Green, and it was determined in the negative.

Mr. Parmenter — Mr. Chairman, I desire to renew my amendment to section seven, which has been sent up. But I desire, in view of the vote just taken by the Convention, to eliminate the provision which provided that at the first election the seven additional associate judges' minority representation shall be applied. I will strike that out, and, with that eliminated, I ask to have the amendment read.

The Secretary read the amendment of Mr. Parmenter, as follows:

"The Court of Appeals is continued. It shall consist of the chief

judge and associate judges now in office until the expiration of their respective terms, and of seven additional associate judges, who shall be chosen by the electors of the State at the first general election held after the adoption of this article. The official terms of the chief judge and the associate judges shall be fourteen years from and including the first day of January next after their election. After the additional associate judges are elected, any seven members of the court shall constitute a quorum, and the concurrence of five of such quorum shall be necessary to a decision. Two quorums of said court may sit at the same time or alternately, as the court shall determine. The court or the chief judge may order that any particular case or class of cases shall be heard before the full bench, or before not less than nine judges, and in every such case the concurrence of a majority of the judges before whom any such case is argued shall be necessary to a decision. The court shall have the power to appoint and remove its reporter, clerk, deputy clerk and such other attendants as in its judgment shall be necessary."

Mr. Parmenter — Mr. Chairman, the contention of this Convention has been mainly between a court of seven judges and a court of nine judges. In respect to that contention, I took no particular part. In fact, I might say, in the language of the poet, slightly modified, "A rot on both your houses." I do not agree with either of them, and I think that the only solution of the problem involved in creating a new Court of Appeals is the one that I propose, or a similar one. I ask for a few moments to state my reasons for the position I take, and I do not intend to make any long speech, because I am going to follow the admonition of the learned President in that respect. I simply desire to make a few statements, which will be addressed mainly to the lawyers, who constitute quite a majority of this Convention.

When, in the history of this State, did the idea arise for the creation of a Court of Appeals? It was during the Convention of 1846, when they sought to unite in its administration both law and equity, and they proposed a Court of Appeals to take the place of the chancellor and of the Court for the Correction of Errors. The Convention of 1846 hit upon the plan of having a court of eight judges, four to be elected by the people and four to be taken from justices of the Supreme Court, who should sit in alternate years. They organized such Appellate Court under those auspices in 1847, and it continued down until the present court was organized under the election of 1870. Now, what efficacy was exemplified in the first court? They were all good judges, and I am not here to raise a word of complaint against any of the judges that sat in the Court

of Appeals from 1847 down to the present time. I think they were all able judges. The question is, how much work can they do, and how much work is there for them to do? The original Appellate Court commenced running behind on its calendar. That continued for a number of years, and finally the question began to be agitated by the people that this court was not so fully equipped as to be able to perform all the duties that ought to be imposed upon a court of last resort. You will remember that at that time the population of the State was about half as large as it is now. Finally that court became so crowded with business that in 1869 the people passed affirmatively upon a question at the polls providing for a new Court of Appeals, to consist of a chief judge and six associate judges, all to be elected by the people. Now, in order to give them a good start, it was provided that they should commence with a clean calendar, and to do that the old judges of the Court of Appeals, whose terms had not expired, were continued, and a new commissioner was appointed to create a court of five commissioners, consisting of those judges of the Court of Appeals who were still in office and others appointed in the places of those whose terms had expired. Then this present Court of Appeals started with also a commission to discharge such duties, to clear up the calendar that was then away behind. That went on, and the existing court discharged its duties as well as might be expected. The commissioners were excellent judges, no fault is to be found with them at all, but they passed upon litigated questions that filled seven volumes of our reports, and by that time it became certain that the people demanded a new court or rather an enlargement of the court. As I said before, the present court was established in 1870, under the amendment to the Constitution which was adopted in 1869, and the judges were elected. At the first election of judges this minority representation was introduced, and those who voted at that time could only vote for a chief judge and no more than four of the associate judges. That provision as well as the majority report induced me to insert the clause which I have stricken out, in view of the vote taken by the house, requiring that no man should vote for more than four, a majority of those additional judges. That provision is now out of the way. I cared nothing about it myself, but I thought perhaps, having been first put into the present Constitution, that it was not a bad principle, and I do not think it is a bad one now, but it is out of the way. The new court started, and what has been its course since 1870? I think that the lawyers in this Convention will agree with me that it has not discharged the

duties which it was supposed it could discharge. Now, I am opposed to a Court of Appeals with seven judges, because I conscientiously believe that the number of judges is too small to discharge the duties that come before that court to be discharged, and I am equally opposed to nine judges, because I think that number is not large enough, for the same reason.

The court organized in 1870 continued very well until it had filled some three or four volumes of reports, I think they are the forty-third, forty-fourth and forty-fifth; but they then began to discover that they could not clear up their calendar, and what was done to overcome such difficulty? They commenced reporting by memoranda, and continued that system down to the last volume of those reports which is 141, the last one that I have received. At the end of every volume, from volume forty-six down to 141, except some of the volumes where the decisions of the commissioners were reported, if you will look at it, you will find at least from thirty to fifty decisions only reported very briefly. From thirty to fifty decisions appear in each one of these volumes where the only information a litigant can get in regard to them is that they affirmed, or they reversed, or they dismissed the appeal. Why did they do that? The old Court of Appeals did not do it. They reported the decisions in full. If there were dissenting opinions they were reported, too. The present court abandoned that notion, because it could not discharge the duties that were imposed upon it, and hence it is that in the seventy-eighth or seventy-ninth volumes, the last volumes of the Court of Appeals reports, I think you will find the lowest will be about thirty and the highest about fifty, decisions reported by way of memoranda merely, and most of them are reported as "judgment affirmed," or "judgment reversed," or "appeal dismissed." About 3,000 of those decisions appear in the last numbers of the reports.

Now, I submit to the lawyers especially of this Convention, whether that court, as now constituted, is a proper court to be continued under existing circumstances. What is to be done? You must either abridge the right of an appeal, or you must enlarge the court; and I submit in my proposition, and you may vote upon it, that the court shall hereafter consist of judges enough to make two quorums of seven each, so that those two quorums, according to the rules and regulations of the court itself, may sit alternately, or sit in two quorums at the same time. By doing that, I do not think it will lessen the character of the court, and I think it would be a very useful thing to do in the highest court of the State; we can then have a court of last resort to commence on the first day

of October in each year, and continue for five days in a week until the last of June and then give the judges their usual vacation of about three months. With that course of procedure what is likely to be accomplished? Why, they will undoubtedly clear up their calendar. You will then hear no more complaints about running behind. You will not want a second division. I am disclosing no secret when I say that this Second Division was provided for and voted upon favorably in the committee, but it was stricken out afterwards for some reason. It leaves the court in this situation; here is an appellate court that cannot, judging from past experience, discharge all the duties that ought to be imposed upon a court of last resort in a State like the State of New York. Look at the population for a moment. The population in this State to-day is about 2,500,000 more than it was in 1870, when the present court was inaugurated. And the increase of population in this State since 1870 will number more people than exist at the present day in any one of thirty-nine out of forty-four States of this Union. Why should we continue this old court; small in number and inefficient — not inefficient because the judges are not competent, but inefficient because under the laws the cases that shall go to the Court of Appeals properly cannot be disposed of as they ought to be disposed of by the court as it now exists.

Now, what is attempted to be done here? We have not come to the section yet which confers jurisdiction. It is plain that the court as now organized cannot discharge all the duties that properly belong to it, and therefore the majority of the committee have proposed two additional judges, which have been voted down. Now those two additional judges would undoubtedly furnish some little relief, but the relief that is needed is a relief which increases the number of judges, so that we can have a continuous court and the lawyers may know that when October arrives we will have a Court of Appeals that will sit continuously until the latter part of June, when the judges will take their usual vacation, and they will then clear up their calendar. In no other way, in my judgment, can they keep abreast with their work. What do the committee in the majority report propose by way of relief? I submit that they have increased rather than abridged the jurisdiction of the Court of Appeals by this article. The Court of Appeals now exercises jurisdiction only on questions of law, and it can only pass upon facts where they are undisputed, except in capital cases. If there be a conflict of evidence in the lower courts on any given question, the Court of Appeals will not intervene. They confine themselves to the jurisdiction conferred by certain sections of the code that

define the same, and while some gentlemen may not precisely like to entrust such matters to the Legislature, yet they should understand that the Legislature, in defining its jurisdiction, is only reflecting the will of the late David Dudley Field, the Lycurgus of the nineteenth century. He has proposed in the Code of Civil Procedure the jurisdiction that the Court of Appeals should possess.

Now the Committee on the Judiciary undertake to legislate, in addition to making a Constitution, and propose to take away the right of the Legislature to interfere by enlargement with the jurisdiction conferred by the Constitution upon this Court of Appeals. It is all done undoubtedly for the purpose of relieving the court. I do not like to hear this talk of relieving the court. The court can relieve itself if it wants to resign, but if it will not do that; then let it do its duty, and we need not talk any more about relieving the court of last resort.

The ninth section provides for an abridgment of the jurisdiction of the Court of Appeals, in order that seven judges may discharge their duties. We have not yet come to that section, but I may as well allude to it because it illustrates my point: "No unanimous decision of the Appellate Division of the Supreme Court that there is evidence supporting or tending to sustain a finding of fact or a verdict not directed by the court, shall be reviewed by the Court of Appeals, except where the punishment is of death," etc. What does that mean? Does anybody know? I for one admit that I do not know. Where the Appellate Division of the Supreme Court declares that there is evidence supporting or tending to support a finding of fact or a verdict not directed by the court, that shall not be reviewed by the Court of Appeals. Are the justices going to make a special statement in their decision on that subject? Suppose the case of an appeal from a judgment on a verdict of a jury, and there are exceptions in it. Those exceptions raise questions of law. This provision says, and the present law is, that we may bring an appeal from those questions, but when the Appellate Division of the Supreme Court has heard argument, and decided a case by affirming or reversing it, are they to insert a clause in their decision to the effect that there are facts tending to prove the correctness of the verdict? If they do that then the Court of Appeals is shorn of all jurisdiction over the question involved. Nobody knows better than the lawyers in this Convention that where there is no disputed question of fact, although there are questions of fact in the case, yet that the conclusion to be drawn from those undis-

puted facts is a question of law and the court has uniformly exercised jurisdiction by examining that question and passing upon it.

Now it is stated in the majority report: "Except where the judgment is of death, appeals shall be taken to said court only from judgments or orders entered upon decisions of the Appellate Division of the Supreme Court, finally determining actions or special proceedings, and from orders granting new trials on exceptions, where the appellants stipulate that upon affirmance, judgment absolute shall be rendered against them."

The Committee on Judiciary have before stated that the court shall have jurisdiction over all questions of law, and I repeat again how, when you undertake to abridge the jurisdiction, are you going to get any such question before the Court of Appeals unless it is that the Appellate Division of the Supreme Court shall deliberately state that the facts are sufficient or at least tend to prove a given fact?

Again, while in the majority report they have attempted to abridge the jurisdiction for the purpose of relieving the court of last resort, they actually enlarge the jurisdiction by wiping out the $500 limitation on appeals from money judgments. They go further. Now, you cannot appeal from a judgment arising in a justice's court. You may go to the General Term, but not to the Court of Appeals. They have stricken that out of this proposed amendment. If there is a question of law arising in an action tried in a justice's court, this proposed amendment provides, that being a question of law, the Court of Appeals may take jurisdiction of that question. So, therefore, by the majority report they have in fact enlarged the jurisdiction. I think it will be found, if this section is approved by the people, that a court of seven judges which cannot perform their duties now, will be burdened with a heavier load of jurisdiction imposed upon it by this article.

I said I was going to be brief, and I have now stated about all I care to say. In my opinion the only relief we should furnish the Court of Appeals is to give them a sufficient force with which to discharge their duties, not take away any of those duties, nor abridge the right of appeal. It is said by the majority report that a man has no right to more than one appeal. I should like to know where that doctrine came from. I may go further: The Legislature up to this time has had a right to say to litigants, you have no right to appeal, or you shall only appeal once. The Legislature has exercised that power and they have such right. But what is the policy of the State? Is it that there shall be but one appeal? That has

never been established as the policy of the State of New York to my knowledge.

Now, I say in conclusion, if the gentlemen will consider the matter carefully, that the only course left for us to pursue in a matter which is to last for the next twenty years, the time which will undoubtedly be provided for the holding of a new Convention, is to enlarge the number of judges of the Court of Appeals so that there can be two working quorums, and let them regulate their own practice. It would be an honorable court, no lowering of its dignity, and I have no doubt that the new additional judges will heartily concur with the present members when they are right, and will boldly dissent from them when they are deemed wrong. And if they shall do that, we will have a court that nobody will be ashamed of. Nobody could point their finger at it and say, you are an inadequate court, you are unable to discharge the duties that the law imposes upon you.

I submit to the candid judgment of the lawyers in this Convention and to the Convention itself this proposition, and if the majority of the Convention shall vote against me I can live under that administration just as long as they can. (Applause.)

The Chairman put the question on the substitute to section 7, offered by Mr. Parmenter, and it was determined in the negative.

Mr. Dickey — Mr. Chairman, I renew the amendment that I offered earlier in the day.

The Secretary read the amendment of Mr. Dickey.

Mr. Dickey — Mr. Chairman, the purpose of this amendment is to leave in the Constitution the present provision upon this subject. The amendment, as proposed by me, is in the exact wording of the present Constitution providing for the Second Division of the Court of Appeals. The Judiciary Committee in their report, in their revised article, have abrogated that provision entirely. The people by their vote adopted that provision only a few years ago, and they did it because there was a crying necessity for it. The business of the Court of Appeals was so clogged up and so in arrears that there was a necessity for some relief. The Legislature proposed this relief, two Legislatures in succession, and it was submitted to the people and voted upon by them. If there was a necessity then, when the Court of Appeals was composed of seven judges, as we have decided to-night to leave it, then the strong probability is that the necessity will arise soon again for some such relief.

No member of the Judiciary Committee will say that there will be no such need. They hope there will not be, but it is a mere con-

jecture, rather than anything, which they can say with certainty. In my opinion, while the other amendments to this judiciary article may tend in some degree to lessen litigation, in other respects they will tend to increase litigation that will reach the highest court. In the matter of doing away with the $500 limitation, that will be prolific of lawsuits to be carried to the court of last resort, more so, indeed, by far, than they will save by a requirement that the Court of Appeals shall pass only upon questions of law, and shall not have to do with questions of fact; because the questions of fact that now go to the Court of Appeals are largely mixed with questions of law, and the litigation, because of this new limitation, will be but small in the number of cases, where the doing away with the $500 limitation will increase largely the number of cases. It is a question whether the taking away of that limitation is not mixed with evil, because it has been suggested to me that taking it away is entirely for the benefit of the poor man, because the rich man can take up the cases where the poor man has succeeded in the lower courts, and litigate him, out of spite and malice, and make him a large expense, making his recovery barren in the end by the extra expense of carrying the case to the Court of Appeals. We all know that litigants are naturally very pugnacious, and, if they have the means or can borrow the money or give the necessary bonds, you know how disposed they are to fight where there is any chance for fight. So I take it, with the increase of population and the growing business of this State, that the Court of Appeals, instead of having their business lessened, will, probably, have it increased. Therefore, there may be, at least, an urgent necessity for some sort of relief. If this amendment of the Judiciary Committee, abrogating this provision as to the Second Division of the Court of Appeals is carried, and it is wiped out, there is no relief whatever for the next twenty years, unless the Legislature sees fit to propose this same amendment or something similar to it to the people in two successive Legislatures, and the people vote for it. Let me call your attention here to the amendment in this Convention already proposed by Mr. Marshall, requiring that any amendment that is carried by the people shall have a majority of all the votes cast for any proposition. If that amendment goes through this Convention and is adopted by the people, we may safely prophesy and predict that no amendment will be carried by the people in the next twenty years at all. So you are putting yourselves in this situation, that for the next twenty years you have no remedy whatever against multiplicity of cases on the Court of Appeals calendar. I think it

is well to have cast an anchor to windward; have a provision for a second court that you may resort to, if the need arises, and not to be resorted to necessarily, unless the occasion demands it.

Therefore, I have offered this amendment to test the sense of this committee on this subject. On the matter of economy the judges assigned are the present existing judges; no expense for them, because they are under pay, anyway. The only additional expense to be incurred is the crier of the court. I think that this is a matter that deserves to receive the serious consideration of the delegates, and that there ought to be some such provision, this or something similar.

Mr. A. H. Green — Mr. Chairman, if I understand this amendment, it is a proposition to insert in the Constitution a provision for a Second Division of the Court of Appeals to be appointed from the Supreme Court judges by the Governor. Now, sir, we are creating twelve or thirteen new judges of the Supreme Court to attend to the multiplicity of business that is accumulating upon it. We propose to take them out of the Supreme Court and put them into the Court of Appeals. I have very great respect for my friend from Orange (Mr. Dickey), whose propositions I have generally found to be very sound; but I have observed something of the action of the Second Division of the Court of Appeals as heretofore constituted, and I trust that this State will never be subjected to any such a calamity again. I suppose that if we are to have an additional Court of Appeals, constituted by the Supreme Court, the argument will be that their salaries should be increased, if new duties are imposed. If you impose new duties, you must increase the salary. I am utterly opposed to that, and I hope that no amendment of this kind will be adopted, although I can sympathize entirely with my friend here in the wisdom of his desire to make some provision for what may occur some twenty years hence or less. If that should be so great, the Legislature, in two sessions, can put through a constitutional amendment that will provide for it.

The Chairman put the question on the adoption of Mr. Dickey's amendment, and it was determined by a rising vote in the affirmative, 58 to 54.

Mr. Doty — Mr. Chairman, I desire to present on amendment to the amendment which has just been adopted.

The Secretary read Mr. Doty's amendment as follows:

Strike out the words "and to form a Second Division of said court," and insert in lieu thereof the following: "And a Second Division of said Court of Appeals shall be thereupon formed, and

shall be composed of three judges of the Court of Appeals, except the chief judge and four of such additional justices, such judges and justices all to be selected by lot, and the Court of Appeals shall be composed of the chief judge and the remaining judges and justices, until said Second Division shall be dissolved as herein provided."

Mr. Root — Mr. Chairman, there are a number of the members of the Convention in the hall who did not vote upon the amendment of Mr. Dickey, which has just been put to a vote, and I suppose I exercise the right of any member in the case, where there has not been a roll-call, in moving a reconsideration.

Mr. W. H. Steele — Mr. Chairman, I rise to a point of order. A vote cannot be reconsidered in Committee of the Whole.

The Chairman — The point of order is not well taken.

Mr. Veeder — Mr. Chairman, what is the proposition? Another order of business has been taken up. The announcement has been made and we have read another section.

Voices — It is the same section.

Mr. Veeder — Well, we have gone into another order of business.

The Chairman — Will the gentleman please state what other order of business?

Mr. Veeder — The Secretary has begun to read another section.

The Chairman — No, he has not. Mr. Root moves that the vote by which the amendment of Mr. Dickey has been adopted be reconsidered.

Mr. Veeder — Does the Chair hold that no business has intervened since that vote has been announced? Did not the Clerk commence to read?

The Chairman — The Chair holds that Mr. Doty offered another amendment to this very amendment that has been adopted.

Mr. Veeder — Then has not business intervened in the committee since the announcement of the result of that vote?

The Chairman — Just such business as that has intervened.

Mr. Veeder — That is what we are talking about. I make the point of order that the motion is out of order.

The Chairman — The point of order is not well taken.

Mr. Dickey — I make the point of order that Mr. Root cannot make this motion, as he did not vote with the majority.

The Chairman — If that is true, I think the point of order is well taken.

Mr. Root — I understand that does not apply, except in the case of a roll-call.

Mr. Dean — Mr. Chairman, that rule does not apply in reference to proposed constitutional amendments, under the rule.

Mr. Root — Mr. Chairman, I feel that that vote was taken without the discussion and consideration which, perhaps, ought to have been given to it. I should feel very sorry to have this Convention put upon record, on the face of this judiciary article, which the Convention has been kind enough, or many members of the Convention have been kind enough, to express approval of in its general features, a statement that the Convention has no confidence in the effectiveness of the article which they adopt. I think there can be no doubt that that would be the effect. We propose to the people of the State a new plan, which involves the creation of appellate tribunals, larger in numbers, requiring much greater expenditures than those which now exist. We invite the people of the State to add to the number of justices of the Supreme Court, in order that we may withdraw from the ordinary trial work a sufficient number of these justices to constitute these new tribunals. We invite the people of the State to this large expense. We propose to them a plan for limitations on the appeals to the Court of Appeals, and upon the jurisdiction ——

Mr. Veeder — I rise to a point of order. There is no motion that is debatable before the House, if the Chair has held that the motion to reconsider is in order.

The Chairman — The point of order is not well taken.

Mr. Veeder — Is the motion to reconsider held in order?

The Chairman — It is.

Mr. Veeder — Is that debatable?

The Chairman — The Chair so holds.

Mr. Root — And at the same time, Mr. Chairman, we propose to say to the people of the State that we do not think that all this new machinery and this added expense are going to be of any avail, and that, notwithstanding it all, we find it necessary to retain an expedient, a make-shift, which involves the accumulation of a great number of cases upon the calendar of the Court of Appeals, with all the delay and the injustice involved in the accumulation of those cases, and that only after that delay and injustice shall relief be given. I do not believe, Mr. Chairman, that there is any

occasion for any such expedient as this. I believe that the system which is proposed here will be adequate to produce the result of enabling the Court of Appeals, whether it be nine or whether it be seven, to keep faith with the demands upon it on its calendar; and I am opposed, Mr. Chairman, first, to our saying to the people of the State that we do not believe in our work, when we do; I am opposed, second, to our offering to the Court of Appeals an invitation, not to keep up with their calendar and do the work that comes to them. Let us put this judiciary article in such shape that the court will have their work set out before them, and let us leave it to them to do or not, and, if they cannot do it, then let the court take the consequence of whatever relief the people may see fit to seek. The remedy is not in constituting a sporadic and occasional tribunal of this kind to repress evil already done. It is to perfect the system, if we have not perfected it, so that the work can be done; and, still more, Mr. Chairman, I am opposed to keeping in the Constitution a provision which every now and then, if it is worth anything, will break up the ordinary administration of the law in the Supreme Court of the State, and take from the State, from their ordinary duties, a great array of the justices of the Supreme Court, leaving the people who want their services without judges to do their work. I know the last Second Division was the occasion of great inconvenience, and annoyance, and loss, and dissatisfaction among the bar and suitors all over the State, because their judges were taken away and sent up into the Second Division at Albany. Either we do not want these judges in the Supreme Court or we want them there, and we want to keep them there, and any system which provides for putting a lot of justices in the Supreme Court, that may just as well be spared to be put into a Court of Appeals, any system which provides a Court of Appeals which needs to have justices of the Supreme Court taken away to supplement its work is an ineffective system. I believe in the system, and, therefore, I am against this proposition, and I hope the Convention will reconsider it and vote it down.

Mr. Lester — Mr. Chairman, I would like, with the indulgence of the Chair, to ask a question of the gentleman who has just taken his seat (Mr. Root), and that is, what reply can be made to the suggestion of the gentleman from Rensselaer (Mr. Parmenter), that the removal of the $500 limit and the permission which is contained in the present proposed amendments for appeals from cases arising in justices' courts, that these two things combined will bring a greater number of causes to the Court of Appeals than the restriction which the article contains will keep out of the Court of Appeals, and that,

therefore, the result of this amendment, instead of being to diminish the causes which come to the Court of Appeals, will, in fact, increase the number of causes, and thus increase the labors of the court, and thus make it still more difficult for the Court of Appeals to dispatch its business.

Mr. Root — My answer is that, in my judgment, the doing away of the limit will not materially increase the number of appeals that go to the Court of Appeals. I further believe that we do not take away by this constitutional provision any prohibition or prevent any prohibition upon appeals from justices' courts going to the Court of Appeals. We leave to the Legislature the power to continue the limitation preventing appeals from justices' courts going to the Court of Appeals. Any case that is brought in the Supreme Court can go there, but the Legislature may continue, and may increase, if they please, the limitation preventing appeals from inferior courts going there, and making the court of last resort for these inferior courts the substitute for the Court of Common Pleas and the Superior Court of Buffalo and the County Courts as they are now.

Mr. Powell — Mr. Chairman, owing to the logical turn of mind of the gentleman from New York (Mr. Root), who has just addressed the Convention, I cannot help thinking that under the surface of his serious face, while he made the address, there must have been a smile which was not visible to his auditors. The line of argument is this, that if we place in the Constitution the amendment which we have substantially adopted by the vote of a moment ago, that it in itself is an intimation to the electors of the State who are to pass upon our work, that we, ourselves, have no faith in the judiciary amendment which we shall probably adopt. Now, I can conceive of myself for a moment, as the captain of an ocean steamer, and of the gentleman from New York (Mr. Root), as the president of the navigation company which employs me, and, as I am about to start out of the port of New York for Liverpool, he comes down to the steamer which I command, and, seeing the lifeboats on board, at once says: "Throw them overboard just as quickly as you can." "Why throw the lifeboats overboard?" "Why," he answers me at once, "if you do not throw them overboard, they will be considered as an intimation to all the passengers on the steamer that the company has no faith in the steamer itself, and that we expect it to sink somewheres in mid-ocean." We all know what the answer of the sensible man to a proposition of that kind would be. We should say it is no intimation of anything of the kind. We have absolute faith in the steamer. We expect it to go across the ocean, and reach the other side in safety, but still we carry the lifeboat so

that if anything should go wrong on the way, we shall have something to provide for us in that case of emergency. Is not that exactly the situation of this proposed amendment, as relating to the amendment which was offered by Mr. Dickey and which was adopted a few moments ago? It is no intimation that we have any lack of faith in the judiciary article. It is something which was adopted by the people not many years ago, as Mr. Dickey has already said, and we must all admit that with this new judiciary article we shall go out upon untried ground, not absolutely knowing whether the work of the Court of Appeals is to be increased or is to be diminished, and there is nothing mandatory in this amendment of Mr. Dickey. It is simply something to provide for an emergency, if that emergency should, by any possibility, arise. It is a provision for such an emergency, which has the sanction of a popular vote, and I, for one, cannot see the slightest harm that will arise from our placing it in the judiciary article. I certainly hope, for these reasons, that we shall not reconsider our vote, and I hope also that this Convention will have sufficient respect for its own dignity and its own action not to reconsider a vote simply because some one who is opposed to the proposition sits quietly in his seat until he is defeated, and then asks us to reconsider the matter that his speech may be delivered which should have been delivered before the vote was taken, when every member had an opportunity to voice his sentiment upon the matter at issue before the Convention. I hope we shall vote not to reconsider the vote taken not more than five minutes ago.

Mr. Dean — Mr. Chairman, I simply want to ask a question whether we are justified in introducing something into the Constitution which is ill-considered and ill-advised, simply because somebody has failed to make a speech here? It seems to me entirely proper, if there is any question here to be discussed, that this Convention should reconsider its action, and give us an opportunity for having a hearing upon it.

Mr. C. B. McLaughlin — Mr. Chairman, I regret exceedingly that I feel it my duty to oppose this amendment. I was heartily in favor of this article as reported by the Judiciary Committee. The whole system incorporated in that article, with, possibly, one slight exception, met with my hearty approval. But no sooner was that article presented upon the floor of this Convention than one member of that committee saw fit to attack it, and moved to reduce the number of judges which the committee had reported unanimously, with one exception, to seven. Now, I regret that I am forced to disagree with the chairman of this committee. I do not believe that

seven judges on the Court of Appeals can do the work in that court. I do not believe it, because I judge that it will do in the future just what it has done in the past. I do not agree with him that the provisions of this article will lessen the number of appeals to that court. But, if they do, the committee has provided in this article for a large increase of the justices of the Supreme Court. Now, it seems to me that it is a wise provision, inasmuch as there is a difference of opinion as to whether or not seven judges in that court can do the work; that out of this increase of justices in the Supreme Court some provision be inserted by which a Second Division can be organized as a part of the Court of Appeals, if necessary. I sincerely hope that there will be some provision put into this article which will afford some relief, if relief is needed. Now, if the article had left the nine judges, there would have been two additional judges, which would have increased the working power of that court, at least, to seven, comparing it with the work it is now doing, and, I say it with all due respect to the gentlemen who opposed this amendment. It seems to me the height of folly, in the light of the experience of the past, that we should adopt an article here and leave the Court of Appeals in exactly the condition in which it is now.

Mr. Moore — Mr. Chairman, it seems to me that if there is anything which proves that our position in favoring nine judges of the Court of Appeals was a correct one, it is the immediate introduction of some amendment as this, by the gentleman from Orange (Mr. Dickey), and its apparent adoption by this committee. I dislike very much to differ from my learned colleague and friend, Judge McLaughlin, of Essex county, about this amendment, but I know he is wrong about it. The people do not want another barnacle like the Second Division of the Court of Appeals fastened on them. No man whom I ever heard of, or who ever consulted me, if he wanted to go to the Court of Appeals, but wanted his case disposed of by the First Division. For some reason or other the Second Division of the Court of Appeals, composed of good lawyers and eminent men, simply, perhaps, because it was called the Second Division, was not regarded by the people, by the litigants, by the suitors, with the same respect which the First Division was. Whatever the reason may have been, nevertheless, the fact stands. I certainly hope that this committee will reconsider this unfortunate vote by which this Second Division is about to be fastened upon us again. I think the gentlemen here who have stated that this judiciary article can be carried out equally as well with seven judges as with nine, must now see their blunder in attempting any such

thing. I admit nothing when I know I am right. Make your admissions and your compromises, but get your judgment first and make your admissions and compromises afterwards, if you want to. I believe this Judiciary Committee was right for the interests of the people when they proposed the two additional judges. I certainly shall vote against the amendment offered by Mr. Dickey.

Mr. Veeder — Mr. Chairman, I am opposed to the motion to reconsider, on the ground that it is entirely out of order. There is no right of appeal from a decision of the Chair in Committee of the Whole. I advise the delegates here to read rule 48, which says a motion to reconsider a proposition of this kind must be made by a person who voted with the majority, and it is only on a motion to reconsider a vote on the final passage of a proposed constitutional amendment that any member is privileged to make the motion. Now, there is no way by which we can correct the Chair, except to vote this down for that reason. If we submit to one error, it may be an inducement to some one else to rule improperly.

The Chairman — The Chair desires to state to the gentleman from Kings (Mr. Veeder) that he is liable to error in parliamentary law, and, possibly, has erred, but he has for his authority this statement, among others, which he considers very good: "When no division of the House takes place, all the members are deemed to have voted with the majority."

Mr. Veeder — What does the Chair read from?

The Chairman — From Cushing's Manual.

Mr. Veeder — Mr. Cushing is overruled by our rules.

The Chairman — If Mr. Veeder will wait, he will get down to our rules. "When no division of the House takes place, all the members present are deemed to have voted with the majority, and may accordingly move a reconsideration."

Mr. Veeder — May I ask the Chair if he means to say that a count is no division?

The Chairman — Rule 25 provides, referring to the Committee of the Whole, which the Chair took as his guide: "The same rules shall be observed in the Committee of the Whole as in the Convention, so far as the same are applicable, except that the previous question shall not be applied, nor the yeas and nays be taken, nor a limit be made as to the number of times speaking." Applying the same rules of interpretation to that rule that we ordinarily apply when exceptions are made, it leaves all other motions open to the Convention. Now, upon the other proposition in which the gentle-

man made an objection to the rulings of the Chair, the Chair has this authority. He reads now from Roberts on Rules, and Mr. Reed on Rules.

Mr. Veeder — That is the gentleman from Washington. He has been overruled. (Applause.)

The Chairman — That may be, but the Chair thinks he has been very well sustained also. (Applause.) "When the motion that is reconsidered is debatable, the motion to reconsider opens the whole subject for debate." That is as good authority as the Chair is able to find in the short time he has had to examine it.

Mr. Veeder — Do I understand the Chair to hold that the same rules apply in Committee of the Whole as in the Convention?

The Chairman — That is what the rules say, with the two exceptions.

Mr. Veeder — Then I appeal from the decision of the Chair.

Mr. Choate — I move to lay the appeal on the table.

The Chairman put the question on the motion of Mr. Choate to lay the appeal on the table, and it was determined in the affirmative.

The Chairman — The question now occurs upon the motion to reconsider the vote by which the amendment offered by Mr. Dickey was adopted.

Mr. Dickey — Mr. Chairman, I hope that this motion will not prevail. Now, who voted for this amendment who has said he wants to vote otherwise? The only two gentlemen who have spoken on the subject, voted against the amendment. No suggestion is made that there would be any change of the vote from the vote taken, provided there was a reconsideration. Nothing has been said to warrant a reconsideration, except the suggestion of the leader of this House, that a vote was taken without sufficient discussion. If it was not discussed, it was the fault of that gentleman, and those who think with him, and it was under the notion that the article, as reported, would be approved without a dissenting vote, or without any change, and there was nothing to warrant that, because there was the suggestion of a good amendment that did carry a majority of this committee. As the gentleman has suggested that the passage of this amendment would be an invitation to the Court of Appeals to neglect their work, an invitation not to do their work, I would say that I interpret it quite to the contrary. It is an intimation and a warning to the Court of Appeals, the regular court, to do their work and to do it quickly, so that there might be no need of calling to their aid a Second Division in that way, to

advertise and to indicate to the community that their work was so far behind as to need the calling of other judges to their assistance. So I think that this amendment would have just the contrary effect to that intimated by the gentleman who spoke upon this question. The Second Division, when it sat before, was made up of good judges, who did their work well, who relieved the calendar and enabled the work to catch up, so that the suitors, as was their right, had the chance to have their cases tried and disposed of speedily. They should have that opportunity again, and neither of the gentlemen who have spoken has suggested any relief in case of such an emergency, if the calendar would clog up. It is 184 cases in arrears to-day already, and promises to be more in arrears every month it goes on from now, when the new calendar is made up, and to increase its volume from month to month until this very emergency I am trying to provide for will, probably, occur inside of six months, or inside of a year's time at the most. None of these gentlemen state any remedy whatever, but they leave the suitors in this State, the masses of the people, without any relief whatever, to wait for two or three years before their cases can be heard and decided, where there are claimants who have judgments against corporations, and other people, so that they cannot realize until that lapse of time, which is a bad thing in itself. It is an invitation and an encouragement to appeal cases for the sake of delay, and delay only, knowing that they will be beaten in the end, but they will keep the plaintiff out of his money, and that is some satisfaction and a good deal of satisfaction to some people. While I think the point of order that was made was a good one, and there is no right to reconsider, personally, I do not mean to press it. I am quite willing the vote should be taken again, because, if the majority of this committee do not desire the passage of this amendment that the people indorsed so recently by their votes, I am quite content they shall say so here and now, and vote it down. I feel I have done my duty, and my full duty, in presenting it to you, and indorsing it, as I have.

Mr. Countryman — Mr. Chairman, without reference to the merits of the proposed amendment, I submit that this motion to reconsider should be sustained and adopted. Doubtless, it passed in the present shape, because it was the general impression that it would not be adopted by the Convention, but, if there is to be any provision made in the Constitution, as amended, for a Second Division of the Court of Appeals, it should receive careful consideration, and there are amendments which could be made to this proposed amendment, which would, I submit, facilitate it for practical

service and use. To illustrate, this proposed amendment requires in the emergency that the Court of Appeals is overburdened with work, that seven judges shall be taken from the Supreme Court to relieve the court of last resort. Now, what is the effect of such a proposition as that? We can judge of it by experience. In attempting to relieve the court of last resort you are obstructing the proceedings of the Supreme Court, the court of original jurisdiction. Now, if there is to be a Second Division, as it was suggested and considered in committee when this question was before the committee, amendments can be proposed to the proposed amendment which will relieve it of that objection. Therefore, I submit that even those who are in favor of the provision for a Second Division of the Court of Appeals should vote for the reconsideration of this question, in order that the whole matter may come before the Convention on its merits.

Mr. Veeder — Mr. Chairman, I did not understand from what Mr. Dickey said, that when Mr. Root moved for a reconsideration, it was because this matter had not been discussed and that Mr. Root desired a reconsideration so that it might be discussed. I understand that Mr. Root asked what he had a right to demand, that upon a matter of this importance he should have the full vote of the Committee of the Whole. He stated that there were many members of the committee who did not participate in the vote, and he wanted, if the scheme proposed by the Judiciary Committee was torn to pieces and condemned, as some one suggests, that it should be done by a majority vote of those who are present and could vote, but for some reason, happening at that particular moment, had failed to vote. Now, this matter will not end here in this Committee of the Whole. Gentlemen who talk as if the action here was the end of this amendment, was the end of consideration of this amendment, are mistaken. When this matter shall have been reported to the Convention, a motion may then be made to refer to the committee, with instructions to amend in any particular.

Mr. Dickey — Mr. Chairman, I would like to ask the gentleman a question, if he will permit. Did not the gentleman in this place on the floor, on the question of Mr. Becker's amendment, raise the point of order that the vote then was final, and that ended it, and there was nothing to do then but carry out the corpse?

Mr. Vedder — No, I am sorry the gentleman did not understand me better, and does not understand parliamentary law and usages better. A delegate in the Committee of the Whole moved that the committee rise, report progress on the bill, and ask leave

to sit again, and the report from the Committee of the Whole to the Convention was that the committee had made some progress in the bill, and they asked leave to sit again, and the Convention refused leave to sit again, and without looking at this boggled-up rule, or knowing anything about it, I asked the Chair to rule, which had been the law for a thousand years, and in every parliamentary body, that when request to sit again is refused, it is the end of the proposition; and the President, with the instinct of a parliamentarian, without remembering the rule itself adopted by this Convention (applause), ruled that the bill was dead, and such is the law and the rule to-day reported by the Committee on Rules and adopted by the Convention, with the voice of the gentleman from Orange (Mr. Dickey), in its favor. (Applause.) That is the point. The gentleman from Orange may know that when this report is made, whatever it may be, to the Convention, that if any amendments have been adopted that any of the Convention desires to change and get the sentiment of the Convention upon that, he may make the motion to refer it to the standing committee, with instructions to amend in this or in that particular, and to report immediately or at some future time ——

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

Mr. Vedder — Certainly.

Mr. Veeder — Do you consider the motion of Mr. Root in order at this time? (Laughter.)

Mr. Vedder — A great philosopher said, that whatever is is right, and I would say in answer to the gentleman that the Chair has so ruled. (Applause and laughter.) Without going into the merits of the amendment, because we have probably had discussion enough, and each member probably knows more about it than any other member, I simply hope that the amendment will not be adopted, and this splendid scheme of the Judiciary Committee destroyed, as it would be thereby.

Mr. I. S. Johnson — Mr. Chairman, I hope this resolution will prevail, that this matter will be reconsidered, that it may be voted upon by all of the members of this committee, and then I hope that the committee will succeed in defeating it. I believe that the people of this State, when they have a Court of Appeals, want a full-grown Court of Appeals. They want a Court of Appeals that are elected as such. While the Second Division of the Court of Appeals was composed of some of the best judges in this State, who would have graced the position of judges of the Court of Appeals, as has been

suggested upon this floor, their decisions did not have the respect of the other division of the Court of Appeals, simply because they were not elected members of the Court of Appeals. This matter has been before two bodies, at least, for its consideration. It was before the commission, and after long consideration, if I am rightly informed, they came to the conclusion to leave out the Second Division of the Court of Appeals. It came back from that commission to the Legislature, and the Chairman well knows that during the entire winter, almost the entire session, the question was discussed by some of the ablest lawyers in the State, and the result of that discussion and of the hearing was an almost unanimous decision by the Judiciary Committee of both branches of the Legislature, that we did not want any more Second Divisions, that, if we were to have more members of the Court of Appeals, they should be members that were elected directly to the Court of Appeals. That was the decision of the Judiciary Committee in the Assembly and in the Senate, and I believe that it is the desire of the people to have the judges of any of their courts elected directly to that court.

Mr. Blake — Mr. Chairman, I do not arise at this late hour to discuss the merits of this proposition. I think the question has had sufficient discussion, in fact, more than sufficient, but I wish to call the attention of the gentlemen of the Convention to a fact which is not beyond the memory of all of us, because we have not yet closed our eyes in slumber since the very chairman of the Judiciary Committee, in a forcible and eloquent address, contended for an increase in the number of judges of the Court of Appeals, because seven judges were not competent or sufficient to discharge the work that might come to that court. Otherwise he would not have been justified in saddling the expense of two additional judges upon the State, if he did not believe that nine judges were necessary for that work. And, again, he tells us, within two or three hours after that statement, that seven judges are sufficient for the discharge of this work, and opposes a simple provision for an emergency, if such should arise, and such a contingency may never arise, and the people may possibly not be put to any expense. I say, where is the consistency in that position? Not three hours ago, as I said before, contending that an increase was necessary, otherwise he would not have justified the expense, and now seven judges may do the work and he opposes a Second Division that may never be called upon to do any work. It is said that consistency is a jewel, Mr. Chairman, and I point to this fact, which is a glaring case of

inconsistency. I trust, Mr. Chairman, that this vote will not be reconsidered.

Mr. Lauterbach — Mr. Chairman, I voted for the amendment of Mr. Dickey, and I am in favor of its reconsideration. And for this reason I voted for that amendment, because I considered it a necessary consequence of what I believe to have been the unfortunate result of substituting the number seven for the number nine, in the committee's report, and I am in favor of reconsidering the vote by which a Second Division is intended to be created, or its possibility made easy, in the hope that the sound, sober, second sense of the Convention, when the section itself comes to be discussed in this Convention, will cause it to retract the proposition which it has enunciated this evening upon the suggestion of a member of the committee which originally proposed that the work of the Court of Appeals should be performed by an adequate number of the judges of the Court of Appeals. If you are going to give us an inadequate number of judges, then you must give us a Second Division of the Court of Appeals. But, if you will give us an adequate number to perform the burden that you are going to put upon the shoulders of that court, then you need no Second Division of the Court of Appeals; you need no first-rate court as a first division and a second-rate court as a second division. In hope that the change will be effected that I suggest, I trust that the motion for a reconsideration may be carried, and that we may remedy the evil which we have brought about, by insisting that the work of the committee shall be reversed, and that we shall have seven judges to perform a service that nine judges will be incapable of performing. I will speak upon the subject for one moment. While in the session of this Convention, at the suggestion of more than a hundred lawyers in the city of New York, I introduced an amendment, No. 33 of the amendments, that were submitted, which provided for the election of ten judges to the Court of Appeals, and for a provision exactly similar to that which was submitted by the Convention, that seven judges should constitute a quorum, and that there should be three judges at hand to supply deficiencies. We take men of mature age to perform that service. It is proper that it should be done, and one or two or three are apt to be incapacitated. When I went to the Court of Appeals last, in the month of July, I found Judge Andrews in Europe and another judge suffering and almost unable to sit on the bench, and we had a small, sparse, scant bench before which to discuss most important questions. I found a court that had been obliged, by reason of its inability to keep pace with its business, to order that fifteen

minutes should be devoted to the discussion of appeals from special proceedings, the most important matters that can be brought to the attention of the court, a special proceeding in which the charters of corporations should be criticised and the constitutionality of the provisions which went to make them up should be considered. And yet, so meagre is the time at the disposal of that court that they have been obliged for years, in that important character of proceedings, to order that only fifteen minutes should be devoted to their consideration. Would they do this if they had time properly to devote to the business? No; but you put too much burden upon them and they cannot do better, and the perfunctory argument takes place, and it is unsatisfactory to them, unsatisfactory to counsel, and very often unsatisfactory in results, because of the limitation of time which is so unjustly put upon the rights of counsel to make full arguments. When this matter comes again into Convention, I hope those things will be considered. It cannot be answered that you put limitations in the balance of this proposed amendment, that is going to render the business of less volume than it has been. You have swept away the $500 limitation. Enormous appeals that have never gone before to the Court of Appeals will now go there, and must be decided with the same decorum, the same consideration, the same deliberations that has characterized the appeals of every character. You have swept away a few appeals of non-enumerated orders, a few appeals from interlocutory orders, but those cases amount to nothing; they have never vexed the court; they have never absorbed the time, and you have, in no respect, reduced the volume of business. As our population increases, the volume of business will necessarily become greater. I trust much more may be said upon this subject. I trust that the sudden flush of excitement which caused you, acting under the leadership of a member of the committee, to subvert and turn over and revolutionize all the work which we have so highly commended here for its symmetry and its perfection, and leave this important detail, the hinge upon which the whole subject turns; that you may again do justice to the committee, not give them idle panegyrics, such as we have heard this afternoon, but to say that we recognize that you have formed a new system, and under the system you have made it evident that more judges are needed in the Court of Appeals, and not for the purpose of having a first division and a second division, and not with a view of having some reserved judges, but with a view that the judges may not be broken down by the tremendous burdens put upon them, but that some of them may rest, and that we will constitute an adequate court.

I believe that the final result will be, not a Second Division, which no one respects, but a full court, fully armed, fully equipped, ready to perform the service which is to be put upon them, consisting of nine members.

Vice-President Alvord took the chair, and announced that the hour of ten o'clock having arrived, the Convention stood adjourned until to-morrow at ten o'clock.

Wednesday Morning, August 22, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, at the Capitol, Albany, N. Y., August 22, 1894.

President Choate called the Convention to order at ten o'clock.

The Rev. Paul Birdsall offered prayer.

On motion of Mr. O'Brien, the reading of the Journal of yesterday was dispensed with.

The President — Mr. Goodelle asks to be excused on Friday and Saturday of this week on account of important family interests and for the performance of public duties.

The President put the question on granting leave of absence to Mr. Goodelle, and it was determined in the affirmative.

The President — Mr. Lauterbach also desires to be excused for to-day only.

The President put the question on granting leave of absence to Mr. Lauterbach, and it was determined in the affirmative.

Mr. Durfee — Mr. President, to enable me to fill an appointment which was made prior to the rule providing for Saturday and Monday sessions, I ask leave of absence from Friday morning until Monday morning. I feel more free because I was fortunately able to be present on the two days last week for which the Convention kindly excused me.

The President put the question on granting leave of absence to Mr. Durfee, and it was determined in the affirmative.

Mr. Williams — Mr. President, owing to the illness in the family of Mr. Burr, he asks that he be excused until they may recover. I understand his daughter is quite ill.

The President put the question on granting leave of absence to Mr. Burr, and it was determined in the affirmative.

The President — Petitions and memorials are in order. Notices, motions and resolutions.

Mr. Kellogg offered the following resolution:

R. 181.— Resolved, That the Comptroller is respectfully requested to furnish the Convention at once with a list of the exempt property in the State called for by the Convention some time since, so far as the same is now completed by him.

The President — That will be referred to the Committee on State Finances and Taxation.

A communication from the Superintendent of Banking will be read.

The Secretary read the communication as follows (No. 24, Document No. 61, in response to resolution No. 158):

To the Secretary of the Constitutional Convention of the State of New York:

In accordance with your request of the 3d inst., I send you herewith a printed statement of the trust companies of this State as compiled from their reports to this department for the year ending June 30, 1894.

Very truly yours,

CHAS. M. PRESTON,

Superintendent of Banking.

The President — What shall be done with the statistics referred to?

Mr. I. S. Johnson — I move that they be printed.

The President put the question on the motion of Mr. Johnson, and it was determined in the affirmative.

The President — There will be no further call for reports of committees. The Convention will proceed in Committee of the Whole on the judiciary article.

Mr. Gilbert — Mr. President, I desire to present a report from the Committee on Industrial Interests.

The Secretary read the report as follows:

Mr. Gilbert, from the Committee on Industrial Interests, to which was referred the proposed constitutional amendment, introduced by Mr. Kellogg (introductory No. 52), entitled, "Proposed constitutional amendment to amend the Constitution, relative to the liability of employers for injuries to employes," and also one introduced by Mr. Coleman (introductory No. 130), entitled, "A pro-

posed constitutional amendment to amend the Constitution, concerning action for damages for negligence," reports in favor of the passage of the same, with some amendments, which report was agreed to and said amendments committed to the Committee of the Whole.

Mr. Gilbert, from the Committee on Industrial Interests, to which was referred the proposed constitutional amendment, introduced by Mr. Springweiler (introductory No. 58), entitled, "Proposed constitutional amendment to amend section 6 of article 1 of the Constitution, relating to conspiracy," reports in favor of the adoption of a substitute for the same, which report was agreed to and said amendment committed to the Committee of the Whole.

Mr. Gilbert, from the Committee on Industrial Interests, to which was referred the proposed constitutional amendment, introduced by Mr. Tucker (introductory No. 315), entitled, "Proposed constitutional amendment to amend article 1 of the Constitution, by adding a new section thereto, relating to a lawful day's work and the employment of women and minors, and to unsanitary labor in tenement houses," reports adversely thereto.

The President put the question on agreeing with the adverse report of the committee, and it was determined in the affirmative.

Mr. Barrow — Mr. President, I understand the judiciary article has been made a special order in this Convention until its completion. There was a special order set down for this morning in which I am interested, and, in view of the situation in regard to the judiciary article, I would move that this special order be deferred until the conclusion of the consideration of the judiciary article, and that it be then taken up.

The President put the question on the motion of Mr. Barrow, and it was determined in the affirmative.

Mr. Mulqueen — Mr. President, to may great regret I will be unable to attend on Saturday, and I would like to be excused.

The President put the question on granting leave of absence to Mr. Mulqueen, and it was determined in the affirmative.

Mr. Davies, from the Committee on Railroads, to which was referred the proposed constitutional amendment, introduced by Mr. Cornwell (introductory No. 363), entitled, "Proposed constitutional amendment, to prevent discrimination in rates or charges, either by railroad, telegraph or telephone companies, corporations or common carriers doing business within the boundaries of the State," reports in favor of the passage of the same, with some

amendments, and requests that the proposed amendment, as amended, be printed, several members of the committee dissenting from the report, which report was agreed to, the said amendment ordered printed and referred to the Committee of the Whole.

The President — If Mr. Acker will please take the chair, the Convention will proceed in Committee of the Whole with the judiciary article.

Mr. Acker took the chair and announced that the Convention was in Committee of the Whole on general order No. 45 (O., I. No. 383, P. No. 422), and that the pending question was the consideration of section 7.

Mr. C. B. McLaughlin — Mr. Chairman, when we adjourned last night Mr. Lauterbach, of New York, had just finished speaking. I voted in favor of Mr. Dickey's amendment that there should be incorporated in this article substantially the provision which is now in the present Constitution. I did so because I felt and because I appreciated the fact that there is a demand on the part of the people of this State that some relief should be given to the Court of Appeals. I am not in favor of a Second Division of the Court of Appeals, as contemplated in this amendment. I do not believe that that is satisfactory to the bar of this State or to the litigants of this State. I do feel that there should be some provision incorporated in the article as proposed to this Convention, and which I hope we will finally submit to the people of this State, some provision looking to haste through the final court of this State. It was for that reason that I supported and urged upon this Convention the importance of adopting this article, as reported by the committee. It seemed to me, as I stated upon the floor of this House yesterday, the height of folly to go before the people of this State with a constitutional amendment leaving the Court of Appeals as it is now. Now, I propose to support the proposition made by Mr. Root to reconsider this vote and shall, at a proper time, move to reconsider the vote which was taken yesterday striking out the nine judges and making it seven, and for my own information I would like to inquire of the Chair if it would be proper to make such a motion to-day?

The Chairman — It would.

Mr. McLaughlin — It would. Now, I sincerely hope that the Convention will reconsider that vote which was taken last night and adopted Mr. Dickey's amendment. I believe it would be unwise to go before the people of this State with a proposed constitutional amendment leaving the judiciary article substantially as it

is now. Why, even now, for the purpose of relieving the Court of Appeals, we could have a Second Division. We have tried it, but it was not satisfactory. The lawyers did not want to argue their cases in that division, and, as I said a moment ago, in order to have some relief in that court, I hope the amendment will be allowed to stand.

Mr. Choate — Mr. Chairman, I earnestly hope that the motion made by Mr. Root for the reconsideration of the vote upon Mr. Dickey's amendment will be sustained, and generally sustained. It was hastily taken. The aggregate vote on both sides did not nearly represent all the gentlemen that were in the chamber at the time. The views of the committee had not been sufficiently presented and considered, and I think they are entitled, on such an amendment as that, to infinite weight. Upon the other question that was presented we were asked to solve a doubt upon which they were evenly divided, as to the number of the court. Not so in respect to this matter, which, I understand, is their unanimous conviction. I hope there will be no hesitation in reconsidering the vote on Mr. Dickey's amendment.

Mr. Dickey — Mr. Chairman, I have little hope of succeeding in opposing this motion, opposed, as I am, not only by the leader of the Convention, but by its honored President. But I take the floor to say what I neglected to say in the debate last night and should have said, that this provision providing that in case the emergency should arise, that the Second Division of the Court of Appeals should be called into being can only be effective when the Court of Appeals themselves certify to the Governor the necessity for such a Second Division. This Second Division could be called into being, if the emergency arose. If the emergency would never arise, they would never be called upon to act. As has been argued here time and time again, wherever there is any question of doubt the Constitution should be left as it is, rather than that a change should be made in it. The provision that I am contending for is a provision already in the Constitution, and the action of the Judiciary Committee is to take out something already in. My amendment is merely to leave in what we have already recently voted for, and those who believe that there may possibly be a need of this Second Division should vote as they did last night, against reconsideration and for this amendment.

The Chairman — The question is on the motion of Mr. Root to reconsider the vote by which Mr. Dickey's amendment was adopted.

Mr. McKinstry — Mr. Chairman, I would like to say just a word or two. For one particular reason, I was very glad that Mr. Dickey's amendment was adopted, and I should like to see it stay in. You have voted to increase the Supreme Court judges very largely. It has been a serious question with many delegates as to how that would be received by the people. It seems to me that this provision should be adopted as an emergency and to support or justify that increase in the Supreme Court judges. It would go far to justify us in the minds of the people in making that increase. I have heard many lawyers say the increase was unnecessary, and I doubt the wisdom of the committee in recommending it. I do not see how this amendment condemns the excellent judiciary article. To my mind, the strong part of the judiciary article is the provision strengthening the General Term. That is the strong part of that article. I think the people will welcome it. I know a great many lawyers have considered it simply a stopping place to the Court of Appeals. I think they have often got extra copies of the evidence printed, because they simply expected to go to the Court of Appeals. That part of the report is very strong, and I don't think Mr. Dickey's amendment interferes with it.

Mr. A. H. Green — Mr. Chairman, I have the greatest respect for anything that comes from my friend from Orange (Mr. Dickey), but I am sorry to say that I cannot agree with him on this occasion. If I am to judge of the future from the past, I should regard the amendment that he proposes, imposing a Second Division upon the Court of Appeals, as nothing short of a public calamity, and I hope the motion to reconsider will prevail.

The Chairman — The question is on reconsidering the vote by which the amendment of Mr. Dickey was adopted.

Mr. Dickey — I ask for a rising vote.

A rising vote was had and the motion to reconsider was determined in the affirmative by a vote of 93 to 39.

The Chairman — The question now arises on the motion of the gentleman from Orange (Mr. Dickey) to amend section 7.

Mr. Dickey — I call for a rising vote on that.

A rising vote was had, and the motion of Mr. Dickey to amend section 7 was lost by a vote of 43 to 71.

Mr. C. B. McLaughlin — Mr. Chairman, I now move to reconsider the vote which was taken yesterday striking out of section 7 the nine judges and restoring it to seven, and ask that that motion, for the present, be laid upon the table.

Mr. Veeder — Mr. Chairman, I make the same point of order that I made last evening, that a motion to reconsider is out of order in Committee of the Whole, and I call your attention to rule 48 on page 102 of the Manual.

The Chairman — The point of order is well taken.

Mr. Veeder — I am very much obliged to the Chair.

Mr. Hotchkiss — Mr. Chairman, I want to inquire whether it is in order to lay a motion to reconsider upon the table in Committee of the Whole?

The Chairman — The Chair holds that it is not. If it was, we would not know where we were an hour from now.

Mr. Veeder — I desire to keep the Chair straight, but, nevertheless, I wish to remind the Chair that he is ruling both ways.

The Chairman — The Chair is obliged for the reminder.

Mr. C. B. McLaughlin — Do I understand the Chair to rule that it could not be laid upon the table?

The Chairman — Yes, sir.

Mr. McLaughlin — Then I do now move that we reconsider that vote.

The Chairman — Whose amendment was that?

Mr. McLaughlin — Mr. Brown's amendment.

The Chairman — Mr. McLaughlin moves to reconsider the vote by which Mr. Brown's amendment was adopted.

Mr. C. B. McLaughlin — Mr. Chairman, as I stated yesterday, I was prepared, and am now prepared, to support the provisions of this article, as it came from the committee. There are minor things in it which do not please me, but, as to the whole of that bill, I believe it is the very best which can be got through this body. The fact is that a committee, composed of the ability and intelligence of the individual members who are upon this committee, have for weeks been at work, and have finally given us this proposition, which is satisfactory to the bar of this State, with a very few exceptions, and which is satisfactory to the whole press of the State, with very few exceptions. Now, it seems to me the height of folly for any individual member of this body, simply because he believes that this bill will be made better by the striking out of some little minor things to ruin the whole scheme of it. I want to see this bill adopted, as it is reported. I am prepared to support it as reported, and I hope that this body will restore it to the form in which it came from the committee. If that committee cannot perfect an article and report it to this body, considering the time

which it has had to consider it, I do not believe that we will, in the heat of discussion, be able, hastily, to make an article which will be satisfactory to the people of this State. I sincerely hope that this motion will be reconsidered.

Mr. E. R. Brown — Mr. Chairman, I regret exceedingly that I should be called upon to address the committee again this morning upon this subject. Although my remarks were not as extended as those of some of the other gentlemen yesterday, still I feel that I have taken up all the time of the Convention that I ought to take. But I must call attention to the fact that, if we now proceed to reconsider that vote, it establishes a precedent, and establishes it beyond the chance of overturning it, for we have once before this pursued the same course of overturning the deliberate vote where a large majority of the Convention showed that it was in favor of an amendment traversing the same ground, and really affording to ourselves and to the people of the State a spectacle of incompetency. I regret it exceedingly from that standpoint.

But I desire to say further upon this matter that I am astonished that the suggestion should be made to this Convention that there is not a "T" to be crossed nor an "I" to be dotted in the report of this committee. I respect this Judiciary Committee. I respect the scheme which they submit to this Convention. We were treated yesterday to an address by a member of that committee in which he represented its members or caricatured them as bottled up, each one of whom had a lot of pet measures, any one of which, if it came out, would be liable to turn loose all the others and set this House in a state of agitation. I believe that this Convention, although it has not given that long deliberation and the careful study to the judiciary article that the Judiciary Committee has given may still have ideas upon single points in that report, which have been considered by them for years, and upon which their united judgment may possibly be better, in the matter of minor details, than that of the committee.

And, Mr. Chairman, let me say more in regard to this matter. It was well established in the debate that this question of the number of the judges in the Court of Appeals had shaken that committee to its very center; that it had only finally been carried by a majority of one, and, if reports be true, on a compromise in that committee. And yet, after it has gotten into the report in that way, we are treated to the declaration on this floor that if the majority of this Convention agree with what the majority of that committee at one time favored, we are upon the point of tearing down the entire structure.

Mr. Chairman, I will not say more upon this subject than that I beg the House to pass upon the matter now and finally, one way or the other, so that the people of the State, as well as the members of the Convention, may know what stand the Convention will take upon this subject; and, that the Convention will not exhibit itself to the State as an incompetent body.

Mr. Choate — Mr. Chairman, I did not suppose that, in becoming the President of this Convention, I was sacrificing my individual right as a delegate to think and vote as I pleased. It has been questioned, however, by a member of the Judiciary Committee. The proposition was laid down that because I had appointed a committee I was bound to accept the report of that committee. I dissent from that doctrine. I, for one, protest against a reconsideration of this important question, which was voted upon yesterday most deliberately, and after the fullest consideration and debate upon both sides. It is a point not in the least vital to the rest of the scheme of the committee, all of the rest of which I propose to sustain to the best of my ability. Nothing else in the report of the committee hangs upon it, and it cannot be reasonably claimed that it does. The question of a vital change in the number of judges is one wholly independent of anything else in the report; and is one which has largely exercised members of the bar and the community at large for many years; and it was brought to a full and final hearing yesterday. As I understood it, and as I understand it now, after all the revelations which were made from the committee yesterday, it was not considered by that committee as vital to anything contained in the rest of their report. It was not decided until everything else had been decided, and was then adopted merely by a vote sufficient to make them able to report upon it one way or the other. They represent themselves as doubtful, and as evenly divided upon it, and ask us to solve the question. It was solved after a most earnest debate, after everything that could be said in its favor had been said, and after everything that I supposed could be said against it had been said. I hope, for one, with Mr. Brown, that we shall not make an exhibition of ourselves, after a vote of 81 to 37 yesterday, upon a proposition like this — a purely independent proposition — by coming in the next morning and reconsidering it. What has been going on over night? That is what I should like to know. (Laughter.)

Mr. McClure — Will the gentleman allow me to ask a question? I would like to ask him, through the Chair, what has been going on over night that warranted the change in the vote of the Convention on the provision for a Second Division of the Court of Appeals?

Mr. Choate — That is a wholly different matter. That was a matter which passed without consideration and without debate. This is not at all so. This is a question which has agitated the community, which has agitated the profession, which has divided the committee, and has been fully discussed and then voted upon in the Convention. Now, do not let us make an exhibition of ourselves. If we wish to secure for our work the confidence of the people, do not let us show ourselves so unable to make up our minds upon such a vital matter as that. I stand by all that I said yesterday. I think reconsideration would be a serious blow to the dignity, to the character and to the efficiency of the work of the courts. I hope that we will stand by our vote.

Mr. C. B. McLaughlin — May I ask the gentleman a question? He speaks about the dignity of the court. I would like to ask him if he thinks it is necessary that the number of judges be exactly seven in order that its dignity be preserved?

Mr. Choate — I think it is important, in a court of last resort, that all its members should sit upon every case. As I consider this proposition, it should be rather entitled as one to give larger liberty of holiday to the Court of Appeals. What I want to see is a court always one, pronouncing a law always one and consistent, not vacillating and changing, to-day consisting of seven particular men, and to-morrow of seven particular other men.

Mr. Bowers — May I ask the gentleman a question? Are you not aware that the committee intended that these nine judges should constitute one court, as do the seven at present, and as do the nine judges of the Supreme Court of the United States?

Mr. Choate — Yes; but I have heard expressed upon the floor how they propose to manage it — that seven judges only should sit, and that one should be in vacation, and one writing opinions. I am not in favor of that.

Mr. Smith — Mr. Chairman, the people of this State are looking to the Convention for consistency. They are demanding of us a judiciary system that will be logical and consistent and that shall possess all the elements of common sense. Let us reflect for a moment upon the condition that will be presented by limiting the number of the judges of the Court of Appeals to seven, and making the concurrence of four a decision. We have agreed that five judges shall compose the Appellate Division of the Supreme Court. Now, let us take a case and look at it in the light that the people of the State will look at it. A man in New York, of a labor organization, believes that he and his associates in the great struggle

between labor and capital have a right to combine for the purposes of protecting the interests of labor, and in that belief, and pursuant to a resolution of his organization, a committee is appointed, of which he is a member, and that committee is instructed to do certain things, and it results that they are indicted for conspiracy; they are brought to trial, are tried by a single judge, convicted and sentenced to State's prison for five years for a felony; an appeal is taken to the Appellate Division of the Supreme Court, composed of five judges, and every judge votes for a reversal, holding that no crime has been committed. An appeal is then taken by the people to the Court of Appeals, and in that court three judges vote to sustain the five judges of the Appellate Division, holding that no crime has been committed. But four judges of the Court of Appeals concur in holding that a crime has been committed, and that the aforesaid labor committee has been properly convicted and sentenced to State's prison. What would the people of the State say? What will the masses say of such a system, in which four judges of the Court of Appeals virtually rule the law against five judges in the Appellate Division and three judges of the Court of Appeals? We must make a system where the greater number of judges make the final rule that is to be adopted as the law of the State; and, if we present to the people of this State a system with this want of common sense and of common logic, it never will be approved — never, never. It has been said here that judges should be weighed and not counted. That is a rule, Mr. Chairman, that relates to witnesses, and where the effort is to impeach some of a numerous body of witnesses, or to show that their evidence is wholly worthless. I never have understood that judges were to be weighed; they are to be counted, and every one is to be counted as having some common sense and some knowledge of the law, and not to stand discredited and dishonored. The rule is not applicable here. We must so reorganize the judiciary system of this State that it shall be consistent, that it shall be logical, that it shall be reasonable, and in such a way as to command the approval, not only of the lawyers, but of the masses of the people who will be affected by it. Instead of having seven judges, we should certainly have nine, with six for a quorum. I hope an opportunity will be presented when I can offer an amendment for eleven, keeping the court a one-headed court, a consistent court, a court than can transact all the business and transact it speedily, and yet not kill a single judge by overwork.

Mr. Towns — Mr. Chairman, I am sorry to say that I cannot agree with our worthy President, Mr. Choate, in my unqualified support of this article, with the exception of the amendment

increasing the Court of Appeals judges from seven to nine. I think that the difficulty with this entire judiciary article is, that it is top-light and bottom-heavy. It was said by the learned Judiciary Committee that this scheme which they had evolved was a scheme beautiful in its symmetry, in its order, and in its harmony; but I can see nothing in it but disorganization, anarchy and chaos, in the administration of the judiciary system and procedure of the State. It is a scheme devised to beget appeals, to fatten jack-pots of lawyers, and to put leaden soles upon the feet of justice, in their weary march up to the Court of Appeals' height. It will be more like the labor of the gentleman mentioned in mythology, who rolled his burden up the hill, and then rolled it down again, in order that he might roll it up again. The present system existing in this State is just like that. The length of time that it takes to try a case in France at the present day will be lightning speed as compared with the time it will take to have a final determination upon your rights in this State, if you have an increase of twelve judges upon a system and number of judges already altogether too large. I do not agree with what gentlemen have said in this chamber, that we must prepare for an increase of litigation in the future; I have said here before, and say again, boldly, that litigation in this State is upon the decrease, and not upon an increase. Titles have been settled, and many questions have been put to rest which involved litigation in the past, but which will never create litigation in the future. The time of the courts is now mostly spent in actions for damages, torts, and actions for all those kinds of wrongs for which the clients themselves are not willing to pay, but which the ingenuity and scheming of lawyers bring into court. Mr. Chairman, the weakness of the system, as I have said before, is anatomic, and not at the bar. We have created here four independent Appellate Divisions in this State, numbering five judges each (and in one, I should say, that there are seven), to determine appeals. Now, we have reduced the high Court of Appeals, the court of last resort, to the number of seven. Do you expect litigants, do you expect lawyers to have respect and veneration for the determinations of the court of last resort, when seven judges in New York, perhaps, have held one way upon a question, and the Court of Appeals, in their determination of the law, and in the opinion which they deliver themselves of, are compelled to hold the other way? What does the layman, what does the average lawyer, know of the science of law which can distinguish fine definitions and close legal distinctions? Who can draw the line between tweedle-dum and tweedle-dee, as between the court of last resort and the Appellate Division of the First Judi-

cial Department of this State? If this scheme is carried out to its last analysis it will simply beget disrespect and contempt for the decisions of the appellate tribunal.

Mr. H. A. Clark — May I ask the gentleman a question? Some of the delegates, I understand, are not informed as to the meaning of the term "jack-pot." Will the gentleman explain it?

Mr. Towns — You evidently have never arisen to the occasion for calling one. (Laughter.) Mr. Chairman, for the information of the Convention in general, I will say that a jack-pot involves very much the same game that the game of law involves — a continual "bluff."

Now, Mr. Chairman, it seems to me that the tendency of all modern judiciary procedure, and of appellate courts, is to curtail appeals to one appellate court. Everywhere, and in every country where they have tried an intermediate appellate tribunal, it has begotten dickering, discontent and disrespect for the system. We in this State could have one scheme for appeals with much more expediency and with much better results than we could have by this scheme which it is proposed to set in operation in this State. If we increase our appellate court by fifteen members, and divide them by five, or by three, so as to have five independent appellate courts of last resort, or three independent appellate courts of last resort, determining questions which may come before them finally (except such questions as may be certified by the chief justice, or by five members of the appellate court), we would then have one homogeneous and harmonious system, one scheme as applied to the whole State, and not sub-divided as this is, for the purpose of begetting appeals and begetting actions that would never end and would never cease. I tell you that the people of the State of New York will not stand it to be robbed of five hundred thousand dollars for the purpose of creating unnecessary courts and unnecessary judges; and the day of reckoning will come when you go before them with a system which is not modern, but which belongs to past ages.

Mr. Countryman — Mr. Chairman, the gentlemen here have spoken about the necessity of a larger number of judges in the court of last resort in order to command the respect of the bar and the people at large. Now, sir, there is no country in the world where the law is more satisfactorily administered than in England, where a less number of judges than we have proposed in this judiciary article, or that now exists in this State, administer the law for over thirty millions of people. Not only that, but those courts determine in a last resort appeals from hundreds of millions of

people in every quarter of the globe. Now, sir, in the Court of Appeals division, as I have had occasion recently to examine, rarely over three judges sit in the hearing of those appeals to review the decisions of the various divisions below, the Chancery Division, the Queen's Bench and other divisions, all of whom are composed of a larger number of judges. Very often only two members sit in that court to determine these great questions of law and equity, and when you reach the House of Lords, the highest court in the kingdom, never over five of the law lords take part in the decisions, and very frequently only three, and even two, as no particular number in those courts is required to constitute a quorum for the purpose of hearing appeals or carrying on business.

Now, sir, it is a notorious fact that in England to-day, although population and business is increasing, litigation is decreasing, so that the number of cases that come before the courts is growing beautifully less every year. Does not that fact indicate beyond all controversy that the number of judges hearing these appeals is not necessary to command respect? But it is the fact that they are able and distinguished men in the profession before they take their seats on the bench, and that they always recognize the settled rules and decisions of their predecessors. I submit, Mr. Chairman, that seven is the greatest number that should sit in any Court of Appeals anywhere, and the only reason why the number has been increased to nine in the Supreme Court of the United States is that there is so large an extent of territory, representing different laws, different institutions to a large extent, different analyses of legal controversy which have to be represented in that court, because in large numbers of cases the Supreme Court of the United States is governed by the local laws and not by the general principles of law as settled and administered in that tribunal. That is the only possible excuse for having nine judges in that court instead of seven, and is the only reason, as I understand it, why it was ever increased or is now maintained at that number.

Mr. Woodward — Mr. Chairman, I wish to say a very few words on this subject. I do not believe that it is necessary that we should increase the number of judges of the Court of Appeals, and for that reason I voted for seven judges and I voted against another division of the Court of Appeals, which I think is a great abomination, or has been, in the experience of litigants, lawyers, and the people generally. It has been said that the number of judges of the Court of Appeals should be larger than that of any of the General Terms, for the reason that they are to pass upon decisions of General Terms; that one General Term is to have seven judges and the others five.

and that four judges of the Court of Appeals may reverse one of their decisions. Now, I maintain that the Court of Appeals is in a better position for passing upon the case than they who decided it in the first instance, for, in the first place, they have the opinions of the judges written out in support of their decision, and their opinions to look over; they have all the authorities that those courts have seen fit to bring to sustain their decisions; then, in addition to that, all the labor of the lawyers in the court below and also in the court above. Consequently, the Court of Appeals is in a better position to decide, and it is not necessary that we should have a court that shall outnumber the General Term. Under section 399 of the code, a single clause of that section, with reference to evidence, was passed upon by seven General Terms; four of them one way, and three the other; four times four are sixteen, making sixteen judges one way, and twelve the other. It turned out, I think, that the three General Terms were right. The Court of Appeals finally got the case and affirmed the law with reference to that; so that there was no difficulty after that with that provision. But it seemed to me that it was a clause of the code that was just as plain as the nose on a man's face, and yet four General Terms decided one way, and three the other. Of course, the Court of Appeals had the benefit of all their decisions and the opportunity to look them all over; and I have no doubt that the Court of Appeals arrived at a correct conclusion, because it was so clear that it seemed to me that no man, though a fool, need err therein. Now, Mr. Chairman, if there should be any necessity hereafter for a change of the Court of Appeals, I would suggest a different method than has been suggested here so far; but I do not believe there will be any necessity whatever; and that is one reason why I favored four General Terms with five judges each, so that the cases might be correctly decided in the General Terms, and not have to go to the Court of Appeals in order to get a correct decision of the law. I thought that would be the best relief that could be given to the Court of Appeals. With reference to the number of judges, I talked with an ex-judge of the Court of Appeals, and he said seven judges were as many as could conveniently consult together, and for that reason I favored seven judges, instead of nine, for the Court of Appeals. The proposition I would make for the relief of the Court of Appeals, if it shall be absolutely necessary to have nine judges, would be to authorize the Legislature to pass a law allowing the people to elect two additional judges to the court whenever, by a certificate of the judges of the Court of Appeals, and by observation, it was found that the Court of Appeals could not do the business. It seems to me that that

will be a great deal better than to have any Second Division of the Court of Appeals, and might afford relief. I do not believe that that would ever become necessary in practice. I think that the Court of Appeals would dispose of all the business that would go up there. There is another remedy that might be applied. If it is found necessary, because the door is open for every kind of appeal, no matter how small the sum or how triifing the dispute, it might be well, perhaps, to allow the Legislature, if they find the Court of Appeals is congested so that it cannot dispose of the business, to limit the amount; limit it to two, three or five hundred dollars, as shall be thought proper, for the relief of the Court of Appeals. It seems to me that in that way the court, if it became congested, could be relieved; but I do not believe that will occur. I think that when you come to have correct decisions at the General Term, a careful examination and a hearing before five judges at General Term, there will be very few cases that will be carried to the Court of Appeals. In my own experience, I do not believe that I should have carried many cases to the Court of Appeals if that had been the case; but where I could not get a fair hearing before the General Term, and where they had not time, or did not look at the case, did not look at the points that were made at all, I was obliged to go to the Court of Appeals, and there I got a correct decision, notwithstanding there were but seven judges. I think seven judges is enough.

Mr. Nicoll — Mr. Chairman, while I agree with the worthy President of the Convention, that the spectacle of the Convention, reversing on one day its judgment of the day before, is not a spectacle admirable in itself, I believe that all will agree with me that even that is preferable to adherence to a scheme of judicial reform which, when it has been promulgated by the Convention, will be practically nugatory. What will be said or thought of this Convention if, after having been in session for three months or more, after a Judiciary Committee sat for six or seven hours a day during all the heated term, for the purpose of perfecting a judiciary article and for the purpose of remedying the evils which now exist in the practice of the law, we practically leave that subject, so far as the law's delay is concerned, in the same position as it was when we came here? It now takes two years practically to get to the Court of Appeals in this State. Every lawyer within the sound of my voice knows that to be the fact, except in preferred cases. We have now, by admission, an arrearage on the Court of Appeals calendar of something like 175 cases. This judiciary article will not go into effect until the first day of January, 1896. By that time we

shall have had an arrearage of not less than 350 or 400 cases. So, that before the provisions embraced in this judiciary article commence to be applied, we shall have an arrearage of 400 cases for the Court of Appeals to dispose of, more than two-thirds of a year's work. So that even if we adopt all that is contained in the present proposal of the Judiciary Committee, we can expect no relief whatever until some time in the year 1897 or the year 1898, and every one of us now engaged in the practice of the law must inform our clients that although we have done the best we could, although we have perfected a judiciary article which has received many encomiums, we have really done nothing to cure one of the greatest evils in the practice of the law prior to the year 1897 or 1898, and, in fact, that would be impossible to be done unless we adopt some other system of judicial reform than that which the committee have finally expressed in the proposed article. Now, what I mean to say by that is this, that unless the article is accepted as it comes from the Judiciary Committee, with the nine judges and the scheme of limitation on appeals to the Court of Appeals proposed by the committee, we might as well begin all over again and adopt some other system, some other scheme of judicial reform, because I believe, as presented, it constitutes one harmonious, independent scheme necessary for the carrying out of the provisions in view.

Mr. Marshall — Mr. Chairman, may I ask the gentleman a question?

The Chairman — If the gentleman gives way.

Mr. Nicoll — Of course.

Mr. Marshall — Did not Mr. Nicoll, until the last ballot in the committee, vote in favor of seven judges?

Mr. Nicoll — Yes; and when you eliminated the Second Division, then I said we must have nine. (Applause.)

Mr. Choate — Will Mr. Nicoll allow me to ask him a question?

Mr. Nicoll — Yes, sir.

Mr. Choate — Does he mean to say, when speaking for the Judiciary Committee, that if this Convention modifies any one feature of the scheme, the committee is against the whole of it?

Mr. Nicoll — I am not authorized, of course, to speak for the Judiciary Committee. All I can do here is to express my views within the conclusions finally arrived at by that committee.

Mr. Bowers — Will the gentleman allow me to answer Mr. Choate's question? I wish to say, sir, in answer to your question,

that several of us yielded the proposition to abolish the Second Division, and several of us yielded other propositions of equal moment, when the nine judges were accepted.

Mr. Nicoll — Now, I want to call the attention of the Convention to the scheme of limitation and reform proposed by the Judiciary Committee, for the purpose of showing that section 7, which increases the number of judges to nine, is dependent really upon section 9, which provides for the limitation of the present jurisdiction of the Court of Appeals. We understood the evil, and that was the delay in getting to the Court of Appeals, an evil which has been notorious in this State within the past twenty years. We knew that two commissions had been appointed in that time for the purpose of clearing away the arrearage. We knew that we must either increase the judges of the Court of Appeals to an unlimited extent, as in the scheme proposed by Mr. Parmenter, or else we must adopt some iron-clad system of limitation; and finally we arrived, by way of compromise, at the scheme which we have presented to this Convention. We were not moved by any considerations of false economy, by any fear of making an undue increase of the judges of the Court of Appeals. We knew that there had been practically no increase in the judicial force of the Supreme Court and of the Court of Appeals in this State in the past ten years, and that in that time the population of this State had increased by a million and a half; so that the time is ripe, if it ever will be ripe, for such an increase as we have proposed. And, as I say, for the purpose of meeting the evil acknowledged to exist, we proposed to increase the court a little and at the same time to adopt a scheme of limitation. Now, what, after all, have we done in the way of limiting appeals? We have prevented appeals hereafter on interlocutory judgments and questions of practice. Well, now, that amounts to something; not in itself enough. We have provided that there shall be appeals only when a question of law is involved, and we have tried to copper-fasten that, so to speak, by defining what a final judgment of the Appellate Division on a question of fact shall be; and then we have established, as an element of limitation, the Appellate Division of the Supreme Court. And these are all our elements of limitation. First, the Appellate Division of the Supreme Court, which we hope will have a tendency to limit appeals. Whether it will or not remains problematical. I believe it will to some extent. To what extent no one can say. What percentage of appeals it will cut off, who can estimate at the present time? It may be two or three per cent. I do not believe that it will be ten per cent. Still, it will amount to something. It

is a valuable contribution to the scheme of limitation. It helps us to find a way out. Then, we have the limitation with regard to questions of practice and interlocutory judgments. That is something more. Added to the first, it is an additional help. Then we have the absolute constitutional command to determine nothing in the Court of Appeals except questions of law. And those three, together with the increase of two judges, for the purpose of providing for all those emergencies and accidents which must constantly occur in a court of old men, for the purpose of enabling more men to be at work, to fill the place of members who are absent, constitute our scheme. Because, you must recollect that while we have provided all these methods of limitation, we have at the same time, as has been pointed out in this discussion, increased the jurisdiction of the Court of Appeals — that is, we have limited it on the one side and opened the door on the other. I do not think that the opening of the door amounts to a great deal, but it amounts to enough to justify us in putting the two other judges upon the Court of Appeals. If you are going to sweep out the five hundred dollar limit, a limit which has existed in this State for years, and which is founded in the jurisprudence of almost every other State in the Union — if that is to be wiped out, a proposition which I reluctantly agreed to in the Judiciary Committee — why, then, we must increase the judges in the Court of Appeals. If you do not do that, I venture to predict with confidence, that all this system that we have devised for the purpose of curing the acknowledged evil of delay in presenting our appeals to the court of last resort and obtaining a final determination of contentions between suitors, will amount to very little. And while I, myself, should have preferred some other system of limitation; while I agree, generally speaking, with what has been said by the advocates of a court of last resort consisting of seven persons, while my preference was for a scheme of money limitation, or a scheme of subject limitation, or that there could be no question about preserving the court of last resort as a small court, yet if this is the system to be adopted, it is the system which we have finally recommended, after months of debate. I assure you, gentlemen, that one part of it is necessary to another, and that if you take away one part, you run a great risk of setting all our labor at naught.

Mr. Mantanye — I desire, Mr. Chairman, simply to ask Mr. Nicoll a question.

The Chairman — Does the gentleman desire to answer a question or not?

Mr. Mantanye — It is simply this, how can a Court of Appeals do any more business when it has nine judges, and requires seven for a quorum, leaving only two supernumeraries to fill vacancies that may occur, than it can with seven, when five only are required for a quorum, also leaving just two supernumeraries to fill vacancies? I cannot see why one of those courts is not constituted so that it can do just as much business as the other.

Mr. Nicoll — Well, if all nine sat at once, of course, they could not do very much more business than a court of seven, although they could do a little more business.

Mr. Mantanye — If nine sat, and seven were required for a quorum ——

Mr. Nicoll — If seven were required for a quorum, two could be working upon the case which they had decided.

Mr. Mantanye — So, in case seven is the whole number, five is a quorum, and there are still just two men left to work upon the cases just the same.

Mr. Nicoll — Then you have added two more men; you have added two more men to do the work.

Mr. Mantanye — But it applies in one case just the same as it does in the other. There are two extra men to do the work.

Mr. Hawley — Mr. Chairman, I hoped not to intrude at all upon this discussion, and I shall not, except for a minute or two upon this occasion; but it has seemed to me that the argument which has just been addressed to the committee is entirely aside from the question which is now under consideration; that the question as to whether we shall have seven judges or nine judges does not at all depend upon whether the Judiciary Committee has been successful in its various schemes to limit the number of cases which shall find their way to the Court of Appeals. The simple question is the one suggested by the interrogatories that have just been made by the gentleman who last addressed the committee, and that is, whether, taking the work as it is and is to be, nine men can do any more work than seven? Now, upon that question I confess that I have as yet received no satisfactory evidence that the nine will do any more than the seven. As was suggested by the inquiry just made, in the one case equally with the other, there is a reserve force of two. Nine judges, with seven making a quorum; seven judges, with five making a quorum, leaves exactly the same reserve force to supply deficiencies on account of health or business, or of fatigue, or to be off the bench writing opinions, in the one case just exactly the same as in the other; and so, until some more satisfactory solu-

tion of that inquiry is presented, some more evidence is produced that nine judges will make a more effective working court and be able to dispose of more business than seven, my mind, of course, would incline to the seven rather than to the nine.

A single other suggestion and I have done. The learned gentleman who last addressed the Convention presented to us the picture of this article going into effect with an arrearage of four or five hundred causes staring the Court of Appeals in its face as they enter upon their duties under this new system. If that be true, and there is likely to be an arrearage of four or five hundred causes, and the Court of Appeals desires, as it doubtless will desire, to make this scheme a success, it will take advantage of its present power undoubtedly and start with a clear calendar, by giving that arrearage, under the present provision, to the Second Division, which it may at any time create.

Mr. McClure — I think, sir, that the importance of this subject is apology sufficient for the intrusion by any member of his views upon the Convention touching this subject. I am inclined to think, sir, that the people will conclude that so far as relief in litigation is concerned, this Convention will have been an abject failure, unless some relief is given by way of more expedition in the Court of Appeals. Now, Mr. Chairman, this Convention, supported, I dare say, by the voice and vote of its able President, the section which provides for an increase in the number of judges composing the General Term. I do not know, Mr. Chairman and gentlemen, who asked for that relief. In the great city of New York, which I in part have the honor to represent, we have had a General Term of three judges, and it has given perfect satisfaction. We have had a General Term sitting for two weeks of every month, disposing of every appeal upon the calendar promptly, and to the satisfaction of the bar and of litigants, three judges sitting there. Why, therefore, Mr. Chairman, should there be an increase in the number to seven, an increase in the expenditure also? My friend, Mr. Brown, as I understand, opposed the provision increasing the Court of Appeals to nine, upon the score of economy, and yet the General Terms throughout the State, composed of Supreme Court judges, are to be increased, and in the great city of New York, as I consider it, unnecessarily increased to the number of seven judges. Now, Mr. Chairman, if there is any propriety in that, and I believe that there may be some reason for it, so that there may be, perhaps, throughout the whole of the month in the city of New York, a General Term sitting, there is every reason why there should be an increase in the number of the judges of the Court of Appeals.

Mr. Chairman, with all respect to the Judiciary Committee, may I be permitted to say that I do not base my action at all upon the action of either the minority or the majority of that committee upon this question. There appeared before the Judiciary Committee, and, I have no doubt, influenced its action, judges of the Court of Appeals, who desired, perhaps, with the greatest propriety, that the number of the judges of that court should be limited, that the family circle should be as small as possible, and I am inclined to believe that a certain number of the minority of that Judiciary Committee who did not favor nine judges, were influenced by the appearance and suggestion of the judges of the Court of Appeals with regard to their ability to do the business and their disinclination to have the number of judges increased; and yet, Mr. Chairman, there appeared before that same committee judges representing twelve judges of the Court of Common Pleas and the Superior Court of the city of New York, and the Judiciary Committee in its wisdom, and I consider it wisdom, decided to disregard the wishes of those twelve judges who opposed the consolidation of their courts with the Supreme Court, and reported in favor of their consolidation with the Supreme Court. Therefore, I think we ought not, as the Judiciary Committee promptly disregarded the views of those two courts, to consider as having any very great influence upon us the wishes of the judges of the Court of Appeals.

Now, Mr. Chairman, practically, what will be the benefit to us of having these judges? The benefit will be that we will have a court of nine judges in the Court of Appeals. I do not think that the argument of the President of this Convention, which carries with it necessarily, naturally and properly, so much weight, not only by reason of the office which he holds in this body, but by reason of his great personal ability and high character — I do not think that the argument that he made with reference to there being nine judges of the Court of Appeals, seven of whom shall sit, possessed much force, although presented with considerable emphasis. He supported the article with reference to the Supreme Court appellate bench, which provides that although seven shall be the bench, four shall be a quorum, and where are the three others to disport themselves while the four are doing the business of that court? Why should not there be a lee-way in the Court of Appeals, two extra judges writing opinions and doing extraordinary work, the same as the lee-way of the three extra judges of the Supreme Court of the appellate bench, as the act now provides? And, Mr. Chairman, there is a provision in regard to that Supreme Court appellate bench that, in the matter of economy, in the matter of propriety, so far

as the interests of litigants are concerned, that is very objectionable, and can only secure the approval of this Convention in case such a suggestion which relates to the Court of Appeals should be adopted. The Judiciary Committee and the President favored an article which provides that the seven judges composing the Appellate Bench of the Supreme Court in the city of New York, practically, shall not do any other business, although there may be only four of them sitting upon the bench, and yet objection is made to the fact that one or two judges in the increased Court of Appeals may not be always sitting upon the bench. I support the article that refers to the Supreme Court Appellate Bench, although I object personally to the provision that does not allow them to do other business; but I think consistency in reference to this judiciary article requires that we should have an increase of judges in the Court of Appeals.

Now, Mr. Chairman, this is an important question to go before the people. I do not surrender, as my friend from St. Lawrence said should be surrendered by the minority, the entire responsibility for the work of this Convention. I do not surrender it. I represent in part the city of New York, where there is more litigation in quantity and quality than all the rest of the State combined, and I cannot sit here and have this Convention adopt an article which, as Mr. Nicoll says, will require us to say to our clients that we have done nothing unless we add to the judges of the Court of Appeals. I say that the people have a right to say that this Convention has utterly failed. It has created new officers. I do not know how many candidates there may be in the Convention for these new judgeships, or how many there may be in the Judiciary Committee, but they have increased the officers and they have added to the expense of the State, and have given not one particle of relief to the litigants. Look at the condition now. I know it as a fact that appeals in the last ten years have been taken to the Court of Appeals simply to gain time. A bond has been given and the judgment debtor has done business for two or three years upon the capital that was represented by the amount of the judgment, and when the case has been reached in the Court of Appeals there has been a default, and there has not been even the temerity to make an argument. Everyone knows that. He goes on doing business, making ten, twelve or fifteen per cent out of the money, instead of the six per cent which the judgment carries. I am earnestly in favor of the motion to reconsider this thing. I voted to reconsider Mr. Dickey's proposition to have his Second Division in the hope that this nine judge provision might be adopted, because I think it is

better to have one court with nine judges present. We must have some relief, and I will favor his provision for nine judges. I want to go on record positively, clearly, and emphatically as I can, that I believe and assert, and I do here now, that we have failed in giving relief, unless we carry it out. This notion of relieving the Court of Appeals by this Appellate Supreme Court may be a success. However, it is an experiment. We don't know whether it will succeed or not, and even if the money limit is restored to five hundred dollars, as I believe it ought to be, yet the Court of Appeals remain with the natural increase of business, and the fact that they are now way behind with their business. It seems to me that throughout the whole question, there cannot be a bit of doubt but that the recommendation of the committee should be carried and the motion to reconsider be adopted.

Mr. Hotchkiss — Will the gentleman give way for a question?

Mr. McClure — Yes, sir.

Mr. Hotchkiss — Is it not a fact that the Court of Appeals has the power to impose a penalty of ten per cent where they find that a case has been appealed unjustifiably?

Mr. McClure — Yes, and the gentleman cannot point to one case where they enforced that penalty.

Mr. Hotchkiss — The books are full of it.

Mr. McClure — A man in Wall street can make twenty per cent out of the money, even if he has to pay ten per cent to the judgment-creditor. Very often where a bond is given and two years have elapsed the bond is worthless and the judgment-creditor is worthless.

Mr. Becker — Mr. Chairman, I merely want to call attention to one argument that has been used against this increase, and that is the expense. I desire to say to this Convention that in abolishing the Superior Court of the city of New York, the Common Pleas Court of the City of New York, the City Court in Brooklyn, the Superior Court of Buffalo, the clerk's offices in those courts going with them, and being merged into the county clerks' offices, who are the clerks of the Supreme Court in those portions of the State, a very large saving to the taxpayers will be effected. One of the justices of the Superior Court of the city of New York stated before the Judiciary Committee, in answer to a question put to him by one of the members of the committee, that that saving would probably amount to upward of $75,000 per year. In the city of Buffalo we have been endeavoring for some time to abolish the clerk's office of the Superior court and merge its duties and work in the-

office of the county clerk. A very careful analysis was made by the clerk himself (and he certainly did not put the figures any too high of what that clerk's office cost), and we estimated, that is, a committee of the Citizens' Association did, from his statement, that at least the salary of one judge of that court, to the amount of about $6,000 a year, would be saved by abolishing that clerk's office. Now, taking these figures together, you will find that by the abolition of these clerks' offices alone, to say nothing about what will be saved by doing away with judicial pensions in this State, you have saved more than enough to pay the salaries of the additional Supreme Court judges and the two additional judges of the Court of Appeals, as proposed in this amendment. It can be demonstrated by figures that the saving will take place. You all know that it is the tendency of the head of an office to draw a large salary for his services and expenses and let his deputy do all the work. It is not always the case, but there is a tendency that way. This work will all now fall upon the hands of the two deputies in the county clerks' offices.

We will save enough in abolishing these clerks' offices to pay these additional salaries, saying nothing of the pensions, as shown by the statement which has been submitted by the Comptroller of the State, showing the average amount of pensions each year to Supreme Court judges and Court of Appeals judges. In view of this fact, how can it be said as a matter of economy that this additional force should not be granted? I merely want to call attention to these facts and figures, because it has been urged here that delegates should vote against any increase in the judges on account of the hard times and additional expense. I believe that it can be demonstrated that the saving that is brought about by the other provisions of the judiciary article is such that it will pay the salaries of the extra judges, and more than pay them.

Mr. M. E. Lewis — Mr. Chairman, if this motion to reconsider shall be adopted, I shall feel like agreeing with the distinguished member of this Convention, and the remarks recently made by him in relation to the comparative qualification of men and women for membership in this Convention. We met here yesterday and solemnly debated this question the entire day. After a long discussion we decided to adopt the amendment offered by Mr. Brown. To-day we meet and solemnly proceed to undo the work of yesterday. If there is no stability in this Convention, the best thing it can do will be to adopt a motion to adjourn without day, and cease to make a spectacle of ourselves of having a motion adopted one day reconsidered the next.

Mr. Bowers — Have we not done that very thing this morning?

Mr. Lewis — Not after full consideration of the question.

Mr. Bowers — Yes, after a very full consideration.

Mr. Griswold — Mr. Chairman, it is but a very few words that I propose to say in reference to this question under discussion, and it is not with a spirit of antagonism or criticism of the work that has been done so well by this committee, because all concede that they have bestowed great labor and attention on this proposed article. But, sir, there are certain things that should be taken into consideration. There is one thing that is a necessity, and that is to relieve the Court of Appeals that now stands blocked, litigants being unable to have their cases decided. Now, for the purpose of relieving the Court of Appeals, what do we find here in the measure as reported? We find that instead of three judges, that the General Terms have five provided for them. Who can tell whether that will lessen the appeals to the Court of Appeals? It is a matter entirely problematical whether a lawyer who has carried his case in good faith to the General Term, will rest quietly under the decision of five judges, three of them, perhaps, one way, and he having the Special Term judge and the other two. It is entirely problematical whether, in providing for five judges of the General Term, it will in any way tend to relieve the Court of Appeals.

Another proposition that is made here is in reference to two additional judges to the Court of Appeals, and that is, even if adopted, just as problematical as to relieving the Court of Appeals, and delegates are not in harmony upon that subject. Some think one way, and some another. Now, sir, those two things, adding the two judges to the Court of Appeals and making five judges in the General Term, are expected to expedite the work. The only thing that I can see about this proposed provision or amendment that will in any way tend to relieve us of this block in the Court of Appeals is to limit appeals, and the line of limitation is not the importance of the subject, but to limit appeals so that it will be in accordance with the strength of the appellate court to dispose of them, and that is a line of limitation that I have never before heard of. After this is done, I fear we shall hear clamor as soon as this Convention adjourns. I believe that lawyers will be dissatisfied with this unusual limitation that has never existed before and this line of limitation that is arbitrary.

Further, there is another provision here with regard to this limitation of cases. It is that there shall be no appeal to the Court of Appeals from interlocutory judgments. Take the case

of an interlocutory judgment. I serve my complaint against the gentleman, the lawyer or his client. He puts in an answer that he claims two separate defenses against my complaint. I put in a demurrer to one defense and the court sustains my demurrer at the General Term, which constitutes an interlocutory judgment, and that one defense of his is stricken out. Now, you can't appeal to the Court of Appeals. You cannot perfect your pleadings at all until you have gone back, and he is compelled to try his case standing on one leg, for one of his defenses has been stricken out, and the only way is to take a circuitous course, going back with all the expenses of the trial to the General Term, which will decide the same way, and then have a final judgment, and then, after that, go to the Court of Appeals, so that before you perfect your pleadings in the case you have got to have a trial, with all your additional expenses of the re-appeal to the General Term. This was the parctice, if I remember correctly, before our practice of a new appeal to the Court of Appeals from an interlocutory judgment, and it was removed.

Now, it must be, that when we have made this provision, the only way that will relieve the Court of Appeals is to cut off appeals down to that extent that the Court of Appeals, working as slowly as they may, can dispose of them. In other words, we bring appeals according to the capacity of the Court of Appeals.

I simply make these suggestions without intending criticism on the great work that has been performed by this committee, whom I respect for their talents and ability. But I believe that you will find, when you have got this amendment in this way, great objection will be made by intelligent lawyers, without any disparagement of the members of the committee or the advocates of this provision. I do think that some provision should be made to relieve the Court of Appeals from the position in which it stands, without a mere limitation of appeals that we have heretofore had.

Mr. Cochran — Mr. Chairman, so much has been said upon the question now before the committee that I do not desire to take up the time any further than to make a single suggestion. I have listened with great attention to all that has been said upon the question, and I have not as yet heard that you will have any better law from the Court of Appeals by increasing the number of judges to nine than if you leave it at the present number, seven. The whole question seems to be whether we have afforded proper relief to the Court of Appeals and to the suitors, that they may have their cases disposed of promptly when they reach that court. We have heard a great deal of what the limitations should be of taking cases to the

Court of Appeals. We have also heard it said that the removal of the five-hundred-dollar limit would tend to increase the number of cases on the Court of Appeals calendar. But I have not as yet heard what the effect would be by the establishment of this intermediate tribunal, and I venture to make the suggestion that if, in the establishment of the Appellate Division of the Supreme Court, confidence would be established and the people would be satisfied with the decisions of that intermediate court, many of the appeals that are taken to the Court of Appeals would be shut off.

Mr. Griswold — May I ask the gentleman a question?

Mr. Cochran — You may, and I will answer it if I can comprehend it.

Mr. Griswold — I take this occasion to say that I did not, in what I said, advocate the simple addition of two judges. I meant to say that I hoped that this Convention could relieve the Court of Appeals in some other way than by this limitation; whether we have seven judges or nine judges does not matter much.

Mr. Bush — Mr. Chairman, this debate seems to be extending somewhat to the whole article instead of the question at issue. As I understand it, the question now at issue and the question to be reconsidered, is whether or not we shall have nine or seven judges. Now, I never have considered that of such vital importance as the Convention seems to consider it. In the committee I was in favor of the seven judges from start to finish, and I am still in that position; but when the committee made its report, I was willing to stand by that report from start to finish, and I am willing to do so yet. But if this question of nine to seven judges is to be decided here now, which I suppose it is, I think it advisable to state the reasons why I think that seven judges are preferable to nine under the present circumstances, and I may say that I do not consider it of serious importance in any case. First, if we are to increase the number of judges, there should be at least some good and logical reason for it, and I am not satisfied from all the information that the Committee on Judiciary could obtain that nine judges could do much more work than seven, or that it would be necessary to make the change. On the contrary, I think there is very serious objection to making the increase of two judges, and for this reason. There are a great many important cases which have been decided by the Court of Appeals in recent years by a majority of four to three, particularly the elevated railway cases. Now, if you add two judges to the Court of Appeals, you virtually reopen every case which that court has decided by a vote of four to three for the last

ten years, and every question of that character will then be brought to that court in the hope that the two new judges who will be put on the bench may reverse those decisions.

Mr. McClure — Mr. Chairman, may I ask the gentleman a question? Is the gentleman aware of the fact that the Court of Appeals, composed of seven justices, has over and over again reversed itself?

Mr. Bush — That may be true, Mr. Chairman, but there is a much greater likelihood of reversing itself when you add two new judges as is proposed, when, perhaps, some of those judges may be nominated on account of their views on some serious questions that are now pending. Take the elevated railway cases in the city of New York. You will always find in such cases as these that a great corporation will be actuated by a powerful motive for dictating the nomination of the judges of this State in accordance with their views upon these questions, and that is not only true as to this State, but it is said that the Supreme Court of the United States has often had a judge placed upon it for his known views upon a particular question, for instance, the greenback question, and for that reason I think, Mr. Chairman, this Convention should hesitate and weigh carefully whether the advantages to be gained by adding two judges to that court will not bear with it the danger of a reversal of that court upon the great questions which have been decided by it by four to three. That is one point that this Convention should look at and consider in determining this question. That is the reason why I stood out for seven judges all the way through; and I am of the same opinion yet, that adding the two judges will not counterbalance the danger which will arise from the reversal of established legal decisions which have been made by that court on those questions.

Mr. Root — Mr. Chairman, I feel justified in saying for the Judiciary Committee as a whole — and I know that I represent the prevailing sentiment of that committee when I say it — that the committee made this report and came into this Convention contemplating the possible, perhaps the probable, action of the Convention in the exercise of its deliberate judgment adversely to some or to many, of the conclusions of the committee, and prepared to bow loyally to the action of the Convention. No member of the committee, sir, I venture to say, intends or dreams of arrogating to himself or to the committee any right which shall preclude the Convention from the free and full exercise and the expression of its voice and vote, of its deliberate judgment, upon every question raised by this judiciary article. We say nothing upon that subject

but this, that after the long weeks and months during which we have deliberated upon this question, we are entitled to a presumption in favor of our conclusions, and to have the gentlemen of the Convention vote on them, giving us credit for honest, fair consideration, and for some degree of sense in reaching our conclusions; vote for them, unless upon deliberate consideration, good cause appears for voting otherwise. That is all we ask. Are we not entitled to it, sir? Is not every committee which furnishes any fair degree of evidence of careful, painstaking and honest consideration of its work entitled to that presumption? So that while every delegate votes according to his convictions, the result of his reasoning and his own thought, every delegate will stand by the committee, unless he sees cause to the contrary. Now, sir, all that we ask is that this Convention shall settle this question, and settle it once for all in accordance with its deliberate judgment. The motion to reconsider this question was made by the gentleman from Essex, largely because since the vote of yesterday there had been discussion upon other parts of the article, and there had been in various quarters the expression of the opinion that the scheme of limitation was not efficient without either the enlargement of the court or the provision for a Second Division. The motion for the reconsideration brings again before this Committee of the Whole that question. Whether it sees fit in the light of the further discussion of other parts of the scheme to reconsider its action or not, I shall bow, and every member of the Judiciary Committee will bow to its decision and proceed to other matters. But, sir, I still believe that nine men can do more work than seven (applause), and in endeavoring to make a perfected and harmonious scheme, which will accomplish the result we are sent here to accomplish in respect of the administration of the law, it is better to add here something and there something else, a provision to make the Court of Appeals a bench of nine, and I shall, therefore, vote for the reconsideration.

Mr. Storm — Mr. Chairman, my head is so full of nine and seven judges that it cannot contain any more, and I trust that we will come to a vote. I will confess that after all the discussion that has taken place, I am no clearer on the subject than before. It is often charged that some of us vote only as the leaders dictate. This time I do not know which leader to follow. However, I hope we will come to a vote and follow somebody.

Mr. C. B. McLaughlin — I know the delegates of this Convention are ready to vote upon this proposition, but let us vote with our eyes open; let us vote understandingly. Now, if there is any

one feature in this proposed amendment that is popular, I believe it consists in the fact that the committee has stricken from the present Constitution the $500 limitation. Now, a member of this Judiciary Committee, as I am told, who has seen fit to attack this bill upon the floor of this Convention, proposes, or the committee, some portion of it, proposes, as soon as the $500 limit is reached, or that portion of the article, to move to restore the $500 limit, in order that the Court of Appeals of seven members may do the work. Now, I think that the Court of Appeals, as I said before, with seven members, cannot do it; and if it is reduced to seven, then I agree that the $500 limit ought to be restored.

Mr. Countryman — Mr. Chairman, will the gentleman allow me to ask him a question? Do I understand him to say that a member of the Judiciary Committee has stated that he would move to strike out that provision for the purpose of enabling seven judges to do the work, or for any other purpose?

Mr. McLaughlin — What I said, Mr. Chairman, or what I intended to say was this: that I understood that a member of the Judiciary Committee had said that a motion would be made, when this portion of the article was reached, to restore the $500 limit.

Mr. Marshall — May I ask the gentleman a question?

The Chairman — You cannot ask but very few.

Mr. Marshall — My question is, whether the gentleman means to intimate that I said that I would make any such motion as that on the floor of the House?

Mr. McLaughlin — I do not accuse any member of saying that.

Mr. Nicoll — Perhaps the question arises from the fact that it ought to be made. That will dispose of that.

Mr. McLaughlin — If anybody will confess — I have not accused anybody. I simply say what is asserted on this floor. When we reach that portion of the article we can determine whether it is true or not. Now, I hope this will pass.

The Chairman put the question on the motion of Mr. McLaughlin, to reconsider, and it was determined in the negative by a rising vote, 64 to 83.

The Chairman — Are there any further amendments to section 7 of this proposition? If the Chair hears none, the Secretary will read section 8.

Mr. O'Brien — How about Mr. Doty's amendment to Mr. Dickey's amendment?

The Chairman — Mr. Doty's amendment to Mr. Dickey's amendment falls with it.

The Secretary read section 8 as follows:

"Sec. 8. When a vacancy shall occur, otherwise than by expiration of term, in the office of chief or associate judge of the Court of Appeals, the same shall be filled, for a full term, at the next general election happening not less than three months after such vacancy occurs; and until the vacancy shall be so filled, the Governor, by and with the advice and consent of the Senate, if the Senate shall be in session, or, if not in session, the Governor may, by appointment, fill such vacancy. If any such appointment of chief judge shall be made from among the associate judges, a temporary appointment of associate judge shall be made in like manner; but in such case, the person appointed chief judge shall not be deemed to vacate his office of associate judge any longer than until the expiration of his appointment as chief judge. The powers and jurisdiction of the court shall not be suspended for want of appointment or election, when the number of judges is sufficient to constitute a quorum. All appointments under this section shall continue until and including the last day of December next after the election at which the vacancy shall be filled."

The Chairman — Are there any amendments to section 8?

Mr. Root — Mr. Chairman, let me say that section 8 is the section as it stands in the present Constitution.

The Chairman — If there are no amendments to this section, the Secretary will read section 9.

The Secretary read section 9 as follows:

Sec. 9. After the last day of December, 1895, the jurisdiction of the Court of Appeals (except where the judgment is of death) shall be limited to the review of questions of law. No unanimous decision of the Appellate Division of the Supreme Court that there is evidence supporting or tending to sustain a finding of fact or a verdict not directed by the court, shall be reviewed by the Court of Appeals. Except where the judgment is of death, appeals shall be taken to said court only from judgments or orders entered upon decisions of the Appellate Division of the Supreme Court, finally determining actions or special proceedings, and from orders granting new trials on exceptions, where the appellants stipulate that upon affirmance judgment absolute shall be rendered against them.

The Appellate Division in any department may allow an appeal in any case which, in its opinion, involves a question of law which ought to be reviewed by the Court of Appeals.

The Legislature may further restrict the jurisdiction of the Court of Appeals and the right of appeal thereto, but it shall never make the right to appeal depend upon the amount involved.

The provisions of this section shall not apply to orders made or judgments rendered by any General Term before the last day of December, 1895, but appeals therefrom may be taken under existing provisions of law.

Mr. Crosby — Mr. Chairman, I offer the following amendment to this section:

The Secretary read the amendment of Mr. Crosby as follows: In line 22, page 7, after the word "death," insert the words "or imprisonment for life."

Mr. Crosby — Mr. Chairman, I have been informed that the Judiciary Committee made the exception which is included in this section, because the Legislature has already provided that, in order to secure a speedy review and a just administration of the law, an appeal may be taken in capital cases direct from the Oyer and Terminer to the Court of Appeals. In that case, the court has the power, under certain circumstances, to review the facts the same as the General Term of the Supreme Court might have done, had the appeal been taken to that court. The exception, which is made in this section by the committee, only relates to a case where the judgement and sentence are for death. The amendment, which I propose, gives the defendant the right to have his case reviewed by the appellate court, the court of last resort, when, by operation of law, his sentence makes him civilly dead. I hope, Mr. Chairman, the members of this committee will not vote hastily upon this question, but will consider the situation of one who is sentenced to imprisonment for life.

By section 708 of the Penal Code, it is provided that a person sentenced to imprisonment for life is thereafter deemed civilly dead. The Court of Appeals, in Avery v. Everett (110 N. Y., 332), has defined the disabilities flowing from this statute, and I can do no better than to read from the opinion, calling the attention of this Convention to those disabilities briefly: "The statute, without expressly declaring this result, assumes that a life sentence of a husband *ipso facto* dissolves his marriage. The convict cannot sue, although he may be sued, and his property is answerable to his creditors. He cannot enter into executory contracts and call in aid the courts to enforce them. His political rights are taken from him. His wife and children owe him no fealty or obedience."

If this provision is adopted as it comes from the committee, the man convicted for and sentenced to imprisonment for life, shut out during the remainder of his life from the whole world, deprived by the statute of the right which the law has heretofore given, relating to his domestic affairs, his wife having the right to marry, his children having the right to repudiate the relation which they owe and bear to him, prohibited by statute, in case the Governor pardons him from being restored to his marital relations, prohibited by law from being the guardian of his children or having any control over them, has certainly a right to an appeal to the court of last resort.

I ask the gentlemen of this Convention, when we are drifting along so smoothly, adopting one proposition after another, to stop for a moment and consider the misapplication made by the committee of this statute which gives the right of appeal. Instead of following that statute, instead of giving the defendant, the prisoner, the remedy of a speedy appeal and a review of his case in the court of last resort, which the Legislature has seen fit to provide for him, the amendment recommended by the committee will deprive him of the right which the statute secures. Now, I trust, Mr. Chairman, that the right of appeal will be accorded. Although a man is absolutely deprived of all civil rights, of all domestic rights, of all property rights, except the right to hold the title to his property, and in that regard the law providing that he cannot manage it, but must have a trustee put over it for its management, without the right to prosecute in any court to prevent infringement of his property rights, we are asked now to adopt this provision and thereby deprive him of the right of review of the facts in the court of final resort.

Mr. Nicoll — Mr. Chairman, may I ask the gentleman a question? Is it intended by this amendment to deprive a person convicted and sentenced to imprisonment for life, of his right of intermediate appeal? Do you intend to deprive him of his right to appeal, to go to the Appellate Division and compel him to go as men sentenced to death now go, directly to the Court of Appeals?

Mr. Crosby — Mr. Chairman, if there is any object in the proposition proposed by the committee, to limit the right of appeal, except as appears upon the face of the section, then I think we should examine the matter more carefully.

The object, as stated in the report made by the committee to the Convention, and in the discussion of this matter in this committee, is to lessen the labor of the Court of Appeals by preventing a review of any question of fact in that court. That, I understand, to be the

broad proposition upon which this Judiciary Committee has planted itself, to make the review of all questions of fact, except in one single instance, depend upon the appellate branch of the Supreme Court, and make the Court of Appeals purely a court to pass upon questions of law. Now that single exception, as I read the article — and if it is not as I read it it ought to be amended so that an ordinary man can understand it — is, "where the judgment is of death." There the Court of Appeals may review the facts, as it may now, under the statute as it is. The amendment which I propose has nothing to do with the practice on appeals. It does not attempt to regulate it, but it says the Court of Appeals may review the facts where the the judgment is imprisonment for life, simply including that other case.

Mr. Marshall — Mr. Chairman, lest there should be a misunderstanding by the Convention on this point, I think it should be stated that it was the purpose of the committee to lay down a general rule which would prohibit a review of the facts by the Court of Appeals. We found, however, that the statutes were such that one very important class of cases had to be provided for, and that was the case where there was a conviction of a crime which was punishable by death. There was, under our statute, no right of review except by the Court of Appeals upon a conviction which resulted in a sentence to death. It is necessary to go directly from the trial court to the Court of Appeals, and therefore there is no right of review, either in the General Term or by the Appellate Division, which has been created by this article. Hence, it was necessary to provide for the review of questions of fact in the Court of Appeals in those cases; but, in a case where the sentence is imprisonment for life, there is a right of review on the facts at the General Term now, and in the Appellate Division as now constituted, and, therefore, there is no reason why there should be a second review of the facts in such case in the Court of Appeals. Hence, the use of the words which were inserted in section 9.

Mr. Crosby — Mr. Chairman, there seems to be some misunderstanding in regard to the situation of this right to appeal. I repeat, that there may be no misunderstanding, that the object of the Legislature was, on the one hand, to give the man who was sentenced to capital punishment the right to review speedily by the Court of Appeals without the delay of the General Term, on the other hand, to give the people the right to prevent delays and secure a final determination in the Court of Appeals. As the law stands, where the sentence is imprisonment for life, the right of appeal to the General Term is given, and, as the gentleman has just

said, it will remain. The objection is, and it must be apparent to every one, that while the right of appeal to the General Term remains, this provision of the Constitution as reported by the committee, if adopted, will deprive a man who is shut out from all the world, with all privileges which he has enjoyed as a citizen cut off, of the right of appealing to the court of last resort and of obtaining a review therein, the same as he might have done if he had been convicted of the offense of murder in the first degree. My contention is that we should add to the words that already appear in the exception made by the committee, the words "where the punishment is for imprisonment for life," so that the defendant, who is civilly dead, will not only have the right which he now has, of going to the Appellate Division of the Supreme Court, but will have the same right to appeal to the Court of Appeals as he would have had if the punishment was death.

Mr. Foote — Mr. Chairman, may I ask the gentleman a question? Is it the opinion of the gentleman from Delaware (Mr. Crosby), that a person convicted of an offense punishable by imprisonment for life should have two reviews upon appeal of the questions of fact, while a person convicted of an offense punishable with death, should have only one review of the questions of fact?

Mr. Crosby — Mr. Chairman, I have said that the Court of Appeals has been given, by the Legislature, the first hearing from the Oyer and Terminer in capital cases that there may be speedy justice and a final determination in the court of last resort. To-day the man that is convicted of murder in the second degree, the punishment for which is imprisonment for life, has his appeals all the way from the Oyer and Terminer through the General Term and to the Court of Appeals. This amendment as it stands will deprive him of that right.

Mr. Foote — Mr. Chairman, does the gentleman understand that the question of fact upon such an appeal may now be reviewed in the Court of Appeals?

Mr. Crosby — Under certain circumstances it may, sir. The question whether or not the proof, as it has been presented to the court at the trial term, establishes the fact, whether upon all the testimony offered upon the trial the people have established the material fact upon which the conviction has been sustained, may be reviewed, and the committee seeks to cut that off.

Mr. Root — Mr. Chairman, I beg the gentlemen of the Convention not to consider this question as if it were a question of appealing from the present General Term. If we do anything in this

article, we constitute tribunals for the review of judgments such as those the gentleman refers to, amply competent to review all questions of fact. If we make this enlargement now, we start on the same career by which the Legislature has overwhelmed the Court of Appeals by adding instance after instance in which the people may go to it. The only thing, Mr. Chairman, I believe, which justifies making any exception to the proper logical line of demarcation between the two courts, one constituted to settle the law, and the other constituted to review the facts, is the sacredness of human life; and in regard to that we have proposed to perpetuate the exception which is made by the present statute of the State. I hope the amendment will not prevail.

Mr. Blake — Mr. Chairman, I desire to say a single word. Mr. Foote has asked whether the Convention would give to the man who is convicted of murder in the second degree two reviews of the facts, while he who is convicted of murder in the first degree has but one. But, Mr. Chairman, the man who is convicted of murder in the first degree has a review of the facts in the court of last resort, and you propose to shut out from the court of last resort the man who is convicted of murder in the second degree. Why should he not have a right to a review of the facts by the court of last resort?

Mr. Marshall — Mr. Chairman, may I answer the gentleman's question? The reason is, that under our law he has no review of the case except in the Court of Appeals on either fact or law. He must go directly from the trial court to the Court of Appeals in a capital case, and now, under this provision, we, therefore, preserve that right of review of the facts necessarily in the Court of Appeals; while, in the case where the punishment is imprisonment for life, he has his review of the facts in the General Term or the Appellate Division, and can still go to the Court of Appeals upon questions of law which have arisen in the case.

Mr. Blake — Mr. Chairman, the gentleman misconceives my argument. I find no fault because you grant the man convicted of murder in the first degree a review of the facts in the court of last resort under the laws as they exist at present. But what I find fault with is, that when you give to a man convicted of murder in the second degree the right to a review of the facts in the General Term, as you call it, or the new court that you propose to create, you shut him out from a review of the facts in the court of last resort and I think that unfair and unsound. Of course, I do not wish to occupy the time of this body, because in the discussion upon the question of capital punishment I expressed myself at consider-

able length, and the Convention knows very well what my views are on that subject. I contend, sir, that liberty is dearer than life. When you deprive a man of his liberty for his lifetime, you sentence him to the most terrible punishment, and it occurs to me that the amendment proposed by Mr. Crosby is perfectly sound in principle. The man whom you would deprive of liberty for his natural life should have a right to a review of the facts in the very highest court known to our laws. I admit that you must draw the line somewhere. I would not give to a man, sentenced to a term of imprisonment for five or ten or twenty years, the right of appeal to that court, but it does occur to me that as liberty is as dear as life, when it becomes a question of deprivation of liberty to a person for his natural life, that right ought to be granted to him. Furthermore, Mr. Chairman, it has been shown here by statistics that there are not so many cases arising in our State that we should shut this man out from the right to a review of the facts in the court of last resort. I think the number was some fifty-five of those who were convicted of murder in the second degree during a period of five years, from 1879 to 1884. It seems to me, therefore, that the amendment offered by the gentleman is perfectly sound in principle, and that it is in the interest of justice and humanity.

Mr. Crosby — Mr. Chairman, I call for a division of the committee.

The Chairman put the question on the adoption of Mr. Crosby's amendment and it was determined in the affirmative by a rising vote, 56 to 48.

Mr. O'Brien — Mr. Chairman, I offer an amendment to this section.

Mr. Platzek — Mr. Chairman, I voted in the affirmative upon the amendment offered by Mr. Crosby, and I desire to follow a precedent that has been established, and move to reconsider the vote.

The Chairman — The question is on the motion of the gentleman from New York, Mr. Platzek, to reconsider the vote just taken.

Mr. Veeder — Mr. Chairman, I move to lay that motion upon the table.

The Chairman — The gentleman is out of order.

Mr. Platzek — Mr. Chairman, I have been better advised, and I ask leave to withdraw my motion to reconsider.

The Chairman — The leave is granted.

The Secretary read Mr. O'Brien's amendment as follows:

To amend section nine by striking out the word "but" in line

twelve on page eight, and all thereafter down to and including the word "involved" in line fourteen.

Mr. O'Brien — Mr. Chairman, it is with considerable diffidence that I introduce this amendment, and I would not think of doing so were it not in furtherance of the general scheme of the Committee on Judiciary as I understand it. The object of this amendment is to strike out that provision which prohibits the money limitation. I believe that the provision is an unwise one, and that it should be left to the Legislature to make a money provision upon appeal, if the Legislature shall find best so to do in its wisdom. I was very much impressed by the remark of the chairman of the Judiciary Committee when he said that a single appeal was all that a man was entitled to. I believe that when five judges have passed deliberately upon a matter of law and upon a matter of fact, if you please, and that has been fairly considered, that that should end the controversy; and if I had my way, there would be no such thing as a Court of Appeals in this State. The Court of Appeals should exist only for the purpose of harmonizing the law, and there should be no appeal whatever to the Court of Appeals, except where there was a difference of opinion in the General Terms. I believe that there are too many appeals now. I believe that litigants are driven to too great an expense, and that they are obliged to chase justice too far and too long. Now, it is unknown in other States, Mr. Chairman and gentlemen of the committee; in the other States of this Union, when a man has made his single appeal, he must rest content with the judgment of the court. He is not obliged to follow on to another tribunal. Why, I have practiced law in a State in this Union where a man had an appeal to a court consisting of three judges, and no matter what the amount involved might be, he must rest content with the decision of that tribunal, and people were just as well satisfied with the final decision in that State as they are in this State where they can chase along up through the three different courts. Mr. Chairman and gentlemen, it has been urged in some of the arguments upon this judiciary article that this is to popularize the measure, that you do not want to remove the money limitation, that if you take that off the people will not approve the article. In other words, that the common people, the working people of the State, the ordinary plain people, want to have just as many appeals as anybody else has. Gentlemen, I do not believe any such thing. I do not believe that a man who has a fifty or a hundred dollar suit wants to have the right to travel with it through the three courts. I do not believe that the man who has a small amount involved cares for the right to go to, and above all,

gentlemen, he does not care to have the right of some wealthy suitor to drag him through, the courts at the tremendous expense which is entailed under our infernal system of procedure. Why, gentlemen, if a man meets with a wealthy adversary in a lawsuit he is compelled to travel with that adversary just as far as he chooses to take him. A few months ago I was talking with the attorney of one of the great corporations of this State, and he spoke about this very thing. He said he was in favor of every man having all the appeal that he wanted; let the poor man go to the Court of Appeals; and yet, at the same time he said that it was part of the rules under which he was acting, of that corporation to take every case up just as far as it could. And so, in that way, with the purpose and for the object of frightening away the poor litigant and of compelling him to a settlement, we all know that that is the object of it, we all know that it is the ordinary result which comes from it. Talk about this being a poor man's measure. Why, it is directly in the interest of every great corporation which has a large number of suits. I think that so far from being a measure which is calculated to popularize this proposed Constitution, it is one which, when the people come to give it their sober judgment, will aid more than any other in condemning it. I know a case which happened a short time ago, where there was not more than fifty dollars involved, if the matter could have been fairly sifted, and yet a wealthy litigant upon one side dragged the poor man through to the Court of Appeals, and at the end of it compelled him to pay over six hundred dollars. Is that a measure which is in favor of the poor man? Is that a measure which looks to establishing justice in favor of the poor as against the rich? I say it is exactly the reverse, and that unless you do limit this matter of appeal, you will place the poor litigant at the mercy of the rich. You will force him to settlements to which he would not otherwise consent, and you will sometimes frighten him away from bringing a suit where he has good and substantial cause of action.

I believe, Mr. Chairman and gentlemen, with the man from Brooklyn, who sat in the Convention in 1846; he was a workman, was sent here by the workmen, and represented the workmen of the city of Brooklyn. In his argument in regard to appeals, he stated that if a man could afford two or three trials and two or three appeals, that he was taken out of the category of poor men and did not belong there; and he said, speaking for the common people of the State, that he did not want more than one appeal, and that so far as he was concerned, he opposed it as vigorously as he knew how; and so did every other working man in the Convention. And

I think that when the working people of this State take this matter into consideration, they will find that it is one of the features of this proposed amendment which will certainly condemn it.

Mr. Choate — Mr. Chairman, I hope that this and any other amendment that may be proposed to this section of this judiciary article will be voted down. I do not suppose that any section of this article has received such careful, such deliberate, such unanimous assent on the part of members of the committee as this has received. I dissent entirely from the gentleman who last spoke upon the effect of this provision. In a long experience in the Court of Appeals, from a general observation of their decisions as published in their 141 volumes, I venture the assertion that it is very rarely indeed that a corporation appeals to the Court of Appeals from a decision involving a judgment against it of any very small amount; or that corporations will hereafter appeal to the Court of Appeals, assuming the $500 limit to be repealed by the effect of this section, from judgments involving less than that amount. The effect, on the contrary, of this particular provision, is that this Convention asserts that the Court of Appeals is open to every man, no matter how small is his case; to every man, no matter how small his fortune. (Applause.) Now, we had this subject up in the constitutional commission. An attempt there was made to fix a limit beyond even the $500, below which no suitor should be permitted to appeal to the Court of Appeals. It was condemned, I may say, with almost entire unanimity. The delegates from those portions of the State, where the bulk of litigations was in the average very much larger, yielded their opinions to the opinions of the delegates from the more rural districts, that no such limitation ought to be imposed. I call the attention of the Convention to the efficacy of this section as it stands, as limiting the labors of the Court of Appeals, taking away from them the review of those things that are not questions of law, that never were questions of law, but were only made so by acts of the Legislature. There is every provision in it which is ample for the protection of suitors. In this right of the Legislature to restrict jurisdiction, except in this one particular, and in the power of the Appellate Division to order an appeal in any case where they think a question of law is involved, there is what seems to me to be the cardinal virtue of this whole article, the making the Court of Appeals strictly a court of law and not of fact, and I hope it will be adopted with general unanimity by the Convention.

Mr. Nicoll — Mr. Chairman, up to date, the Convention has disagreed with that part of the committee's report which provides for

two additional judges. To that extent they have not afforded any relief for the present congested condition of business in the Court of Appeals. The Convention has next, by its last vote, increased the present business of the Court of Appeals by giving an appeal directly to that court or from the Appellate Division of the Supreme Court upon questions of fact; that is, they have stated by their last vote that the Court of Appeals in this State, on appeals from judgments for imprisonment for life, shall have the same power of reviewing the facts that they now have in cases of judgments where the sentence is death. I am in favor, as a principle involved in the proper administration of the criminal law, of that proposition. I see no reason why the man who is sentenced to imprisonment for life should have any greater privilege than the man who is sentenced to death. When the statute which wiped out the intermediate appeal in cases where a man had been sentenced to death was passed, I endeavored to have included in that statute also the cases of men who had been sentenced to imprisonment for life. That statute was passed for the benefit of the community. It was designed for no other purpose than to do away with the delays which always were found between the verdict of a jury and the final decision of the Court of Appeals. It was demanded by the community for the purpose of repressing the crime of murder, and no good reason can be found, in my judgment, why men who are convicted or sentenced to punishment of imprisonment for life should stand on any better footing than those who are sentenced to death. Of course, the effect of our last vote, instead of assisting the man or helping the man who is sentenced to imprisonment for life, was to put him where he belonged, in the same category with the man who is sentenced to death. If the business of the Court of Appeals is to be still further increased, and if no extra judges are to be added, what are we to do? How are we to solve the present problem? Shall we leave it alone? We have now stated that in two important particulars there shall be an increase in the business of the Court of Appeals. I think that there are, at least, of appeals to the Court of Appeals where the sentence is imprisonment for life, not less than thirty or forty a year. They are much more numerous than cases from appeals where the sentence is death, on account of the usual disposition of juries to render such a compromise verdict. So that we have really given them thirty or forty new cases a year, where they are permitted to go over the whole record and pass anew upon the questions of fact, and we have also given them practically an unlimited review in all cases under $500. Notwithstanding that, we have not added

one single judge to the Court of Appeals. In that situation I see no hope whatever, unless we return to the present statutory limit of $500 which is involved, I understand, in Mr. O'Brien's amendment.

Mr. Marshall — He wipes out all limitations.

Mr. Nicoll — Well, even if he wipes out all limitations, that simply leaves it to the Legislature to leave the limitation where it is to-day. That proposition of limiting, by amount, of appeals to the court of last resort is thoroughly imbedded in our American jurisprudence. Men talk of it as hostile to the genius of our institutions. This is absurd. It is found in the jurisprudence of the United States; it is found in the jurisprudence of almost every other State in the Union; Missouri, one of the rock-ribbed Democratic States, has a $2,500 limitation, and prohibits its court of last appeal to be addressed in any case of less importance. Tennessee, Alabama, Georgia, almost all of the Southern States, have some money limitations. And my judgment is, that the reason for it is because in a money limitation is found the great security of the poor and necessity suitor. Why, how many thousands and thousands of men are employed by the great manufacturing and transportation companies of this State! How many men are injured by them every year! Are we going to say to all those great manufacturing and transportation companies that they may carry every suit on contract and every suit sounding in tort, to a court of last resort? Is there no limit? Whenever a workman sues them for his wages, may they go to the Court of Appeals with the issue, providing their ingenious advocate can raise some question of law? Should we say that upon every verdict for two or three or four hundred dollars damages for negligence they may carry the litigation on for three years to the court of last resort? And yet that will be the effect if that limitation is wiped out. No greater blow can be struck at the laboring classes of this State than the wiping out of that limitation, and no greater mistake can be made when we strike it out, than to suppose that we do it in the interest of the poor man, and against the interest of the rich. The rule is exactly the opposite, the reverse will be the result, and we will not only have done that, but we will have left our court of last resort practically without any protection whatever from the deluge of small suits which will increase, rather than diminish, the present condition of congestion.

Mr. E. R. Brown — Mr. Chairman, I would like to say one word in reference to this matter. Many suits for sums under $500 are for the wages of laboring men. The jurisdiction of the Supreme

Court extends as low as fifty dollars. The costs in the Supreme Court are approximately a hundred dollars; in the General Term approximately a hundred dollars; in the Court of Appeals approximately a hundred dollars, and the delay in the Court of Appeals at least a year and a half on the average. How can these men ever get their dues if you permit this limitation to be removed? When judgment is entered up against the corporation that owes them for their salaries, that corporation can appeal to the General Term and to the Court of Appeals. I am opposed to the present provision, and trust that the amendment of the gentleman will prevail.

The Chairman put the question on the adoption of the amendment of Mr. O'Brien, and it was determined in the negative by a rising vote, 52 to 78.

The hour of one o'clock having arrived, the Convention took a recess until three o'clock in the afternoon.

AFTERNOON SESSION.

Wednesday Afternoon, August 22, 1894.

The Constitutional Convention of the State of New York met pursuant to recess in the Assembly Chamber, in the Capitol, at Albany, N. Y., Wednesday, August 22, 1894, at three o'clock P. M.

Vice-President Alvord called the Convention to order.

The Vice-President — The chairman of the Committee of the Whole, Mr. Acker, will please resume his place.

The Chairman — The Convention is still in Committee of the Whole on general order No. 45, and is considering section 9. Are there any further amendments to be proposed to section 9?

Mr. Goodelle — Mr. Chairman, if the action of the Convention in regard to the amendment offered by Mr. Crosby is to stand as the work of this Convention, it is absolutely necessary, in my judgment, that the words on the following page ——

Mr. Meyenborg — I rise to a point of order. There is no quorum present. I think the Convention ought to obey its own rules. We cannot do any business without a quorum. I insist upon the point.

The Chairman directed the Secretary to take a count in order to ascertain if a quorum was present.

The Chairman — The Secretary reports that there are eighty-eight members present. Mr. Goodelle may proceed.

Mr. Goodelle — I was about to say, Mr. Chairman, that if the amendment which was offered by Mr. Crosby, and which has been accepted by this Convention, is to stand as the work of the Convention, it becomes absolutely necessary in my judgment to amend line 1, on page 8, by striking out the words "except where the judgment is of death." For this Convention is put in the unique position of saying that the man who is convicted of a crime, the penalty of which is imprisonment for life, shall have the facts in the case reviewed by two courts, the General Term and the Court of Appeals, whereas the man who is convicted of murder in the first degree and sentenced to death shall have the facts in his case reviewed but once. I do not like to propose this amendment because it seems to me that this Convention ought not to be satisfied to go before the people with the proposition that was incorporated in, or the amendment that was offered to, this article this morning. There is nothing in the logic of it, as it seems to me, which should address itself to any member. But, as I said before, if the Convention is to remain in the position which it has taken upon the proposed amendment, then I wish to move that amendment — that the words in the first line of page 8, "except where the judgment is of death," be stricken out.

Mr. Crosby — Mr. Chairman, I move to amend on page 8, line 1, by inserting after the word "death" the words "or imprisonment for life."

The Chairman — The gentleman will put his motion in writing and send it to the desk. Gentlemen, are you ready for the question?

Mr. Roche — Mr. Chairman, what is the question now before the committee? Is it on Mr. Crosby's amendment?

The Chairman — Yes.

Mr. Crosby — I have the amendment ready.

Mr. Hawley — Mr. Chairman, may I inquire what was the amendment introduced by Mr. Crosby which was passed this morning?

The Chairman — In section 9, line 22, after the word "death," to insert "or of imprisonment for life."

Mr. Hawley — That is the amendment which he offers now, is it not?

The Chairman — No; it is in another place. The Secretary will read the amendment.

The Secretary — It will read, if Mr. Crosby's amendment is

inserted on top of page 8, in line 1, "Except where the judgment is of death, or of imprisonment for life, appeals shall be taken," etc.

Mr. Crosby — Mr. Chairman, the object of the amendment is to perfect and make symmetrical the proposed article and to meet the objection that was raised and has been argued against the amendment which was adopted by this Convention. As this Convention is composed of lawyers largely, and as the criticism against the amendment which was adopted was made by lawyers, I trust they will meet this question in a fair, judicial and lawyer-like manner. Now, there are two functions of law-making; one is to establish the principles of elementary law, of constitutional law, which protect the rights of individuals, which prohibit the Legislature infringing upon the natural rights of man, which throw safeguards around the rights of person and of property; and the amendment which was adopted this morning is peculiarly of that class. It is an elementary principle of law, laid down by Coke, that there are three things sacred in law: Life, liberty, and dower — liberty standing upon an equal plane with life. This amendment simply preserves that elemental principle which has been recognized since English law has been written or discussed. Now, Mr. Chairman, it is unfair to seek to deprive the people of the right, which has been recognized by the common law and by the statutory law as well, by attempting to confuse elemental principles with legislation.

The Legislature of the State of New York has the right to prescribe the Code of Procedure, to regulate the manner of appeal, the methods upon which reviews may be had, and to do so without any violation of the constitutional prohibition. It did, as I stated this morning, see fit to protect the rights of both parties — the rights of the people, the prosecutors, to prevent long delays; the rights of the accused, to give him a speedy and impartial administration of justice by permitting him to resort to the court of highest authority, the last appellate resort, without stopping at the General Term and arguing and procuring a decision there. This committee has seen fit to change what has been accorded to a defendant by the common law and by statute and deprive the man who is convicted of murder in the second degree and sentenced to imprisonment for life, of the right to liberty which had been secured to him before.

Now, I ask the gentlemen of this Convention to draw the line between the prohibitory provision of the fundamental law, which we have adopted, and the right and authority of the Legislature to provide a course of practice. If it be deemed advisable by the Legislature to require the defendant who is sentenced to imprisonment for life to appeal in the first instance to the Court of Appeals,

or if it be deemed advisable by the law-making power to give that man a short and speedy trial and hearing in the Court of Appeals, so that he need not be incarcerated during the delay attending the appeal to the Supreme Court in General Term, they may provide that the same provisions shall govern as to convictions for imprisonment for life that are now the law in cases of convictions where the punishment is death. This amendment which I propose provides exactly for that practice. It protects the people, it protects the defendant, if the Legislature see fit, without any amendment of the Constitution, and as I should urge if I were a member of the Legislature, it may give the right and require the defendant to go immediately from the Trial Term to the Court of Appeals, the same as if he was convicted and sentenced to death.

Gentlemen of the Convention, do not be misled against this humane principle, this right which has been accorded as long as law has been written, this right which is protected by statute to-day. Do not be misled, I say, by this argument on a question of practice, into refusing one who is deprived of civil liberty, who is deprived of all his civil rights, an appeal to the Court of Appeals, by adopting this provision, and declining to make this amendment to harmonize the language of this section of the proposed amendment. As I said before, if this amendment is adopted there is no prohibition upon the Legislature requiring one convicted and sentenced to imprisonment for life to go directly to the Court of Appeals.

Mr. Nicoll — Mr. Chairman, the only objection to the amendment proposed by Mr. Crosby is that it imposes an additional burden upon the Court of Appeals by compelling them in such cases to examine the voluminous record usually printed and to pass judgment upon the facts.

Mr. Crosby — Will the gentleman from New York (Mr. Nicoll) permit me to ask a question?

The Chairman — I think the dignity of this debate and the time that the committee has to discuss this amendment ought to prohibit the interruption of gentlemen while making speeches. The Chair will have to rule that interruptions are out of order.

Mr. Crosby — It is a question of privilege. The gentleman from New York interrupted me while I was speaking, and I wish now to return the compliment by asking him a question.

The Chairman — The Chair will hold that the gentleman from New York (Mr. Nicoll) has the floor and must not be interrupted.

Mr. Nicoll — I had the honor to state to the Convention just before recess that, in view of the refusal of the Convention to allow

nine judges in the Court of Appeals, it was unwise, if we desired to relieve the present congestion of the calendar of that court, to still further increase their duties. The effect of this amendment is still further to increase the business of the Court of Appeals by making them the first court of review, in murder cases, and compelling them to award judgment upon the facts, and not upon the law alone. This amendment is not in the interest of the criminal, nor for the protection of his rights. I believe that to have been the intention of the gentleman who offered it. He undoubtedly believes that it is for the protection of the liberty and the rights of the defendant in a criminal case. But the effect of it is exactly the opposite. The effect of it is to take away from the man who is convicted of murder in the second degree one of his appeals. Up to a few years ago a man convicted of murder in the first degree had two appeals, one to the General Term, and a second to the Court of Appeals. The General Term passed upon the questions of fact and of law; the Court of Appeals passed upon questions of law only. The situation of the man convicted of murder in the first degree was precisely the same as that of the man convicted of murder in the second degree. Both had the same rights of appeal. A few years ago the statute was amended and changed in regard to one convicted of murder in the first degree, not for his benefit, but for the purpose of a swifter and more certain administration of justice. His intermediate appeal was taken away from him, and the only resort left to him was an appeal to the Court of Appeals. But in order that some appellate courts might be constituted to review questions of fact it was provided that the Court of Appeals in that case might consider both questions of law and of fact. Now, that was the condition of a man who was convicted of murder in the first degree. But, under the present law, a man who has been convicted of murder in the second degree has two appeals — one to the Appellate Division of the General Term, and one to the Court of Appeals. There may be good reason for taking that intermediate appeal away from one convicted and sentenced to death, but taking it away is not in his interest, nor in the interest of the liberty of the citizen. We thought it advisable in the Judiciary Committee to leave the law as it stands to-day, to leave a man convicted of murder in the first degree with his one appeal in that case, by giving to the Court of Appeals power to pass upon the facts; and to leave to the man convicted of murder in the second degree his two appeals — leaving it to the General Term, the Appellate Division, to pass upon the facts, and the Court of Appeals to pass only upon questions of law. I am opposed to this amendment because the effect would be to dump

into the Court of Appeals a large amount of business by compelling them to pass upon records of fact in cases where men have been convicted of murder in the second degree — which would greatly add to the congestion which exists there now.

Mr. Crosby — Mr. Chairman, I have sat during this discussion on this proposed amendment without rising to speak or to ask any questions until this section now in question has come under discussion. In view of the ruling of the Chair, depriving me of the right to ask the gentleman from New York a question, and wishing to observe the proper decorum towards the presiding officer of this dignified body, I now inquire if it is proper for me to ask the gentleman a question at the conclusion of his remarks.

The Chairman — Certainly.

Mr. Crosby — Thanks. Now, will the gentleman from New York (Mr. Nicoll), through the chairman, answer me two questions?

Mr. Nicoll — Yes; if I am permitted by the Chair.

Mr. Crosby — The Chair has granted the privilege. The first question is this: You say that the Judiciary Committee has seen fit to give two appeals to the man convicted of crime and sentenced to imprisonment for life. What are they?

Mr. Nicoll — An appeal to the Appellate Division and an appeal to the Court of Appeals on questions of law.

Mr. Crosby — But no appeal on questions of fact?

Mr. Nicoll — Yes; one appeal to the Appellate Division.

Mr. Crosby — But no appeal to the Court of Appeals on doubtful questions of facts?

Mr. Nicoll — No appeal to that court on questions of fact.

Mr. Crosby — Then he stands exactly the same as a defendant in a civil action, so far as appealing to the Court of Appeals is concerned.

Mr. Nicoll — He stands in the same position as the defendant in civil cases, and as every other man in criminal cases stands, excepting a man convicted of murder in the first degree.

Mr. Crosby — And yet you say you propose to leave this class of cases as they were before. As it stands now has not one convicted of murder in the second degree and sentenced to imprisonment for life the right to invoke a decision of the Court of Appeals?

Mr. Nicoll — On questions of fact, no.

Mr. Crosby — Has he not the same right of appeal to the Court of Appeals that one has who has been convicted of murder in the first degree?

Mr. Nicoll — He has not the same right. There is a difference.

Mr. Crosby — I take grave issue with the gentleman from New York on that question; and I trust that every other lawyer in the Convention will take issue also. Has he not a right to appeal to the Court of Appeals?

Mr. Nicoll — A man convicted of murder in the second degree?

Mr. Crosby — Yes.

Mr. Nicoll — A man convicted of murder in the second degree now, after the verdict of the jury, has an appeal to the General Term.

Mr. Crosby — Has he not an appeal to the Court of Appeals?

Mr. Nicoll — Not on questions of fact.

Mr. Crosby — Has he not an appeal to the Court of Appeals the same as if convicted of any other crime? That is the question.

Mr. Nicoll — He has on questions of law, but not on questions of fact.

Mr. Crosby — I say that he has the same right of appeal to the Court of Appeals as any other defendant charged with lesser crimes.

Mr. C. H. Truax — Mr. Chairman, I am quite anxious to find out what rights have been given to a person convicted of crime, and sentenced to imprisonment for life, by the proposed amendment. I would like to ask the gentleman to state what rights will be given.

Mr. Crosby — Is it proper for the gentleman from New York (Mr. Truax), to ask me a question?

The Chairman — It is, after the gentleman from Delaware gets through his speech.

Mr. Crosby — I desire to answer the question now.

The Chairman — The Chair desires to have one thing at a time. Whatever the member has in his mind, let him state, and then when he is through let him answer the question.

Mr. Truax — I would like to ask the gentleman that question.

Mr. Crosby — I will answer him now by continuing my speech. I propose in this amendment (this Convention having granted the right of appeal by its amendment to this article adopted this forenoon, if the people of the State of New York see fit to ratify it) to give to the Legislature the right to require, if it sees fit, that the appeal must be taken in the same way as appeals are taken in cases

of conviction of murder in the first degree. It is only permissive. Here is a restriction which says that in all cases except one, and that is in cases of punishment by death, or "where the judgment is of death," as the language of the article is, in all cases except one, the papers upon which the appeal is taken must be so and so; the appeal must be based upon the judgment. I will say, in answer to the question of the gentleman from New York (Mr. Truax), that this amendment says that, in all cases except two, an appeal shall be taken thus and so. That is, in all cases except sentence of death, and in all cases except sentence of imprisonment for life, the appeal must be taken from "judgments or orders." It simply adds this other case to the exception, leaving the whole field open. But, more than that, it does not say that in these cases the appeal must be taken in that way, but it excepts these cases from the rule, and leaves the Legislature the right to prescribe how the appeal shall be taken in these two cases.

Mr. Blake — May I inquire what is the question now before the committee?

The Chairman — The Secretary will state it.

The Secretary — The question is on the amendment introduced by Mr. Crosby, who proposes in line 1, on page 8, after the word "death," to insert the words "or of imprisonment for life," so that it will read, "except where a judgment is of death or of imprisonment for life, appeals shall be taken," etc.

The Chairman — Those who are in favor of the motion made by Mr. Crosby will please say aye.

Mr. Root — Mr. Chairman ——

The Chairman — Those opposed will say no. It seems to be lost.

Mr. Crosby — I call for a count.

The Chairman put the question on the amendment offered by Mr. Crosby, and by a rising vote, it was determined in the negative by a vote of 40 ayes and 66 noes.

The Chairman — Are there any further amendments to this section.

Mr. Nicoll — I move to reconsider the vote by which the amendment of Mr. Crosby was adopted this morning.

Mr. Crosby — I move to lay that motion on the table.

Mr. Nicoll — You cannot do that in Committee of the Whole.

The Chairman — The Chair rules that the motion to lay this motion to reconsider on the table is out of order.

Mr. Crosby — I rise to a question of privilege. Did not the Chair entertain a motion last night on appeal from his decision, and was not the motion put by the Chair, and carried by this Convention, and is not that appeal on the table now?

The Chairman —The Chair is delighted to explain that question. This is the third time it has had to answer it. Last night, as I recollect it, the President of this Convention moved to lay an appeal on the table. I never saw one go to any other place, and as long as I am in the Chair I shall so rule on every appeal. But in no other case has the Chair ruled differently from what it does now. The question is upon the motion to reconsider the vote by which the amendment offered by Mr. Crosby to section 9 was passed. The gentleman from New York (Mr. Blake) has the floor.

Mr. Blake — I understand that the motion is to reconsider the vote which was taken to-day?

The Chairman — Yes.

Mr. Blake — The vote which was taken this morning?

The Chairman — Yes.

Mr. Blake — On the adoption of Mr. Crosby's amendment?

The Chairman — Yes.

Mr. Blake — And the motion is to reconsider that?

The Chairman — Yes.

Mr. Blake — I am opposed to the reconsideration of that vote. It strikes me that as something has been done here in twenty-four hours, it is due to the Convention to have some respect for its own dignity, and let that action stand. It seems to me that the Convention ought to be of one mind at least for twenty-four hours, or, if not for twenty-four hours, at least for sixty minutes. This committee, by a large majority, decided that a man convicted of murder in the second degree, and sentenced to be deprived of his liberty for life, should have one chance at least; that he should have as much right to go to the Court of Appeals, as is given to a man convicted of murder in the first degree, to have a review of the facts by that court. Why should he not have such a right? It not liberty sweet to all of us? Is not liberty dear to all of us? Is there a man in this Convention who, if he were innocently convicted of murder in the second degree, would not like to have his one chance of appeal? I say that it is not fair, it is not just, it is contrary to the rules that should prevail in every well-regulated community, it is contrary to law and justice, that it should be otherwise. I know not what has actuated men here to change

their votes, if any have changed their votes. I myself did not understand the last question put to this committee. I did not know that this question was before the committee in time to vote upon it. Mr. Chairman, what reason is there, what good reason has been or can be advanced, why a man who has been convicted of murder in the second degree should not have the right to have his case reviewed by the Court of Appeals? The gentleman from New York (Mr. Nicoll) has stated that there would be some thirty or forty appeals taken to the Court of Appeals on convictions of murder in the second degree. Why, sirs, the figures before this body, elicited in response to a resolution offered by myself, and which came to the Convention in a communication from the Secretary of State, show that not more than fifty-five cases of conviction of murder in the second degree have occurred in the last five years. That was at the rate of about ten or eleven convictions for each year. How many of those cases were appealed to the Court of Appeals? Not more than one-fourth. How much labor will that add to the duties and the work of that court? I trust, gentlemen, you will have sufficient respect for yourselves to recognize what you owe to this body, to this Convention and what you owe to the cause of justice and humanity, to stand by a vote when deliberately taken after full discussion. That appeal was made to you here to-day by our honored President, and by other gentlemen in this body. I think that you will heed it. I ask you what good reason is there, what has occurred since the vote was taken, which should lead you to reconsider it? Has the whip been snapped over the heads of gentlemen here that they must change their position within two hours? It seems to me we ought to have more respect for ourselves, and a higher appreciation of the importance of this law than to reverse the action taken this morning. We should give to every man convicted of murder in the second degree this right of appeal. Let us not deprive him of his natural liberty, and take from him the right to have his appeal determined by the highest Court of Appeals in the State, and at the same time let the man who is convicted of a lesser offense, and who is sentenced to judgment of imprisonment for five or ten years, and who may reasonably have some hope or expectation of outliving that term of imprisonment, enjoy that freedom of appeal. But not so with the man who is sentenced to imprisonment for his natural life. Therefore, I say give him this one chance. I am perfectly satisfied that he should jump into this intermediate court. Let it be so if you will. I do not ask that he should have a larger measure of law or justice than the man who is

convicted of murder in the first degree, but I ask that you will give him a judgment and a decision of the court of last resort on his appeal. It seems to me that he is entitled to that. I do not wish to unnecessarily occupy the time of this body, but I appeal once more to the gentlemen who stood up here this morning like men, as though they had the milk of human kindness in them, and a sense of justice in their hearts, to vote to give the man that right. You vote to give yourselves this right, for who of us knows it may not be his fate to be innocently accused of some crime of this gravity. And so I appeal to you to stand up like men for a principle when you have adopted it, and not shuffle to and fro in this way. It seems to me a prostitution; it is stultification, a self-imposed stultification for us to do otherwise. Therefore, Mr. Chairman, once again I appeal to the members of this body to stand by their vote to-day, and to give to a man who is deprived of his liberty for his natural life at least one chance to have the judgment set aside if any error has been committed.

Mr. Nicoll — I feel very certain, Mr. Chairman, that there is some misunderstanding as to the effect of this amendment by some of the gentlemen of the Convention. This morning Mr. Crosby moved in the third line of section 9, which says, "except where the punishment is of death," to include the words "or imprisonment for life." Now, let us see what is the effect of adding the words "or imprisonment for life" to the words, "except where the judgment is of death." It is to say that "after the last day of December, 1895, the jurisdiction of the Court of Appeals (except where the judgment is of death or of imprisonment for life) shall be limited to the review of questions of law." That is, that while in all other criminal cases the jurisdiction of the Court of Appeals should be limited to the review of questions of law, in cases of death or imprisonment for life they should not be so restricted but might also review questions of fact. Now, the consequence of that amendment is this: Under the present law, as I have said before, there is but one appeal — to the Court of Appeals — where the judgment is of death. That, I suppose, is thoroughly understood by the Convention. But in cases where the judgment is of imprisonment for life, under that amendment, and unless the next clause is also amended, there would be two appeals, that is, there would be one appeal to the Court of Appeals, where the questions of fact and of law might be reviewed in cases where the judgment is of death; and there would be two appeals in every case where a man had been sentenced to imprisonment for life, including, of course, not only cases of murder in the second degree, but also cases of arson, and cases of forgery

in the first degree. So, that we have got ourselves into this anomalous position: that we are going to give a man who was convicted of murder in the second degree or of forgery in the first degree or of arson in the first degree, a greater privilege in the way of appeal than we are going to give a man convicted of murder in the first degree. That certainly is not right. And, recognizing that it was not right, when we came to read the second section of this proposed amendment on line 1, of page 8, it was moved to add after the word "death," also the words "or imprisonment for life." That was to put all persons so convicted, either of murder in the first degree, of murder in the second degree, of forgery in the first degree, or of arson in the first degree, on the same level. To that I said that I had no objection, not because I thought that the right of intermediate appeal ought to be taken away, and that a man convicted of crime ought to have only one appeal; but I objected to it on account of the great volume of business in the Court of Appeals, that we thereby entailed upon it. That amendment was voted down by the vote just taken. And, as the article now stands, by reason of that last vote, the Convention is in this position: Unless the motion to reconsider shall prevail, and we give to the man convicted of murder in the first degree one appeal, and under this article, we give to the man convicted of murder in the second degree, of forgery in the first degree, or of arson in the first degree, the right to take an appeal to the Appellate Division where questions of fact and of law may be discussed and decided, and after that he may take an appeal to the Court of Appeals where questions of fact and of law may again be decided; whereas a man who is convicted of murder in the first degree can only take one appeal to the Court of Appeals for the purpose of reviewing questions of fact and of law. That ought not to be the position in which we leave the Constitution. We ought either to take Mr. Crosby's amendment in its fullest sense and application, or we ought, unless we desire to make that inequality between men guilty of those offenses, to reconsider the vote which we took this morning.

Mr. Platzek — Mr. Chairman, my friend, Mr. Blake, has suggested that it was a stultification for this Convention to vote one way this morning and differently this afternoon; and that we ought to stand upon principle. I voted in favor of Mr. Crosby's proposition this morning, and I am now in favor of reconsidering that vote because, on principle, I have discovered that my vote of this morning was wrong, and I think I would stultify myself now, in the light that I have since received, if I failed to correct my error. As I understand the proposition it was this: in a special case, where

death is the penalty, the appeal is directly to the Court of Appeals, and there the questions of law and the questions of fact are both reviewed; but where the penalty is imprisonment for life there is in the first instance an appeal to the General Term, at present, and hereafter to the Appellate Division of the Supreme Court, which will review the law and the facts, and thereafter there is an additional appeal to the Court of Appeals upon the law alone. Therefore it appears to my judgment that the rights of the defendant, or of the criminal, if you please, are surrounded with greater safeguards when he is able to have the General Term first review the questions of fact and of law, and then be heard again in the Court of Appeals upon questions of law alone. And in that way we believe the calendar of the Court of Appeals, or rather the work of the judges of the Court of Appeals, by withdrawing from them the necessity of reviewing the facts and only passing upon the law. That being my belief, and especially after having listened to the suggestion in that regard by the gentleman from New York (Mr. Nicoll), to whose experience I am always willing to yield in matters pertaining to criminal law, I am prepared to vote for a reconsideration.

Mr. Cady — Mr. Chairman, I desire very briefly to call the attention of the committee to a single consideration connected with this matter. Under the provision as reported by the committee, a person convicted of any offense which entails punishment of imprisonment for life, can reach the Court of Appeals so that questions of fact can there be considered, unless seventeen men — the twelve jurors necessarily concur in the verdict, and five justices of the Supreme Court sitting in the Appellate Division — decide that there is evidence sufficient to sustain a conviction. If there is a dissent in the Appellate Division on questions of fact; if a single judge out of the five composing that tribunal dissents from the position that there is evidence supporting or tending to support the conclusion which the jury has reached, then the Court of Appeals under this provision may pass upon the questions of fact. What is the situation, even in its worst aspect, as claimed by the advocates of this amendment? In cases of murder in the first degree, where the judgment is of death, nineteen men may pass upon the questions of fact — the twelve jurors who find the verdict, and the seven judges sitting in the Court of Appeals, to whom the appeal upon the questions of law and of fact may be taken directly from the trial court. So I say that in the worst aspects of the case as viewed by the advocates of the amendment, there would be only two less judges, two fewer men, to pass upon the questions of

fact involved. And if there is a single dissent, as I say, in Appellate Division upon a question of fact, then the case goes of right under this proposed amendment to the Court of Appeals. That seems to me to be at least sufficient security for any person so convicted upon the question of fact.

Mr. Maybee — Mr. Chairman, no such provision as that proposed by the gentleman from Delaware as in the old Constitution, and no such provision is in the statutory law of this State, and no such provision ought to be in the amendments to be submitted to the people this fall. The reason why in capital cases such a provision is proper is apparent. In those cases if an error was committed, and the judgment carried into execution, no remedy could be had. But in cases, where the judgment is of imprisonment, the person unjustly convicted still exists, and if an error of fact be discovered, a remedy by executive clemency, or in some other manner, is possible. Now, if the principle contended for by the gentleman from Delaware is correct, then this ought to be the case; where the judgment is of imprisonment for a term of years, and the age of the criminal sentenced is such that a sentence for that term would extend beyond the probable duration of his natural life, then you ought to extend the same privilege to a prisoner sentenced for such term of years as to one receiving a life sentence. So that there does not seem to be any propriety or wisdom in the suggestion of the gentleman from Delaware (Mr. Crosby), and, therefore, I hope that the amendment proposed by him will be voted down, and the section left in its present form.

Mr. Blake — Mr. Chairman, one reason why it is advisable that an appeal should be allowed to the court of last resort on questions of fact as well as of law, is this: We all know very well that the justices of the Supreme Court of the department where a case may be brought to trial are susceptible to the influence of public clamor, whereas the Court of Appeals is far removed from such influence. A second reason is one which appeals to the gentlemen here who are lawyers. They know that not long since the Court of Appeals abolished the right of a man convicted of capital crime to appeal to the General Term, and compelled him to appeal directly to the Court of Appeals. Why may not the Legislature proceed in like manner? Why do you not leave to the Legislature the right to say that a man convicted of murder in the second degree may appeal directly to the Court of Appeals? It is a matter for legislative enactment. We are supposed here to make the permanent law; we are not to regulate the methods of appeal; and the Legislature will undoubtedly at its first session correct this error. Therefore,

I say, for these two reasons, if for no other, you should give to a man convicted of murder in the second degree an appeal to the court of last resort; and what I contend for is that he shall have his right determined, not by the Supreme Court of the same district where the alleged crime was committed, but by the court of last resort. That is my contention. He has just as much right to have his rights determined by that court as has a man convicted of a capital offense.

Mr. A. B. Steele—I would like to ask Judge Cady what language of this section he construes as giving a person convicted of murder in the second degree the right to have his appeal taken to the Court of Appeals and there heard on questions of fact, where the General Term is not unanimous. What language is there in this section that gives to a person under those circumstances, convicted of murder in the second degree, the right to have his appeal heard upon questions of fact in the Court of Appeals?

Mr. Cady — I refer to the language to be found in section 9, line 23: "No unanimous decision of the Appellate Division of the Supreme Court that there is evidence supporting or tending to sustain a finding of fact or a verdict not directed by the court, shall be reviewed by the Court of Appeals;" and which section permits an appeal where there is a dissent.

Mr. A. B. Steele — I cannot quite see how that is. I do not see how that language gives him the right to have his case heard in the Court of Appeals upon a question of fact. The reason I speak of this is because I want to understand it thoroughly before I vote. I did not vote at all this forenoon on the question of whether this amendment should be carried, and I did not vote for the reason that I wanted to see the judiciary article passed as nearly as possible, if not in the exact language or in the exact terms, in substantially the terms, reported by the committee. If I am wrong with reference to my understanding of the language of this section, then I certainly am not in favor of it, or rather I am not in favor of the amendment; but if the language is not sufficiently clear, so that a person convicted of murder in the second degree, where the General Term is not unanimous, can have the questions of fact raised at the General Term, then it seems to me that it ought to be. There is in my mind no question but what the punishment for murder in the second degree, although it does not take the life of the individual, is substantially as severe, and should be substantially as carefully considered by the Appellate Court as in case of conviction of murder in the first degree; because, among other reasons, a person

who is convicted of murder in the first degree has the executive standing between him and death until the execution actually takes place, so that he may be saved from the consequences of the judgment imposed upon him. But a man who is convicted of murder in the second degree, as has been said here, is civilly dead; his property, and all his rights may be taken away from him. So that, whether the conviction be of murder in the first degree or of murder in the second degree, it seems to me the questions of fact and of law should be considered by the Appellate Court with just as much care. If you will pardon me, I will make a further suggestion. It has been said that this will increase the duties of the judges of the Court of Appeals. I may be wrong, but I understand that the Court of Appeals has invited this Convention to leave that body substantially the same as it was, and have said to us, in substance, if it was left with only the seven judges constituting it as it is at the present time, notwithstanding the fact that if this proposed amendment to the Constitution is adopted it will increase the appeals to the Court of Appeals for construction, notwithstanding all that, they say, in substance, that they are willing to take the responsibility of disposing of all the work that comes before them under the article or under the practice as presented by this judiciary article.

Mr. Hirschberg — Mr. Chairman, I desire to say a few words in answer to the argument advanced by the gentleman from New York, Mr. Nicoll. As I understand, his main objection to the amendment which is now under consideration under the motion to reconsider the vote taken this morning, was that to leave that amendment to stand as it does would present the anomaly that a man convicted of murder in the first degree would have but one appeal, whereas a man convicted of murder in the second degree would have two appeals. That argument has no force whatever, because that anomaly has existed now for years in this State, not only as between a man convicted of murder in the first degree and a man convicted of murder in the second degree, but also as between a man convicted of murder in the first degree and a man convicted of any other crime in the category. In the county, in which I reside, last year a man who was convicted of murder in the first degree took his appeal to the Court of Appeals, and that court affirmed the conviction, and he was executed. In the same year a man was convicted of the crime of fishing on Sunday, and was fined five dollars. He took an appeal to the County Court, and the conviction was affirmed. He took an appeal to the General Term, and the conviction was again affirmed. He took an appeal to the Court

of Appeals, and the Court of Appeals, after argument and patient hearing, and after several months of deliberation, affirmed the conviction by a vote of four to three; and he was compelled to pay the five dollars. (Laughter.) Now, if the State of New York can stand that anomaly ——

Mr. Goodelle — I want to ask the gentleman a question.

The Chairman — The Chair rules that the gentleman speaking cannot be interrupted.

Mr. Hirschberg — I think it is just as well to let the examination in chief close first. Now, I say that if the State of New York can stand that anomaly it can stand the strain on its sense of justice and humanity of permitting two appeals to be taken in cases of murder in the second degree, although only one is taken in cases of murder in the first degree. So much for that argument of the gentleman from New York.

Now, as to the other arguments. It does seem to me that if a court is to pass in review upon a judgment which will deprive a man of his liberty for life, it ought to be permitted to pass upon questions of fact as well as upon questions of law. There is no adequate review in a criminal case which does not involve an examination of the facts; and no court should be compelled to write an ultimate judgment in a criminal case, if, in its opinion, the facts in that case do not tend to prove the commission of the crime. A few months ago the Albany Law Journal contained an account of a decision in a western case, in a court of last resort, where the syllabus contained just this single principle: "A conviction in a case of murder should be reversed if the facts proved do not tend to show that the defendant committed the crime." Can any one find fault with that decision, or that opinion? Why then should the Court of Appeals in this State, in a case involving human liberty for life, be asked to decide a case where, in their judgment, reviewing the question dispassionately, removed from the atmosphere of the alleged offense, they conclude that on the facts as established no crime has been proven?

I voted for the resolution amending the section this morning, and I shall vote against the resolution to reconsider because I think that so long as there is a tribunal in this State of last jurisdiction, of final appeal, it should have the right and it should be made its duty to pass upon questions involving life and death; and it should therefore have the right to review questions in judgments where imprisonment for life is the penalty; and should not only be required to review such cases on appeal, but should review both the law and the facts.

Mr. Goodelle — Does the gentleman mean to convey the idea that in the case cited by him the Court of Appeals reviewed the case upon the facts? I mean the conviction for fishing on Sunday.

Mr. Hirschberg — Entirely upon the facts.

Mr. Goodelle — The Court of Appeals did that?

Mr. Hirschberg — Yes.

Mr. Goodelle — Were the facts of such a character that they constituted a question of law?

Mr. Hirschberg — The question of fact was whether the conceded fact that the man fished in private property upon Sunday, was a crime under the code.

Mr. Goodelle — It became, therefore, a question of law.

Mr. Hirschberg — No; it became a question of fact — whether the act, which was not disputed — for there was no disputed fact at all — was a crime.

Mr. Goodelle — What was that if not a question of law.

Mr. Marshall — Why, no; you are mistaken.

Mr. Goodelle — Does the gentleman understand that the Court of Appeals reviews any question of fact in such a case?

Mr. Hirschberg — Always the question of any evidence of guilt.

Mr. Goodelle — Either my friend is greatly mistaken, or else I am.

Mr. Hirschberg — What was Judge Gray's opinion in the Harris case but a review of the facts?

Mr. Goodelle — I understand that where the facts predominate so to one side or the other that it becomes a question of law as to whether a conviction is sustained or not in those cases, and only in those cases, the Court of Appeals will review them. What I desire to say while upon my feet is this, upon principle, I see no reason why this amendment should be accepted. I have in my own recollection a case where a party aged seventy-five years was convicted upon four separate indictments, and was sentenced for forty years upon the four indictments, or ten years upon each. Nobody could claim that that man would live to see the end of his forty years of imprisonment. If the rule is to prevail, which has been suggested here, why should it be confined to people convicted of murder in the second degree? If that is not to be the case, where is the line to be drawn? There is adequate reason why, in capital cases, in a case of murder in the first degree, the exception should

be made, but I see no reason and no logic or any suggestion to be made why it should exist in any other case.

Mr. Crosby — A single further suggestion. I desire to answer first the gentleman from Onondaga, who says that he does not see a single reason why, in this class of cases, the rule should be applied. It has been well suggested by the gentleman from Herkimer that in capital cases, before the punishment of death is inflicted, executive clemency may restore the prisoner to his civil rights. But, in cases where the punishment is imprisonment for life, as I read the decisions of the Court of Appeals, it is impossible for the executive to restore the prisoner to all his rights by giving him a discharge from imprisonment. His family is gone; his wife is severed from him by operation of law; his children are no longer under his guardianship or control. It is possible that the gentleman from Onondaga does not regard those as matters of any importance, but to the ordinary citizen, who has not risen to that height of understanding of the human affections, it is a strong substantial reason. This morning this Convention voted on principle deliberately, and, after considering the arguments upon the question of the right to human liberty, now it is asked to vote, not upon that question, but the argument, and the pressure that has been brought around this Convention on this floor and outside, is not on the main question, but whether it is sacrilegious, unholy and unlawful to attack the report of the Judiciary Committee. The other question is whether we should be led by this outside influence, or should vote as we believe to be right, and as we did this morning.

The Chairman put the question on the motion of Mr. Nicoll to reconsider, and it was announced as determined in the affirmative.

Mr. Crosby — I call for a division of the House.

The Chairman put the question on the motion of Mr. Nicoll to reconsider, and, by a rising vote, it was determined in the affirmative by 72 ayes to 43 noes.

The Chairman — The motion to reconsider is carried. Now, the question is upon the motion made by the gentleman from Delaware (Mr. Crosby), to insert in line 22, section 9, after the word "death" the words "or imprisonment for life."

Mr. Crosby — On that question I call for a count.

The Chairman put the question on the amendment offered by Mr. Crosby, and, by a rising vote, it was determined in the negative by a vote of 55 ayes to 67 noes.

The Chairman — Are there any further amendments to section nine?

Mr. Blake — Now, Mr. Chairman, to relieve the situation of some of the objections urged here by gentlemen who seem to be somewhat conscientious, I desire to move the following amendment: I move that the words in lines 21 and 22, on page 7, "except where the judgment is of death," and also the words in line 1, on page 8, "except where the judgment is of death," be stricken out, and that the amendment, which I send to the desk, may be added after the words "against them," in line 7, on page 8.

The Chairman — It is written here (Mr. Blake's amendment): "Except where the judgment is of death or of imprisonment for life, the appeal may be from the judgment of the trial court directly to the Court of Appeals, which may, in such cases, review both law and fact."

Mr. Blake — That is it.

Mr. Nicoll — I would like to have the amendment read again.

The Chairman — It is to strike out "except where the judgment is of death," in line 22, on page 7, and also to strike out in line 1, on page 8, the words "except where the judgment is of death," and it will then read: "Except where the judgment is of death or of imprisonment for life, the appeal may be from the judgment of the trial court directly to the Court of Appeals, which may, in such cases, review both law and fact."

Mr. Blake — I offer that amendment, as I said before, to meet some objections which have been urged, apparently with some force and, perhaps, altogether conscientiously, by certain gentlemen who were misled in the vote taken this morning, who did not understand that a man convicted of murder in the second degree had an appeal to the intermediate Appellate Court; and I say, to meet that objection, I have offered this proposition, which is an entirely different one, in which the question can be squarely met and squarely voted upon intelligently by everybody. We only ask that one appeal shall lie, and that to the Court of Appeals.

Mr. Dean — I rise to a point of order. Under rule 55 this is an equivalent motion, and cannot be entertained at this time.

The Chairman — I do not know whether it is equivalent or whether it is not equivalent myself. The Chair would like to ask Mr. Blake where he wants these words inserted?

Mr. Blake — Mr. Chairman, with the permission of the Convention, I ask that the first word "except" be stricken out of the amendment.

The Chairman — That is out.

Mr. Blake — The amendment is to follow the words "against them," at line 7, on page 8.

The Chairman — The point of order is not well taken. The question is upon the motion of Mr. Blake.

Mr. Hawley — I move to amend the amendment by inserting after the word "life" "or for ten years."

The Chairman put the question on the adoption of the amendment offered by Mr. Hawley, and it was determined in the negative.

The Chairman then put the question on the amendment proposed by Mr. Blake, and it was determined in the negative, by a rising vote, 44 to 68.

The Chairman — Are there any further amendments to section 9?

Mr. Roche — Mr. Chairman, I find the following in lines 11 to 14, page 8: "The Legislature may further restrict the jurisdiction of the Court of Appeals, and the right of appeal thereto, but it shall never make the right to appeal depend upon the amount involved." The impression here is that this sentence abrogates the present restriction, the $500 restriction. I would like to know if, in fact, it does that? Has it a retroactive effect? If it should be adopted by the people, it will take effect, I presume, the first of January next. Now, how does it affect what has already been adopted by the Legislature? Will it be said that it simply operates to prevent the Legislature in the future from passing any acts making the right to appeal depend upon the amount involved? Supposing that the Convention should adopt a provision, which is now before it, saying that the Legislature shall not pass any private or local act, regulating county or township affairs, would it be held that that in any manner affected the acts of that character which had already been passed by the Legislature and which are upon the statute book? Now, if there is any doubt upon this subject, it seems to me that it should be removed, and it can very easily be removed by having the section read in this way: "But the right to appeal shall never depend upon the amount involved," or, "the right to appeal shall not depend upon the amount involved." That will be legislating upon the present act and upon the present condition of affairs, and will make it certain that by this Constitution we not only act upon what is already on the statute book upon the subject, but will make it prohibitory upon the Legislature from passing any similar acts in the future.

The Chairman — The Secretary will read section 10, if there are no amendments to section 9.

Mr. Roche — I make that, Mr. Chairman, as an amendment. I may be all wrong, but it seems to me that it is sufficiently in doubt to have it made certain by the Convention. I, therefore, move that the sentence shall be amended to read as follows: "The Legislature may further restrict the jurisdiction of the Court of Appeals and the right of appeal thereto, but the right to appeal shall not depend upon the amount involved."

Mr. Root — Mr. Chairman, I feel very much inclined to agree with the gentleman from Rensselaer upon the subject. I would like to think about it a few minutes, and I think other members of the committee who drafted this section would, if it can be postponed for a few minutes. I do not like to say yes just on the spur of the moment without a little time for reflection.

Mr. Nicoll — Mr. Chairman, I am opposed to the principle of it, but, so far as the language is concerned, I think it better come out. It is desired to wipe out the present $500 limitation, that would do it better than this language.

Mr. Root — Then, Mr. Chairman, I will say now, that I think that that language should be accepted.

The Chairman put the question on the adoption of the amendment proposed by Mr. Roche, and it was determined in the affirmative.

The Chairman — Are there any further amendments to section 9?

Mr. Roche — Mr. Chairman, I find the first sentence in section 9, declaring that the jurisdiction of the Court of Appeals shall be limited to the review of questions of law. I simply want to make the inquiry whether the committee understands by that that we are adopting any new or different rule from that which, in fact, now prevails; whether it is simply a declaratory provision of existing law or practice, or whether it is intended to declare and provide for some new rule?

Mr. Marshall — It is declaratory.

Mr. Nicoll — Declaratory.

The Chairman — If the Chair hears no further amendments, the Secretary will read section 10.

The Secretary read section 10 as follows:

Sec. 10. The judges of the Court of Appeals and the justices of the Supreme Court shall not hold any other office or public trust. All votes for any of them, for any other than a judicial office, given by the Legislature or the people, shall be void.

The Chairman — Are there any amendments to section 10? If the Chair hears none, the Secretary will read section 11.

The Secretary read section 11 as follows:

"Sec. 11. Judges of the Court of Appeals and justices of the Supreme Court may be removed by concurrent resolution of both Houses of the Legislature, if two-thirds of all the members elected to each House concur therein. All other judicial officers, except justices of the peace and justices of inferior courts, not of record, may be removed by the Senate, on the recommendation of the Governor, if two-thirds of all the members elected to the Senate concur therein. But no officer shall be removed by virtue of this section, except for cause, which shall be entered on the Journals, nor unless he shall have been served with a statement of the cause alleged, and shall have had an opportunity to be heard. On the question of removal the yeas and nays shall be entered on the Journal."

The Chairman — Are there any amendments to section 11?

Mr. Hawley — Mr. Chairman, I observe that in line 6, the first word is "journals." Is that an error? Ought it not be "journal?"

Mr. Root — Mr. Chairman, I will answer the gentleman that that is the language of the existing Constitution, and I suppose it is intended to cover the case where the removal is to be by the concurrent resolution of both Houses, as well as the case where it is to be by the Senate alone.

Mr. Hawley — I think that is right.

Mr. Root — Mr. Chairman, let me say, in regard to this section, that we have made only one change, and that is, whereas the old section provided that no removal shall be made by virtue of this section, unless the cause thereof be entered upon the journals, nor unless the party complained of shall have been served with a copy of the charges against him, and shall have had an opportunity of being heard, we have made it read: "But no officer shall be removed by virtue of this section, except for cause, which shall be entered on the journals, nor unless he shall have been served with a statement of the cause alleged and shall have had an opportunity to be heard," the difference being this — under the existing provision of the Constitution, in order that a judicial officer should be removed, it is necessary that there should be something to justify charges against him, and that he should be put in the attitude of a party complained of, served with a copy of the charges against him. Now, there have been a number of instances in this State where judicial officers, through no fault or dereliction of their own, have been unable to perform their duties — justices who had had soften-

ing of the brain, who have, through illness, been entirely incapable of performing their duties, and when the suggestion was made that they ought not to remain in the receipt of the large salaries which were attached to their offices while they were not doing anything, the answer was that they could be removed only for some dereliction of duty. Charges must be made against them, culpability must be established, they must be branded with some malfeasance or misfeasance in office, and, therefore, nothing has been done. I presume every gentleman can recall cases of that kind. We have now taken and substituted merely the word "cause." They may be removed for "cause." A statement of the cause shall be served and an opportunity given to be heard; and that is language which has been construed by the Court of Appeals, and the Court of Appeals has said that this very language means incapacity to perform the duties of an office. That is the only change that has been made.

Mr. Alvord — Mr. Chairman, permit me to suggest to the chairman of the committee that this is the first time the word "journals" appears in the article. It may be the journal of a mechanic, the journal of a merchant, the journal of a lawyer. It seems to me that that wants to be distinctly mentioned. I, therefore, propose to him that it should read "on the journal of each branch of the Legislature." In line 6, after the word "journals," read "the journal of each branch of the Legislature."

Mr. Root — Mr. Chairman, we have taken the precise language of the existing section in that respect. The Constitution has just provided for the concurrent resolution of both Houses of the Legislature, and it then says that it shall be for cause and the cause shall be entered on the journals. I do not believe there is any real possibility of misunderstanding or that anybody would think that it was a railroad journal, for instance.

The Chairman — Are there any amendments to section 11? If the Chair hears none, the Secretary will read section 12.

The Secretary read section 12 as follows:

"Sec. 12. The judges and justices hereinbefore mentioned shall receive for their services a compensation established by law, which shall not be diminished during their official terms.

No person shall hold the office of judge or justice of any court longer than until and including the last day of December next after he shall be seventy years of age.

No judge or justice elected after the 1st day of January, 1894, shall be entitled to receive any compensation after the last day of Decem-

ber next after he shall be seventy years of age, but any judge of the Court of Appeals or justice of the Supreme Court elected prior to the 1st day of January, 1894, whose term of office has been, or whose present term of office shall be, so abridged, and who shall have served as such judge or justice ten years or more shall be entitled to the compensation attached to his office during the remainder of the term for which he was elected."

Mr. C. B. McLaughlin — Mr. Chairman, I offer the following amendment:

The Secretary read the amendment offered by Mr. McLaughlin, in the following language: "Strike out all from line 16 to 25, inclusive, on page 9."

Mr. Veeder — Mr. Chairman, if the gentleman will permit me for a moment, I desire to offer an amendment to the preceding paragraph of that section, line 15.

The Chairman — Only one motion can be pending at a time. The amendment is not in order at this time.

Mr. McLaughlin — I do not understand that the rules prohibit his offering the amendment.

Mr. Veeder — I am not tenacious about it. You may send it back.

The Chairman — The Chair holds that there can be only one amendment pending at a time, but there may be an amendment to the amendment.

Mr. McLaughlin — Mr. Chairman, I regret that I feel it my duty to oppose so much of the constitutional amendment under discussion as relates to the pensioning of judges elected prior to January 1, 1894. I regret it because what I may say upon the subject might be construed into a personal attack upon some of the judges affected by the amendment which I have offered. I have no intention, sir, of making any attack upon any judge, and what I may say relates entirely to this system which is incorporated in this proposed amendment.

Mr. Chairman, the principle which looks to the protection of any individual from the effects of a constitutional amendment seems to me to involve that sort of questionable legislation, which is not only vicious in principle, but which this body, composed of the delegates here sitting, should condemn. We have, time and again, heard upon this floor arguments against special legislation, against seeking to protect any individual from what seemed to be the interests of the whole people of the State. The Judiciary Com-

mittee, in considering this subject, has condemned the system of pensions, but for some curious and unknown reason, known to themselves, perhaps, they have protected a few judges elected prior to January 1, 1894. What reasons actuated that committee in reaching such conclusion I know not; but it seems to me that the principle here inaugurated is one which this body should condemn. Now, Mr. Chairman, the only plausible explanation, as it seems to me, that can be made is that not to protect those judges, elected prior to January 1, 1894, would be a breach of good faith on the part of the people of this State. There is neither reason nor authority, as it seems to me, for such a position. The question of good faith on the part of the people of this State has no more to do with this proposition than any amendment which we may propose in this body. The members of this Convention are here assembled for one purpose; that is to amend and revise the Constitution, and when we have once reached the conclusion that a given subject of the Constitution should be amended and revised, and have proposed the amendment, we have performed our duty. If we go a step beyond that and seek to protect some one individual, or some two or three individuals, it is nothing more nor less than class legislation.

Now, Mr. Chairman, the only argument, as it seems to me, that has been or can be made in support of this provision, in excepting judges from this provision, is that it is a breach of good faith on the part of the State, because these judges accepted the office on the implied agreement or understanding that the salary or pension would be continued.

Now, sir, I propose to discuss for a few moments, if this body will bear with me — we have had so much discussion here to-day that it is almost impossible to get attention — I propose to discuss the history of this legislation which led up to the granting of pensions. At the time of the adoption of the present article in the Constitution that I am discussing, the people themselves, the judges themselves, did not believe that any judge elected to these offices could hold or get a pension beyond four years. That was the understanding of the people of this State, of the courts and the judges down to 1891. Not a single judge that you are seeking to protect here, with the possible exception of one, has been elected since 1891, and comes within the provision of this exception. Therefore, there can be no breach of good faith, if my proposition is correct in that respect, because each one of them that then accepted the office did not believe that he could draw a pension to exceed four years.

Now, let us see if I am not correct in my statement that that was supposed to be the law. In 1884 or 1885 there was in this judicial district in which is located this capitol, a justice of the Supreme Court, who was a candidate for re-election, and the objection was then made to his re-election that if he was re-elected, he could serve but seven years of the term for which he was to be re-elected, and so much force was recognized in that argument, Mr. Chairman, that the Attorney-General of this State was applied to for an opinion, and he wrote an opinion upon the subject, holding distinctly, fairly and squarely, that under no circumstances, under this provision, could a judge draw a pension to exceed four years. That opinion was upheld by many of the prominent lawyers of this district, was circulated broadcast and put into the hands of the voter, and he was elected. He went on the bench and served seven years, and afterwards went into retirement, and is now and will continue to draw a pension for the balance of his term, if he lives.

About the same time, in the Fourth Judicial District, there was a judge who was a candidate for re-election, and the same objection was made to him, that if he was re-elected to this office, he could serve but seven years, and at the expiration of the seven years he would retire from the bench and draw this pension for the balance of the term. About this time there was submitted to the Board of Claims of this State this question of whether a judge could draw a pension for more than four years, and in the case of Smith against the State, the Board of Claims unanimously decided that no judge could draw a pension to exceed four years. That decision of the Board of Claims, with a circular, was sent broadcast in the Fourth Judicial District, and the judge was renominated and re-elected. Notwithstanding that fact, he has since retired by reason of age, and has been and is now, and will for several years to come, draw a pension under this provision.

Now, whether or not the opinion of the Attorney-General and the decision of the Board of Claims was correct on this subject, it was finally submitted to the Supreme Court, and the Supreme Court, sitting at General Term, unanimously decided that a judge could not draw a pension to exceed four years of the fourteen.

Now, Mr. Chairman, that was the condition of the law of this State. Every judge sitting upon the bench to-day that will draw a pension, every one of them when he accepted his office knew that that was the law, and that continued to be the law of this State until January or February, 1891. In January, 1891, the question finally came before the Court of Appeals of this State. The Court

of Appeals passed upon the question, three of the judges voting one way, and three the other. Thus the matter stood. January 1, 1891, a present member of the Court of Appeals entered upon his term of fourteen years of office. The question was submitted to that court a few days after he entered upon his term, and the question whether or not a judge could draw this pension for four years or more was an important one to be decided by that body. If it was decided that a judge could not draw a pension unless he had served ten years of his term which was abridged, then the judge who entered upon the term of office on the 1st of January, 1891, could draw nothing. If the other construction was given, that a judge could draw a pension if he had served upon the bench any time during his life, ten years, then he could draw a pension. In other words, it made a difference to that judge, if he lived, of $120,000. Now, he saw fit — and I am not here to criticise his action, he may have been right; but I am only here to relate the history of that law — to cast his vote with the three that said ten years upon the bench at any time, and not of the term, was the correct construction, and by that vote put into his pocket, if he lives, $120,000.

Now, Mr. Chairman, I do not believe, in view of the history relating to this provision, that the argument of good faith is entitled to very much consideration.

Now, for another reason, which seems to me equally as forcible as this one, the question of good faith does not apply. We say to the ordinary man, in all the varied and extraordinary relations in life, that he is bound to know the law. We go upon that principle; we punish men; we subject them to fines and imprisonment, because they are bound to know the law. Now, every one of these judges, when they accepted office, was bound to know that the people in their sovereign capacity, might not only reduce the salaries, but abolish the office itself. We have the power here to abolish the office. We have the power here to reduce salaries, and when each one of those judges accepted office, he did so knowing that there was in the people of this State the power either to abolish the office or reduce the salary.

Now, Mr. Chairman, the Judiciary Committee must have reached either one of two conclusions in reporting this section; either that this pension was given as a gratuity, and if so, no argument need be made as to our right to wipe it out; or the salary of the office is sufficient for the services performed without the pension. If the salaries are not sufficient, then let the present provision in the Constitution stand as it is. It seems to me that if we vote three or

four men a half million of dollars, we will be subjecting ourselves to severe criticism. It is class legislation. Nothing less and nothing more. I sincerely hope it will be stricken out.

Mr. Cookinham — Mr. Chairman, I most heartily concur in many things that have been said by the gentleman from Essex (Mr. McLaughlin). I am opposed upon principle to pensions. I should vote against pensioning any officer or any person, except those who have performed military or naval service, if the question were before us now in that shape. But, Mr. Chairman and gentlemen, it is not. We are here to pass upon two questions as presented by the Judiciary Committee; one a question of law, the other a question of expediency. It is not within the power of this Convention to affect many of the judges who have drawn and who will draw what is called a pension. All those judges are to-day receiving what is not, strictly speaking, a pension. It is compensation for services performed, and is known as such to the courts. As to those judges, this Convention has no power by a constitutional amendment to affect them in the slightest. The Supreme Court of the United States has said that where an officer performs a service for the State, and that service is completed, and a compensation has been attached to that office, even by constitutional amendment, the State cannot affect it. So that as to every judge who to-day is drawing this compensation by virtue of the existing Constitution, our hands are tied. We cannot affect them. As to certain other judges, those that have been elected, and who will become seventy years of age before this Constitution goes into effect, having served ten years, we cannot affect them by any act of ours. The distinction drawn by the Supreme Court of the United States is, that where the contract is executed, we cannot affect them. Where it is executory, we may affect them. That leaves the Convention in this condition. If we should repeal the existing provision of the Constitution, there are certain judges, or at least one judge, that would receive $120,000 should he live. There are other judges who have performed longer service and would receive nothing. Now, as for me, Mr. Chairman, I believe upon the question of expediency this Convention should keep the utmost good faith with the gentlemen who occupy these high offices. I do not believe the State of New York could do a worse act than in spirit, if not in the letter, to repudiate a contract. I confess, Mr. Chairman, that a gentleman upon this floor who disagrees with this committee upon this proposition may do so just as conscientiously as I may believe or as this committee may believe, as the vast majority of this committee do believe, upon this proposition. Now, it is not so serious

a matter as has been presented to us, in my opinion, and I have endeavored by the figures given us by the gentleman from Herkimer (Mr. Steele), and by investigation, to ascertain just exactly what there is involved, and for the information of those who have not examined it, I will endeavor to state it. In the Court of Appeals, there is but one judge who may be affected by our act.

Mr. A. H. Green — Who is it?

Mr. Cookinham — The chief judge of the Court of Appeals, should he live, will draw a pension for nine years. It will be $12,500 per year, and he will, therefore, should he live, draw $112,500. But I have examined the Northampton table to see what the probabilities of life are of a person seventy years of age, and I find it to be six years and twenty-three one-thousandths of a year, so the probability is that this judge would draw it for six years instead of nine.

In the First Judicial Department no judge is affected by this provision, and there is no judge who will draw a pension, provided we pass the section as reported by the committee.

In the Second District there are three judges who will draw a pension. One of them, should he live, will draw $43,200, one will draw $50,400, and the other $50,400, should they live, but the probabilities of life are against them.

In the Third District there is but one judge that can ever draw this pension, and he for five years.

In the Fourth District there is but one judge who can draw the pension, and that for only one year.

In the Fifth Judicial District there is no judge that can draw a pension, although there are two judges in this district that will serve, if they live, twenty-eight years as justices of the Supreme Court, and can draw no pension.

In the Seventh District there are two. One of them can draw for three years, or $21,600, and the other for five years, or $36,000.

In the Eighth District there are but two judges that can ever be affected by this provision of the Constitution. One of them can draw the salary for one year, the other for six years.

Now, Mr. Chairman, the total amount involved in this proposition, as near as I have been able to ascertain, is $406,900, assuming that every judge lives to the utmost limit and draws the last dollar that he can by any possibility draw from the State, the State will pay $406,900. Mr. Chairman and gentlemen, shall this Convention, made up so largely of lawyers, made up, as I believe, of men who desire to uphold the high honor of this great State, shall we perpetrate one single act that can be construed as reflecting in the

slightest upon the honor of this great State? I confess, gentlemen of the Convention, that I would be most happy could I see my way clear to vote to take away from every civil officer that which is called a pension; but I cannot see it that way, and I hope that this committee will adopt the report and accept the amendment as presented by the Judiciary Committee, and save, as I believe, the honor of the State.

Mr. Moore — Mr. Chairman, it has seemed to me that if we are to adopt this provision, entailing upon the State four hundred odd thousand dollars, that in order to make a still further saving to the State, we had better incorporate into this section the Northampton table, and make it a part of the Constitution, so that, if it is possible, we may shorten the amount of pensions to be paid to these judges. I am very much in favor of Judge McLaughlin's amendment, Mr. Chairman. I believe that it is right. I believe it is for the interests of the State. While I am as much in favor of saving the honor of the State as my friend from Utica (Mr. Cookinham) is, I am also in favor of saving the money of the people of the State. Mr. Chairman, I am opposed to civil pensions. I do not believe in them in this country. I do not believe it is the thing to do in a republic, to create a favored class, even if they are the judges of the highest court in this State; and, therefore, with great regret, for I have most profound respect for the talent and ability of my friend from Oneida, I must oppose his views on this subject. It seems to me that it is a good time now for this Convention to call a halt upon these expenditures, and, therefore, I heartily support, in these few remarks, the motion of my colleague from Essex county (Judge McLaughlin), to strike out the lines which he suggests in his amendment, and I will yield the floor to any other gentleman who wishes to make one-minute speeches, as I have, until the adjournment of the Convention.

Mr. Barhite — Mr. Chairman, the gentleman from Oneida (Mr. Cookinham) says that he does not look upon this as a pension, but as a compensation for services rendered. Now, if that is true, if that is the proper way to look at this matter, then the State of New York is now doing, and has been doing for years past, not only a great injustice to these gentlemen who will draw a pension, but also to the other justices of the Supreme Court and the judges of the Court of Appeals who will not draw any pensions. It is an admission, Mr. Chairman, that the State of New York is not paying those judges and those justices a sufficient salary for their services. It is an admission on our part that the salary of the judges and the justices is so small that we are obliged

to continue them for a number of years after they cease to render any actual service. Now, do we want to take that position? Do we want to say to the people of the State of New York that we will not pay them for their services while they are actually rendering them, but we will pay them less than they deserve and continue their pay for a few years longer? That is the legitimate conclusion of an argument of that kind.

Now, Mr. Chairman, there seems to be a very tender feeling in this Convention towards the judges ——

First Vice-President Alvord took the chair and announced that, as the hour of five o'clock had arrived, the Convention stood in recess until eight o'clock in the evening.

EVENING SESSION.

Wednesday Evening, August 22, 1894.

The Constitutional Convention of the State of New York met, pursuant to adjournment, in the Assembly Chamber in the Capitol, at Albany, N. Y., Wednesday, August 22, 1894, at eight o'clock P. M.

First Vice-President Alvord called the Convention to order.

Mr. Acker resumed the chair in Committee of the Whole, on the matter pending when recess was taken.

The Chairman — The Convention is still in Committee of the Whole on general order No. 45, and the gentleman from Monroe (Mr. Barhite) has the floor.

Mr. Barhite — Mr. Chairman, when the descending gavel wielded by the strong right arm of my friend from Onondaga closed my remarks, I believe I was speaking of the tender regard with which the justices and judges of the State seem to be regarded by some of the members of this Convention. In referring to the gentlemen who are just a little lower than the angels, who are clothed with glory and honor and draw pay at the rate of $7,200 per year, they seem to speak with bated breath, as though they were referring to people living under different Constitutions and with different rights from the rest of the people of the State of New York. Mr. Chairman, I do not want to be understood as saying anything against the judiciary of this State. I believe that a proper and wholesome regard for the judges of the State is just, and should be indulged in by every citizen; but at the same time, when we are considering a question of this kind I do not understand why

the statutes that pertain to them and their compensation should be considered in any different light from the statutes for compensation or the rights which refer to the humblest citizen of the State.

The gentleman from Oneida says that we should not pass this proposed amendment because certain of those rights we cannot interfere with, and if in order, I would like to ask the gentleman where he gets his authority for that statement, so that we may strictly understand each other. I do not know where he gets his authority, but possibly he gets it from a decision in the 116th United States Court Reports, a small portion of the opinion of which I desire to read to this committee, but a single paragraph:

"We do not assert the proposition that a person elected to an office for a definite term has any such contract with the government or with the appointive body as to prevent the Legislature or other proper authority from abolishing the office or diminishing its duration or removing him from office. So, though when appointed the law has provided a fixed compensation for his services, there is no contract which forbids the Legislature or other corporate body to change the rate of compensation or salary for services after the change is made, though this may include a part of the term of the office then unexpired."

Our present Constitution provides that every judge of the Court of Appeals and every justice of the Supreme Court, whose term of office shall be abridged pursuant to this provision, and who shall have served as such judge or justice ten years or more, shall be continued during the remainder of the term for which he was elected. Now, I say that when a justice or a judge of the Court of Appeals is elected under the provisions of the statute, and on account of his age will be able to serve but ten years of that term, that justice's term is not more than ten years by statute any more than the justice who ordinarily might be permitted to serve fourteen years, who was not so old. And this case in the Supreme Court of the United States simply holds that any person who has performed certain services, can get paid for those services from the public body, the State or the city which may have engaged him. But the Constitution of the State of New York provides simply that his salary shall be continued. It is not pay for past services, it is simply continuing his compensation. And reading that case and the Constitution of the State of New York together, I am not so certain as has been asserted upon the floor of this Convention, that there is any judge or justice of this court who,

as a matter of law, can claim compensation for the balance of his term.

But leaving that question. Assume, if you please, that there are some judges who have a legal right to the money of the State after their term of office may be abridged. It is unquestionable under this same decision, that there are certain judges who are not entitled to that compensation after their term is abridged, who can be cut off the moment they cease their duties to the State and are not entitled to receive another dollar from the State of New York. In other words they have not a legal right. They have what, perhaps, may be called a moral right, possibly an equitable right, although not an equitable right in the legal sense of that term.

Now, did these gentlemen, when they were elected to office, consent to become candidates without any regard for the compensation which they were to receive? If they say, "bear in mind that when we took the office of judge of the Court of Appeals, or justice of the Supreme Court, part of the consideration for taking that office was the fact that we might receive our salary for one, two or three years after our service had ceased;" if they take that ground, then upon what ground can they come to the people of the State now and say, you should not abridge our salary? If that was not part of the consideration upon which they entered into the service of the State, what ground have they now to come and ask the people of the State to continue the compensation after their term has ceased? On the other hand, if they say that was part of the consideration; that when they consented to take this office, they had in mind the fact that they would receive a pension or compensation, whichever you are pleased to call it, after they ceased to perform the duties of their office, then they intimate to you that they expected to receive money of the State for which they never expected to perform any service. They tell you that they expected to receive pay for the time they actually performed the duties of their office, but that after that they expected to get pay for doing nothing at all.

Mr. Chairman, if they take that position, and if they come into this body or before the people of the State of New York and say: "We want you to continue our pay; we desire this pension which the Constitution at present gives us" — then we say to them: "You tell us that you expected to receive the money of the State without rendering any service therefor, and if you want equity you must come into court with clean hands." When the judges of the Court of Appeals of this State decided that the ten years' service which

would entitle any judge or justice to the pension allowed by the Constitution (it need not necessarily be ten years of service within any one term), they stood strictly and solely upon their legal rights. There was nothing in their minds in regard to the rights of or justice to the people of the State of New York. They stood before us as any suitor stands in any court of law, and they said: "We demand what is ours as a matter of law." There was nothing in their opinion, nothing in the decision which they rendered that would lead us to think they had in mind anything more than that strict legal right which they said they had under the Constitution and the statutes of this State. Further than that, when the courts of this State decided that a justice whose term was abridged was entitled not only to the $6,000 salary which the State paid him for his service, but that he was also entitled to the $1,200 which had been given him by statute to pay his expenses in going from city to city and from town to town, to make him even on his hotel bills, his railroad fare and other necessary expenses; then again they stood strictly upon their legal rights. They stood upon the statutes and the Constitution of the State and they said: "We demand this as a matter of law." We never find a judge or a justice of the Supreme Court or of the Court of Appeals, in any decision which affects the interest of the court, taking any other or different stand from that which I have indicated. And so why should we here, at this time, stand before the people of the State and say, on moral grounds, that the judges who went into office expecting to receive a pension should be continued? The State of New York is large and wealthy. It can afford to be just, it can afford to be generous, but further than that we, as the representatives of the State of New York, should not go.

One further consideration and I am done. According to the provisions of this section which have been adopted thus far, we are to give the people of the State twelve additional justices of the Supreme Court. By that part of the section which consolidates the Superior Courts, the City Courts and other courts, after the present terms of the judges of those courts have expired, their successors are to be elected as justices of the Supreme Court. That will give to the people of the State of New York something like thirty additional justices of the Supreme Court. And I, for one, sir, do not feel willing to go to the people of this State and say: "We consider that you must have thirty additional justices"—and I will say I speak of them because their salaries will not be paid from particular localities which receive a special benefit for their services, but from the treasury of the entire State. I do not

feel like going before the people of the State of New York and saying, "We shall ask you to pay for thirty additional justices of the Supreme Court and at the same time pay out $406,000 in pensions, for which not a dollar of service has been rendered."

I hope, Mr. Chairman, that the amendment of the gentleman from Essex will prevail.

Mr. Cady — Mr. Chairman, I do not think that the question which is presented in the amendment offered by the gentleman from Essex (Mr. C. B. McLaughlin) is entirely to be disposed of, or entirely to be considered, under cold rules of law, although I have little, if any, doubt as to the absolute correctness of the decision and the report of the Judiciary Committee upon that subject, if that report and that conclusion should be judged by those standards. The delegate from Essex (Mr. McLaughlin), in introducing his amendment, expressed some doubt and some curiosity as to the methods by which the Judiciary Committee arrived at the conclusion it reached, and some doubt and some curiosity as to the motives which animated the committee in reaching that conclusion and submitting the proposition contained in its report. The answer to all his questions is a ready one, and I think it ought to be a satisfactory one. The sole purpose of the Judiciary Committee in reaching that conclusion and reporting that amendment was to do absolute justice between the State of New York and the judges of its courts, who are, by virtue of existing constitutional provisions and the decisions of the courts, to a certain extent, interested in the subject. I do not believe that this Convention will have to consider, at all events during the remainder of its session, any question which involves higher moral grounds than this question involves. I believe that it is disassociated and differentiated from all sentiment, and that it involves purely a question of State honor and State dignity. The amount of money which is involved in the matter may be large in a certain sense, but in another sense it is small and trifling, when compared with the great wealth and the great resources of this State. But the size of that sum is of no moment in the due consideration of this question upon its exact merits. Under the old dispensation, before the principles which prevail in this State and in this republic had been born and reached their fruition, the king was the fountain of power and the fountain of honor. Under the new dispensation of republican government, the people are the fountain of power and the fountain of honor, and their honor ought to be more dear and precious to them in every view of the case than their power can possibly be. We stand here representing the people of the State

of New York in the loftiest capacity in which any body of men can represent them. We are here in the Capital City of the State, and we are here in the building which is the heart of the power and sovereignty of the State, and I sincerely trust that this Convention will not go forth from the performance of its duties, after doing any act which directly or indirectly leaves any blot or stain upon the escutcheon of this State. There is one thing which every citizen of New York can say to the world and never blush in saying, and that is that this great State, the Empire in every sense, of the Union, has never repudiated a single dollar of obligation, has never violated any of its duties to any of its citizens or any of its sister States. I do not believe that this Convention, misled by any false notions of economy, is prepared to place a blot upon that escutcheon or to change the record by one jot or tittle. The honor of the State is pledged in this matter. It is pledged by virtue of a constitutional provision which has existed for many years. It is pledged further by the decisions of its courts of justice. There have been some insinuations by gentlemen who have indulged in some discussion of this amendment which might lead one uninformed on the subject to the conclusion that there had been a deliberate conspiracy on the part of the judges of the Court of Appeals in this State to put the money in their pockets by rendering a decision which had no foundation in law or in morality. Now, what is the genesis of that decision in the people on the relation of Gilbert against Wemple, as reported in 125th N. Y.? Gentlemen would seem to suggest that the judges of the Court of Appeals and those judges of the Court of Appeals who were interested in the matter were the only ones who had anything to do with the establishment of the principle which is embodied in that decision. There are seven judges of the Court of Appeals, and there were seven judges when that decision was rendered; four of them united in making it, and three of them dissented from it; but prior to that time the question had been considered. The original order in the case was made by a justice of the Supreme Court, who, for caution, prudence, intelligence and integrity of character, stands the equal of any justice in this State. I refer to the Honorable Samuel Edwards, of Columbia. He made that order in September, at the Special Term in Columbia, directing that a writ of mandamus issue upon the application of Judge Gilbert. That decision of itself stands for something because it was rendered by a man who, by no possibility, could take advantage of any benefits to the judiciary flowing from it by reason of his age. From his decision it went, on the appeal of the Attorney-General, to the General Term

of the Third Department, and there it was passed upon by a majority of that General Term. Judge Learned did not vote upon the rendition of the decision, but Judge Landon and Judge Mayham united in the affirmance of Mr. Justice Edwards's order. From that decision of the General Term it went to the Court of Appeals, and there, as I have said, four judges united in the affirmance of the Special Term and the General Term, and three judges dissented from it. Now, without the official action of the judge of the Court of Appeals, who has, by indirection, been referred to here as most largely interested in the matter, the Court of Appeals would have been equally divided upon the question, three would have been in favor of affirmance and three in favor of reversal. That judge of the Court of Appeals was left between the two. Now, what was his duty under all the circumstances of the case? Was it his duty to vote or not to vote? Was it his duty to express his opinion in an action between a citizen of the State of New York or the people on the relation of a citizen and the State of New York as represented by Mr. Wemple, the Comptroller, or was it his duty to decide, to act upon the question thus presented, regardless of its effect upon himself, just as a judge should act in a case between third parties, regardless of its effect, beneficially or detrimentally to himself? It seems to me that there can be no criticism based upon the action of that judge, because without his action it would have stood affirmed, and nothing that he did, no decision which he united in, or no act of his in uniting in it, tended to change the result in any sense so far as he was personally concerned. I do not think that the judges of the Court of Appeals upon that question or any other need defense. I do not hold a brief for them in the discussion of this matter any more than I am holding a brief for any resentment that any man may cherish against any judge of the court. But as a member of the bar of the State, I feel a just pride in the fair fame of its judges. I do not believe that men who have grown gray in the service of the State, who have been placed upon the bench time and again by the suffrages of their fellow-citizens, should be disgraced or dishonored by reckless words uttered in hasty debate. The fame of a judge is a great and sound fame. It does not spring into existence in a single night like Jonah's gourd, but it is the result of long years of study, of seclusion from the ordinary enjoyments of social life and from the ordinary ambitions and the more attractive ambitions which have force in the minds of other men in other vocations. And I, for one, shall be proud, as I am now, at any

time and in any presence, to defend the fame of the judiciary of the State of New York.

The nature of that question, as I have said, is not strictly a legal question, although I believe, as suggested and stated by the gentleman from Oneida (Mr. Cookinham), that it can be maintained upon those grounds. He has handed me, to bring to the attention of the Convention, in response to the inquiry made by the delegate who spoke last upon the question (Mr. Barhite), the report of the decision in the case of the State of Louisiana against the police jury of Jefferson, as reported in 116th United States Court Reports. The head-note of that decision, which is fairly borne out by the decision, is as follows: "After services have been rendered under a municipal law, resolutions or ordinances which fixes the rate of compensation, there arises an implied contract to pay for those services at that rate, and the obligation of such contract cannot be impaired by the State. A provision in a State Constitution may be a law impairing the obligation of a contract as well as one found in an ordinary statute." Now, that is the deliverance of the ultimate court of the nation upon the particular question which is involved in the matter before the Convention. With such a light to guide us, with such a solemn deliverance, I do not think the delegates ought hastily to rush to a counter conclusion, especially when that counter conclusion, as I stated in the outset of what I have said, nearly involves the honor and the reputation for integrity of this State. I think I have stated now to a sufficient extent the answer to the inquiry of the gentleman from Essex (Mr. McLaughlin) as to the motives and purposes of the Judiciary Committee in reaching the conclusion that it did reach, and I sincerely trust that this amendment will not prevail.

Mr. Hawley — Mr. Chairman, I do not think that the Judiciary Committee needs any defense in this Convention for the amendment which is now under discussion. I had proposed to speak briefly upon the amendment from the view point that whether or not there was here a liability upon the part of the State, there was most certainly a question which affected the good faith and the honor of the State in such a way that the State could not afford to disregard that moral obligation; but I can add nothing to that argument. I turn then to express, in a very few brief sentences, what seems to me to be the necessary construction of the present Constitution.

The present Constitution says that the official terms of the justices and judges shall be fourteen years. It does not again in that section repeat the phrase "official terms," but in the succeeding

section it provides that the compensation of the judges shall not be diminished during their official terms. Now I take it that "official terms," in the one section, means exactly what the same words mean in the other section. The official term then is fourteen years, and the compensation for that official term cannot be diminished during the term itself.

In the other places in this section, where the word "term" is used, it is used without the qualifying adjective "official," and to my mind that has some significance. The provision is that the compensation; that is to say, the same thing which in the succeeding section it is provided shall not be diminished during the official term, the compensation of one whose term of office shall be abridged under the circumstances provided, shall be continued for the remainder of the term.

It seems to me, Mr. Chairman, that from that use of the language there arises here a contract liability so plain that it is in and of itself a complete justification for this report from the Judiciary Committee, and that the amendment as proposed by them ought to be adopted unchanged.

Mr. A. B. Steele — Mr. Chairman, from the remarks that I made when the question of Mr. Roche's amendment was being discussed, and when the different amounts that would be paid to the judges in future were being considered, I understand a great many delegates inferred from that that it was my judgment that the amounts to be paid to the judges now serving should be cut off at once. And among other things, it was suggested to me that I said that when the vote was taken upon this proposed amendment in 1880, the people who voted upon the proposition voted, believing that in no event could a judge receive pay for more than four years after the expiration of his term.

Mr. Chairman, I reiterate what I said upon this subject, and at the same time I am opposed to the proposition to strike out this amendment, and I shall state briefly why.

I believe it is the duty of this Convention, Mr. Chairman, to endeavor to carry out the wishes of the people. If it were the wish of the people to-day that we should pass this proposed amendment and strike out the part proposed by the gentleman from Essex (Mr. McLaughlin), I believe we should do so; but I do not believe, Mr. Chairman, that such is the desire of the people. And for that reason, as one of the reasons, I desire to call attention to the vote that has been taken. The proposition to give the judges this extra compensation we all remember took place in 1880, when there was no other amendment; that is, except the judiciary article,

before the people. They therefore had full opportunity to read it, to examine it and to consider it, and when they went to the polls, if they considered that was objectionable, they could have cast their votes against it without interfering with any other proposition that might have been in the amendment. Therefore, Mr. Chairman, the people deliberately voted at that time to give the justices of the Supreme Court and of the Court of Appeals, who had served for ten years, compensation for the balance of their terms.

But we go a little further. We say that it is supposed, or that the people supposed at that time, that the term could not exceed four years; that is that this salary without service could not go beyond four years. Judge Cady has just shown that the first decision was made in September, 1890, by a Special Term judge, before even the nomination of Judge Earl, as I understand it, a year before the nomination of Judge Andrews, and before the nominations of two other of the judges who are interested in this proposition. The General Term, very shortly after the election of Judge Earl, upon the opinion, as Judge Cady has just stated, of the Special Term, affirmed the judgment; and then the Court of Appeals, by three persons who were not and could not have been interested in any manner in this result, would have, without Judge Earl, affirmed the judgment.

But let us go a little further. This affirmance was made in February, 1891, which settled the law for all time to come. In November of that year, Judge Andrews was elected. Prior to the election he was nominated by the Republican party, and was indorsed by the Democratic party, in the face and eyes of the decision of the Court of Appeals, that in case he was elected he should receive compensation for nine years without rendering service therefor.

Then, Mr. Chairman, can we say that the people did not know what they were doing? I think not. I think the people deliberately elected Judge Andrews, and also two other judges to the General Term, knowing that they would receive this extra compensation. Therefore, I believe that it would be perverting the will of the people were we now to pass this proposed amendment of the gentleman from Essex.

But, Mr. Chairman, I desire to go a little further. It is said that there is an enormous sum involved here; and that is true in one sense. There is yet to be paid to the justices of the Supreme Court and of the Court of Appeals, assuming that they live during the fourteen years for which they were elected, the sum of $624,400. But, Mr. Chairman and gentlemen, the people elected the judges, after the decision of the court, who will receive $336,400 of that

money, knowing when they elected them that they would receive this extra compensation.

Mr. Chairman, for these reasons, I think we should vote down the amendment proposed by the gentleman from Essex, and indorse the article which is presented by the Judiciary Committee.

Mr. Goodelle — Mr. Chairman, a single suggestion. I am in favor of guarding and protecting the treasury of the State to the fullest extent that the necessities of the case and the honor of the State demand. But I desire to call the attention of the gentleman from Essex to the fact that the proposition here under consideration does not impose any new burden upon the people, but, on the other hand, the amendment, as suggested by the committee, not only tends to restrict, but tends to relieve, the people of burdens which already exist. To that extent, therefore, we are not imposing burdens upon the people, but we are relieving them from burdens which already exist.

But Mr. Chairman, there is in my judgment a question far above and beyond that, the question that has been suggested as the honor of the State. I do not believe that we can afford, I do not believe that this State can afford, to violate at least the implied contract made between its servants and the State, in reference to this compensation; nor do I believe that the people of this State expect or demand, nor do I believe that they would be willing that we should cast dishonor upon the State by passing this amendment proposed by the gentleman from Essex.

I am for these reasons, Mr. Chairman, opposed to the amendment.

Mr. Dean — Mr. Chairman, I am not a lawyer. I am in this Convention representing a constituency which elected me with the absolute knowledge that I would do just exactly as I saw fit to do under any circumstances; therefore I have no apologies to make to my constituency. The people of the State of New York, in the year 1880, by a vote of 201,000 against a vote of 111,000, voted to give this compensation to the judges of the Court of Appeals and the justices of the Supreme Court after their terms of office should expire. I think that this was wrong and vicious. It is, however, a question which has been brought upon us by the present generation. They are responsible for whatever expenditure is made under that provision; and I, believing that the greatest lessons are learned from actual experience, believe that they should in good faith carry out that contract with the judges of the several courts of this State. I am, therefore, in favor of supporting

the recommendation of the committee, leaving to posterity the opportunity to get rid of this pension.

Mr. Dickey — Mr. Chairman, this subject was pretty fully discussed on the proposition of Mr. Roche, when that was heard in committee some days ago. At that time I took occasion to show how that part of his proposition, similar to the proposition of the gentleman here, would leave this matter, and would affect the three venerable judges of the Second Judicial District, one of whom, after thirty years of faithful service, has already retired, and the other two soon are to retire; and when the gentleman who proposed that amendment consented to the amending of his proposition so that it did not affect any of the judges now in office, I supposed that was an end of the matter. But the gentleman from Essex is such a plucky fighter that he does not know when he is beaten, and he renews it. Therefore we must vote down his amendment to-night, because if he is successful in carrying it, does he not know that to-morrow it would be reconsidered and he would be beaten then? And it is far more merciful for him to die to-night rather than to dream that he has been successful over night, and die on the morrow. (Laughter.) I had that experience last night myself, and I have a fellow feeling for him, and want his death to be an easy and a merciful and a speedy one. And when the gentleman from Monroe (Mr. Barhite), who is in favor of all measures of economy and retrenchment, and who is a good member of this Convention and ordinarily stands for the people, including the women people, when he admits, as he does from his place upon this floor, that the present judges may have a moral right to this compensation, he admits everything that is provided for by this amendment as proposed by the Judiciary Committee, and he certainly does not want us as a Convention to be immoral. If, as he says, these gentlemen have the moral right to this compensation if they took office with the understanding that their compensation was to last until the end of their terms for which they were elected, and we have shortened their terms by a new amendment, they certainly ought to have the pay for that full time, and it should be in no sense abridged. But some gentlemen think that they ought to work after they are seventy, and should not be paid unless they do work. As I had occasion to say of those of the judges that I know, one from our district who has already been retired, is quite willing and anxious to work, and therefore, when it is in order to do so, I propose to offer an amendment at the close of this section in the following words: "The Governor shall have power to assign to duty any judge or justice who has been or may

be retired from duty because of the age limit, if, in his opinion, the public interests will be served thereby." If that amendment is adopted by this committee — and it probably will not be, because it is not in the present judiciary article — but if it is adopted it gives the Governor a chance to put to work such of these judges as are willing and able to work; and many of them are better able to do their work at seventy than they were at sixty. The vigor and intellect of men beyond the age of seventy are well evidenced by the large number of intelligent members of this Convention who have reached and exceeded that age. They are prompt in their attendance, they are vigorous in their utterances and they are generally correct in their votes, much more so than some of the boys of the Convention.

Therefore, if those of you who may be troubled by reason of this continuance of the pay after these judges may be retired from having reached the age limit of seventy, will vote for the proposition I am about to suggest, they can be put to work, and they can work the balance of the time they live. The voting down of this amendment will only be the honorable and fair thing, and I hope it will be done.

Mr. E. R. Brown — Mr. Chairman, I desire to offer an amendment to Mr. McLaughlin's amendment if in order.

The Chairman — The gentleman will send the amendment to the desk.

The Secretary read Mr. E. R. Brown's amendment as follows:

Strike out line 16, page 9, and the following lines to and including line 25 on the same page, and substitute: "The compensation of every judge of the Court of Appeals, and of every justice of the Supreme Court heretofore elected, whose term of office shall have been or shall be abridged pursuant to this provision, and who shall have served as such judge or justice ten years of the term which he is then serving, shall be continued during the remainder of the term for which he was elected. No judge or justice taking office after January 1, 1894, shall be entitled to receive any such compensation after the last day of December next after he shall be seventy years of age."

Mr. E. R. Brown — Mr. Chairman, this amendment is in the language of the commission which sat in 1890, and the record discloses that it was certainly at one time adopted by that commission. We should bear in mind, in discussing this question, that when this provision was first put into the Constitution, it was to meet the cases of those judges equally distinguished with the

judges of to-day who had served with great distinction upon the Supreme Court bench of this State eight-year terms at twenty-five hundred dollars a year. The salaries of judges had been raised and the bench was filled with distinguished men who had rendered great service to the State, but who could not in the few years left for service acquire a competence, and in so far as it was intended to provide for those cases, I believe that it was a desirable provision. I am not one of those who believe that it is monarchical, that it is contrary to the spirit of our institutions, or that there is any lurking danger in it whatever, for the State of New York, in a proper case, to provide by pension for its public civil servants. But we come here now with a reasonable degree of unanimity upon this point, that this measure should be repealed, and I believe that the sentiment is so unanimous because of the outrageous effect of the provision itself, made twice more outrageous by the decision of the judges whom it is to benefit.

In the first place, if it is intended to act as a compensation, it does not so act. There are two judges in my district who will have served twenty-eight years upon the bench and whose term will expire just before they are seventy years of age, who will not draw a single farthing. There is another judge in my district who is just now drawing his last year's pension, who served ten years upon the bench. If it is to be treated as a pension, it does not so operate. The man who has served twenty-eight years upon the bench is entitled to the pension much more than the man who serves ten. This provision in and of itself is obnoxious to the people of the State. It violates that rule in relation to pensions heretofore observed, which requires that men who are retired shall receive less than the full pay. In this case, by the construction which has been given to this provision, the judges not only receive their salary, but they receive in addition to their salary their expense allowance, by virtue of the decision of judges who are to derive benefit from it.

Not only that, but we are looking in considering this report of the Judiciary Committee to the protection only of the judges who may draw this pension. We are not looking to the protection of that large number of worthy men, now sitting on the bench in this State, who cannot be re-elected in their own districts, because if re-elected, the people appreciate that they will draw compensation beyond what they earn. Are these men not worthy of consideration? Shall we look only to those who have drawn the full salary for the last fourteen years, and are about to retire from the bench

and drive into retirement the worthy men now sitting upon the bench in this State who may serve from five to ten years?

In the consideration of this question, it seems to me that there cannot be a single gentleman in this Convention who does not regret that the Court of Appeals held that the twelve hundred dollars expense allowance was a part of the pension. No matter what the letter of the law, it is the spirit of the law that should affect the courts, especially when they are deciding upon matters which touch their own interests, and it is, above all, the spirit of the law which should control the deliberations of a Constitutional Convention. Notwithstanding that decision, I must say that one of the judges issued a strong and ringing dissent, and when a question was of such doubt, touching the pockets of the judges of the Court of Appeals, that one of their number would issue a ringing dissent from the judgment of that court I will not take the time of this Convention, and I claim that it would not be to the point for any gentleman to stand upon this floor and take the time of this Convention, arguing the question of law. In matters of such doubt the delicacy to the court iself should come to the rescue of the State, between whom and the judges there is no barrier. After that was done they took another case to the Court of Appeals, not satisfied with drawing the expense allowance, and the Court of Appeals, by a vote of four to three, rendered a judgment in favor of the members of that court further extending its application. It is an indelicacy, it is an impropriety which I, at least, do not fear, to criticise in my place in this Convention. I respect the Court of Appeals; I admire the Court of Appeals; but gentlemen entirely mistake the temper of this Commonwealth if they believe that the standing of the Court of Appeals can be raised by a varnish of this kind, by a Convention made up of lawyers. In the constitutional commission, evidently, the view was taken which was embodied in the amendment I have offered — taken at one time; it has been called to my attention, however, by one of the gentlemen who was in that commission, that the final report did not embody it, although it was adopted by the commission.

Gentlemen of the Convention, I will not detain you in the discussion of this question, but I desire to say one word more. It has been suggested here by gentlemen, that it was a right at law. If it is a right at law, leave it where you left the Salt Springs claim. Do not put claims into the Constitution. Let them rely and stand upon their right like other citizens of the State, but in the exercise of good faith towards the judges, and the amendment which I have offered is intended to exercise that good faith to the

full spirit, let us not forget to exercise good faith towards our constituents.

Shall we perpetuate for a generation this unreasonable construction, this construction against the spirit of the Constitution, a construction which gives compensation where it has not been earned; a construction which denies compensation where it has been earned, a construction which gives $100,000 to one judge, and to another judge who has rendered the same service at the same time, nothing? Shall we perpetuate here for a generation a provision which will drive from the bench, before the age limit is reached, as worthy men as sit upon it, for the benefit of those who have not earned this money? Shall we perpetuate a provision which will give the judges now upon the bench twice the compensation which will be given for the same service to judges who go upon the bench within a year? Mr. Chairman, we are a Convention of lawyers; all judges are lawyers, and when this judiciary article is adopted, all lawyers may hope to be judges; but, Mr. Chairman, when the deliberations of this Convention are over and the great deliberation of the commonwealth begins, the most serious and the most searching inquiry will be, not whether we stood out against the unjust claims of corporations, or the unjust claims of labor, or the machinations of politicians; it will be whether we stood out against the unjust claims of our own class. I adjure you, gentlemen, to be brave enough, to be honest enough, to be discriminating enough, to do equal and exact justice, but not, as is argued, because this is a trifle, tip it into the coffers of our own class.

Mr. Choate — Mr. Chairman, by whatever other name we may be known among men, when the results of our labors are disclosed, and handed down for posterity to forget, let us, above all things, avoid being known as the repudiating Convention of the State of New York, as we shall be, if either the whole amendment of the gentleman offered from Essex (Mr. McLaughlin), or the halfway amendment offered by the gentleman from Jefferson (Mr. Brown), should be adopted here to-night. I do not mean to say that either of those gentlemen, or any of the other gentlemen who have suggested that these earned payments, earned pensions, earned compensations, shall be cut off, have in their minds to sully the fair name of this State or of this Convention, but that that will be the inevitable effect of the measures which they propose. I have not exactly taken in the full purport of Mr. Brown's amendment, but as I understand it, he says to these judges who have entered upon office, upon a constitutional obligation, that their compensation should be so much under such circumstances and

that it should never be reduced, he says to them: "Yes, we recognize your right, but we, as a Constitutional Convention, have power to cut it off entirely; we will compromise the matter with you and give your agreed compensation, not for the term for which it was promised you, and in respect to which you have entered upon the service of the public, but we will give it to you in half measure, for a portion of that time." And the gentleman says that is the true spirit of his proposed amendment. "We do not know and we do not care whether you are entitled to it. We have the power to cut it off, and we will cut it off by our supreme power, speaking for the people of the State of New York."

Now, Mr. Chairman, one word on the history of this matter. Shortly before the adoption of the amendment, which created these pensions, the policy of pursuing which is abandoned by everybody, shortly before that the example was set by the federal government which never had given a civil pension before. Recognizing the arduous labors, the exalted station and the increasing age and the difficulty of bearing the responsibility which rested upon the judges of the Supreme Court, they enacted that if a man had been ten years in service on the bench and reached the age of seventy, he might retire, and should have his pension for the same salary for the residue of his life. In the federal service it had never been known that a judge once retired or relieved from service upon the bench returned after an interval to resume his place by appointment of the President. No such case, I believe, had ever occurred. And so, when the act of Congress said that if you have served ten years upon the bench and have reached the age of seventy, you may retire with this pension, it meant ten continuous years of service, prior to the arrival at seventy years of age. Inspired by that example, the people of this State adopted the constitutional amendment of 1880 in the same spirit and in language which admits of but one interpretation. Let me read it. It seems to have escaped the memory of the gentlemen who have introduced these amendments. The provision is: "The compensation of every judge of the Court of Appeals, and of every justice of the Supreme Court whose term of office shall be abridged pursuant to this provision, and who shall have served as such judge or justice, ten years or more, shall be continued during the remainder of the term for which he was elected" — imitating at a considerable distance, but in the same spirit, the policy that had been inaugurated at Washington. Now, it never had been known in this State, I believe it never will be known, that a judge serving a term of fourteen years, retired into private life, and after an interval was re-elected for another

fourteen years. The perpetual, universal policy in this State was either when a judge's term was ended, to let him depart into private life, or, if his services were held so valuable that he must be continued in the service of the State, to re-elect him immediately, so that his one term should join right on upon the heels of that which preceded, and, therefore, in the only way in which this would apply, you would find a judge who had served fourteen years or more in the service of the State as an acceptable judge, and who had reached the age of seventy, and was thereby to be retired. Mr. Chairman, is there any doubt, has anybody suggested a doubt, as to what that means? Nobody. The gentleman from Essex (Mr. McLaughlin) says the people did not realize what it meant. Who are the people who did not realize what it meant? It is upon its face capable of but one meaning, "Shall have served ten years or more," meaning ten or more continuous years up to the time of his reaching seventy and when this case came before the Court of Appeals, the only argument that was presented that was deemed worthy of consideration by Judge Peckham, who wrote the opinion of the court, was that it would be a very strange thing to apply, that if a man when he was twenty-five years old should serve a term in the Supreme Court, and then go out into private life, and pursue his profession until he was sixty-five, and then be elected for five years, it would be a hard thing for him to claim his pension of nine years after arriving at the age of seventy. Judge Peckham says that is not a supposable case, and when such a conundrum is presented to this court for solution, we will endeavor to solve it. Now, Mr. Chairman, has either of these gentlemen who have advocated the breaking down of the report of the committee on this point, said that the decision of the Court of Appeals was not right? Have they pointed out any other possible construction which this would bear? No. They have only said that Judge Earl, who was afterwards to benefit by it, took part in the decision. It seems to me, Mr. Chairman, that any reasonable lawyer reading that decision and reading the constitutional provision upon which it is based, understanding the history of the whole matter, will say at once that the decision is right. And now what follows? They talk about $400,000 being possibly involved in this. It is a possibility. Probably $200,000 would be a more reasonable calculation upon the possibilities of life. But I call now the attention of the Convention to the presiding judge of the Court of Appeals. The case was submitted in the Court of Appeals on the 15th day of January, 1891. It was decided on the 24th of February, 1891, and the presiding justice of the Court of Appeals was elected in

November, 1892, upon the face of that decision by the people of this State. Now, what is proposed? Why, sir, are we returning to barbarous times, or do we live here in the end of the nineteenth century, when public life and public policy are sought to be placed upon an exalted basis? What is proposed? That the distinguished judge, having served the State faithfully for twenty-eight years in this single Court of Appeals, having then done probably more than any other living man to make the law of this State, shall be what, when his term expires at the end of 1896? What do they say? Do they say: "You are entitled to this pension?" They know he is. But what do they say? "That you are entitled to it; get it; sue like any other suitor." And what a humiliating spectacle will this great State of New York present, meeting before the Supreme Court of the nation at Washington, this hoary-headed and respected servant who has given all his best years to its highest service, and compelling the State to perform its solemn obligations. Are we willing to drive the people of this State to that humiliating position? For one, I am not. In my judgment, take it for what it is worth, good or bad, as a lawyer, there is no answer to the legal claim. As a citizen, as a man, law or no law, there is no answer to the moral claim. (Applause.) Now, Mr. Chairman, do not let us debase ourselves. Do not let us take a position that we cannot afford to take before the people, or afford for the people of the State of New York to take before the world. This State never has repudiated its obligations, and by our aid it never shall. (Applause.)

Mr. A. H. Green — Mr. Chairman, I would like to ask the gentleman who has lately taken his seat, whether, if this article is left out entirely from the Constitution, these judges would not be able to collect their money. I want to know if this article is left out entirely, whether the judges would not have, as you think, a moral claim as well as a legal claim for their money?

Mr. Choate — Yes, and that is the shameful part of it, that the gentlemen here should propose to drive them to a suit for what confessedly is clearly theirs.

Mr. A. H. Green — It may be the very shameful part of it. I have not said a word on this subject, and had no intention of doing so, but as that language has been used, I will just say a word in defense to state my own position. Very much has been said here about preserving the honor of the State, and not tarnishing its escutcheon. I do not understand that anybody here proposes to tarnish the escutcheon of the State, nor to avoid any fair or honest liability that the State has undertaken, or assumed. This matter

of tarnishing the escutcheon of the State, and appealing to the great Empire State, I have heard rung through the halls of the Legislature many and many a time, when disputed claims were before committees, and men wished to impress upon gentlemen who had the power to pay them, the duty of giving them their money. Now, nobody is going to tarnish the honor of the State here, as I see. Every man wants to act, I have no doubt, perfectly fairly and perfectly honorably here. Our friend, Judge Cady, asks what a judge should do. What shall he do who has this excruciating duty of passing upon a claim in which he is personally interested? What would any honorable man do? Any honorable man would say: "I decline to act in it." That is what a man ought to say. What a gentleman would say if a claim was left to his arbitrament, in which he was personally interested, is, "I decline to act on a question of that kind." Here is a case, I understand, where the judges were directly interested. We hear a great deal said about the protection of the judges here. Most singular emphasis is placed by our President and by others upon protecting the judges. I do not think these innocents require much protection. Wherever I have tracked them, I have found they take care of themselves pretty thoroughly, and here is a case before us where they did that. We have lawyers here on all sides, citing one opinion and another; one says this is the law, and the other says it is not the law. Now we are independent of the lawyers and the judges here, I suppose, and I propose, for one, to act on my own convictions of what this Constitution says. I do not care a straw what judges have said about it, in a matter where they were personally interested. It makes no difference to me. They are no authority to me here. When we adjourn and leave the Constitution, of course they can interpret it in their own favor or against them, if they please. I think we should apply a little common sense to our action in this matter, and let the intricacies and the entanglements of the law which have been so strongly urged here for the protection of the judges, let that go, and act a little upon our own judgment. Here are three judges of the Court of Appeals who did not think this was a proper decision. They had the manliness to stand up against their associates and say it was not the law, and they ought not to have this money. How do you make out with that? How is it with the disgrace to which we are going to subject these judges who would be compelled to seek their pay as best they can? What do their own associates say? Now, another point occurs to me, applying common sense to this matter. I think there are two sides to it, and that is in reference to the abbreviation of the term,

after a judge has served ten years on that term. Gentlemen talk about throwing away a half million of money, as though it were a mere trifle. I say it is monstrous, upon a doubtful question here, upon which our President thinks these gentlemen may have a claim against the State if we strike out this amendment. Let them get it if they can get it. Why should we interfere with them. Let them fight it out and get it themselves, as with any other contractor, any other man who makes a bargain. Let them fight it out and get it, if they can. I do not think there is any particular disgrace in that; and I have no doubt our friend, the President, would be retained by one of them to get it for him, and I have no doubt he would do it with great ability. (Applause and laughter.)

Mr. Choate — I certainly would do it if they should employ me.

Mr. A. H. Green — In view of the lightness and triviality with which we are talking about throwing away a half a million, it seems to me the State needs some protection here and the taxpayers need some protection as well as the judges. Who pays these hundreds of thousands of dollars to men who do nothing for it? Who is to pay the taxes? There are districts here where if a man should go back to his district with the tax levy increased ten dollars, he would be censured and compelled to give his reason for it; and yet we are disposed to throw away a half million dollars for fear that the escutcheon of the State should become smirched. Who is going to smirch any escutcheon? Let every honorable obligation be carried out, but let us protect the State and protect the taxpayers in a doubtful case of this kind. The judges will protect themselves. They have shown tendencies already to do that, and they will do it. I am in favor of protecting the taxpayers as well as protecting the judges. They have capacities in that line which they have exercised with wonderful ability and fertility. I think the proposition of the gentleman from Essex (Mr. McLaughlin) is a correct proposition, and this money should not be paid.

Mr. Alvord — Mr. Chairman, I am a simple layman, but I have a proposition to put before this Convention which I hope will sink deep in the minds of all; that they may think, so far as they are concerned, of the glory of the State, rather than the picayune desire to save a little money. I glory, sir, in the honor of the State of New York, and I call the attention of the gentlemen to what occurred but a few short years back in our history. We entered into a bloody civil war. There was a doubt fastened upon the minds of many, even at the North, whether we could ever come forth,

except with a divided and disrupted government and nation. What did the State of New York do then, sir? Sir, she did this noble and glorious thing. She said, our greenbacks are made a lawful tender for the debts of any person in this State, or in the community, but she said to her creditors: "You shall have a hundred cents on the dollar in the real gold when each one hundred dollars of that gold in the market was worth two hundred and thirty dollars of greenbacks." That was a proud time in the history of this State. It was done without blinking on the part of the people. They came up to the solution of the question without a moment's hesitation. That money was loaned in times when a dollar in paper was worth a dollar in gold, and when the exigency came that gold was worth two hundred and twenty to two hundred and thirty against a hundred, the State stood by her engagements and paid her creditors a hundred cents on the dollar in gold. The only exception to that, Mr. Chairman, was that the State paid the annual tribute to the tribes of Indians of this State in our paper money. But when the war was over, when peace reigned throughout our borders, the Indians came humbly before the Legislature of this State and asked to be reimbursed for the difference, and in the House in which I was at that time, I am glad to be able to say, that not a single voice in that entire Assembly was raised against their application, and they were made good by being paid the difference between the money which they had received during the war and its value in gold, a hundred cents on the dollar for a hundred cents in paper.

Mr. Barhite — Mr. Chairman, I would like to ask a single question of the President of this Convention. He says that in his mind there is no doubt as to the legal status of this case; that he believes there can be no question that some of these gentlemen, as matter of law, are entitled to this compensation. If that is so, is there any danger of their being compelled to sue the State of New York? Does not this State pay its obligations without lawsuits when there is no question that they are obligations?

Mr. Choate — That remains to be seen, Mr. Chairman.

The Chairman put the question on the adoption of Mr. Brown's amendment and it was determined in the negative by a rising vote.

The Chairman put the question on the adoption of Mr. McLaughlin's amendment, and it was decided in the negative.

Mr. Vedder — Mr. Chairman, I offer the following amendment:

The Secretary read the amendment as follows:

To amend section twelve by inserting the word "five" between

the word "seventy" and the word "years" on line 15, page 9; and by inserting the word "five" between the words "seventy" and "years" on line 18, page 9.

Mr. Veeder — Mr. Chairman, I will not occupy the attention of the committee but a moment. The purpose, as every one will see, is to extend the term of eligibility of the office of judge of the Court of Appeals and of the Supreme Court until they have reached the age of seventy-five years. I believe this will be a solution of the whole difficulty, as well as of this question of pensions. There is no question in my mind but that the age of seventy years is too early a period to lose the services of a lawyer who has been educated upon the bench and become a competent judge. Several instances have occurred in our State where, because of that period of limitation, we have lost the services of those judges; and the committee will remember that in the Supreme Court of the United States there is no limit whatever in respect to age. I submit, Mr. Chairman, having in mind the valuable legal minds, which we have been obliged to retire without mentioning names, they are well known to all of you, that the solution of the whole question would be to extend the period of service to seventy-five years.

Mr. Smith — Mr. Chairman, I would like to ask the honorable chairman of the Judiciary Committee on what principle the age of seventy was fixed as the limitation of a judicial office.

Mr. Root — Mr. Chairman, according to Holy Writ, it is the natural right of man to consider that he has lived his allotted length of days when he reaches the age of seventy. That great principle has been recognized in the judicial system of the United States. We found it in the Constitution of this State, and we have left it as it was.

Mr. Smith — Mr. Chairman, I am at a loss to know on what principle the life of a man was ever supposed to be limited to seventy years. The most august law-giver of all antiquity, the most venerable and the most renowned sage of the world, began the career which so distinguished himself and his nation when he was eighty years of age. The great sage, liberator, leader and law-giver, Moses, commenced that marvelous career that led his people out of bondage at the age of eighty years and he lived for forty years more, as an example to the world. What authority could there ever have been for this seventy years limitation: it never could have been true except in the sense that men who did not observe the laws of nature, men who did not live according to the laws

of God, and who did not take care of themselves, died before their time. We find such men all along the line from twenty-five years upwards. It is not true that seventy years is the limit of a man's active usefulness on this earth. I propose, if gentlemen will indulge me for a few minutes, to show how wide that statement is from the real truth.

Mr. Chairman, every sentence of the Constitution should be founded on some great principle. We are making a Constitution to protect what the learned chairman of the Judiciary Committee has been pleased, ironically, to style natural rights. One would almost think that humanity has no natural rights from some of the slurring remarks that have been made upon the subject. Why, all the rights we have are natural rights.

Mr. Hotchkiss — Mr. Chairman, will the gentleman give way to a question?

The Chairman — The gentleman is out of order. The gentleman from New York, Mr. Smith, has the floor.

Mr. Hotchkiss — But, Mr. Chairman, I understand the gentleman offers me the opportunity to ask him a question. Will the Chair allow it?

The Chairman — The Chair rules otherwise. We must get through with this talking.

Mr. Hotchkiss — That was one of the objects I had in asking the question, Mr. Chairman.

The Chairman — The gentleman from New York, Mr. Smith, has the floor, and he will proceed if he desires to say anything more.

Mr. Smith — I am perfectly willing to be interviewed.

Mr. Hotchkiss — And I am perfectly willing to interview you.

The Chairman — The Chair must insist that the motion before the House is upon Mr. Veeder's amendment to insert the word "five" after the word "seventy," and if the gentleman from New York desires to discuss that amendment, he will proceed.

Mr. Smith — Mr. Chairman, I would like to know where the Judiciary Committee got this idea of limiting a man's right to hold office to seventy years. It certainly did not come from Great Britain, it is not in her Constitution. It certainly did not come from the Constitution of the United States. No such limitation is to be found there. It never should have been in the Constitution of this State. The first line of the Constitution of this State says that no citizen shall be disfranchised. What is this prohibition against a citizen holding a judicial office but a disfranchisement? I had sup-

posed the learned chairman of the Judiciary Committee would have said that it had been discovered that some man, some judge, had proved to be physically or mentally incompetent before he reached the age of seventy years, and that that was the reason for this limitation. If he had made such an answer as that, we could show him thousands of men who were incompetent before they had reached sixty or fifty or forty or even thirty years. We need not go to the limit of seventy years to find ruined health, destroyed mental powers, impaired vigor. It is all along the line. There is no more reason for limiting the right of a citizen of this State in the possession of a great office to seventy years than there is in limiting him to fifty years or forty.

Now, what are the facts in respect to age? Take Chief Justice Marshall of the United States Supreme Court. He died at the age of eighty years, in the full possession and vigor of all his powers, and in the exercise of his great office. Some of the most consummate judgments that he ever delivered were delivered after he was seventy-five years of age. We should never forget Chief Justice Marshall and never overlook the lesson of his life. Let us next consider the venerable Stephen J. Field, at present one of the justices of the Supreme Court of the United States, now seventy-eight years of age, and still one of the most active and vigorous members of that world-renowned court. Would you disfranchise him if you had the power? Let us next study the case of Chancellor Kent. He was appointed chancellor of this State in 1814, and was retired in 1823 under the folly of the provisions of our Constitution as it then existed, at the age of sixty years. It is true that we have received a great contribution to the literature of the law by his retirement, because it was after his retirement that he wrote his Commentaries, which so distinguished him that he has been justly styled the Blackstone of America. He lived in the full possession of all his great faculties until he was eighty-four years of age. He was retired at sixty, and lived twenty-four years after his retirement and vigorous to the last.

The injustice of the Constitution as it existed at that date, gave us, it is true, Kent's Commentaries; but it lost us a great judge. Shortly after the chancellor's retirement he visited Boston, where he was dined and lionized. His visit was one unbroken triumph. And at a celebrated dinner which was tendered him on that occasion in Boston, Judge Parker offered this toast:

"The happy climate of New York where the moral sensibilities and intellectual energies are preserved, long after constitutional decay has begun to take place."

We have still that same salubrious climate, and I trust that we shall not render the air impure by any prejudices which we may attempt to organize into law in this Convention.

Let us continue the study of our State a little further. Take the case of Judge Earl, now about to be retired, one of the most learned, accomplished, industrious and courteous judges that the State of New York has ever had. He is good for twenty years more, but unless we change the rule he must go into retirement by law. Take the case of Judge Charles Daniels; able, industrious, honest, vigorous and hale, he was compelled to retire, by the folly of our present Constitution; and he left us with the regrets of the bar, and of the entire people, of the State of New York. Take the case of Judge Noah Davis, an able and consummate judge, who administered the law with firm determination, but with a fair and impartial hand. He too was disfranchised by this folly, this injustice written in the chief law of the State. Now, without spending too much time, I would like to call attention for a few moments to the case of the English judiciary. Lord Coke lived and was in actual service until the day of his death, at eighty-five years. Lord Mansfield, the great law-giver, who did so much to perfect the system of the common law, lived until he was eighty-eight years of age, and in possession of all his faculties. Lord Thurlow lived until he was seventy-four; Lord Eldon until he was eighty-seven; Lord Abinger until he was ninety; Chancellor Walworth, of this State, until he was seventy-nine.

Now, by what authority can it be said that this Convention should disfranchise any citizen because he is seventy years of age? If he is infirm and not capable of performing the duties of his office, then he should be retired, whether he be seventy years of age or whether he be forty years of age. It is not a question of age, it is a question of ability to perform the duties of the office. Take for instance the examples before us of the distinguished members of this Convention. Here is my friend, Governor Alvord, I will put him in as an exhibit. (Applause.) And here is my friend, Mr. Francis. (Applause.)

But, Mr. Chairman, it is not necessary to put in any more evidence upon a case so plain. I submit that we should act upon principle, and with common sense and with consistency. I trust that this amendment will be adopted. (Applause.)

Mr. Veeder — Mr. Chairman, I desire to correct one error which I think was made by the chairman of the Judiciary Committee. When asked how he arrived at the age of seventy years, or how he determined that the age of seventy years was the proper age

limit, I understood him to say that this is indicated in the Constitution of the State and of the United States. There is no provision in the Constitution of the United States about it. On the contrary the only provision of law will be found in the Revised Statutes of the United States, which provide that if a judge has served ten years and arrives at the age of seventy, he may retire, but there is no provision by which he shall be retired at the age of seventy.

The Chairman put the question on the adoption of Mr. Veeder's amendment, and it was determined in the negative by a rising vote of 44 to 63.

At this point the Convention adjourned until to-morrow morning at 10 o'clock.

Thursday Morning, August 23, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, at the Capitol, Albany, N. Y., Thursday, August 23, 1894.

First Vice-President Alvord called the Convention to order at ten o'clock.

The Rev. H. C. Searles offered prayer.

Mr. Cookinham — Mr. President, in the absence of Mr. O'Brien I will take the responsibility of moving that the reading of the Journal be dispensed with.

The President *pro tempore* — If there is no objection, the reading of the Journal will be dispensed with.

Mr. Giegerich — Mr. President, I move that the privileges of the floor be extended to the Hon. John J. Blair and his associates of the old volunteer fire department of New York city during their stay in the city of Albany.

The President *pro tempore* put the question on granting the privilege of the floor to the gentlemen named, and it was determined in the affirmative.

Mr. Barhite — Mr. President, on account of an important business engagement I ask to be excused on Saturday afternoon and Monday.

The President *pro tempore* put the question on granting leave of absence to Mr. Barhite, and it was determined in the affirmative.

Mr. McClure — Mr. President, very important and urgent business requires my attendance in New York to-morrow and possibly

Saturday. I ask to be excused for to-morrow and Saturday, but I think I will be here on the latter day.

The President *pro tempore* put the question on granting leave of absence to Mr. McClure, as requested, and it was determined in the affirmative.

Mr. Church—Mr. President, I ask to be excused on Saturday afternoon and Monday on account of important personal business which I am obliged to give attention to.

The President *pro tempore* put the question on granting leave of absence to Mr. Church, and it was determined in the affirmative.

Mr. Barrow—Mr. President, I ask to be excused to-morrow and Saturday on account of ill health in my family.

The President *pro tempore* put the question on granting leave of absence to Mr. Barrow, and it was determined in the affirmative.

Mr. Roche—Mr. President, I ask leave of absence on Saturday and Monday morning.

The President *pro tempore* put the question on granting leave of absence to Mr. Roche, and it was determined in the affirmative.

Mr. Lyon—Mr. President, I ask to be excused Saturday afternoon and Monday.

The President *pro tempore* put the question on granting leave of absence to Mr. Lyon, and it was determined in the affirmative.

Mr. Choate—Mr. President, I hope the fiasco of last week will not be repeated by excusing everybody who asks to be excused on Saturday.

Mr. Nichols—Mr. President, I ask to be excused for Saturday and possibly for Monday.

The President *pro tempore* put the question on the request of Mr. Nichols to be excused, and it was determined in the affirmative.

Mr. Pool—Mr. President, I ask to be excused from Friday evening until Monday.

The President *pro tempore* put the question on granting leave of absence to Mr. Pool, and it was determined in the affirmative.

Mr. J. Johnson—Mr. President, I ask leave to submit a report from the majority of the Committee on Cities on the cities article.

The President *pro tempore*—The Chair understands this committee has power to report at any time.

Mr. J. Johnson—Yes, sir.

The President *pro tempore*—That being so, the report will be received and take its place on general orders.

Mr. Davenport — I understand that leave will be granted for the dissenting members of the committee to file their objection and report.

Mr. A. H. Green — Mr. President, my attention was called to the fact yesterday that my name was recorded in the affirmative in support of the adverse report of the Suffrage Committee on the woman's suffrage question. This was a mistake, as I voted in the negative. I, therefore, ask to have the Journal corrected in that respect.

The Vice-President — The Journal will be corrected accordingly, if there is no objection.

Mr. Acker will please take the chair.

The Chairman — The Convention is still in Committee of the Whole on general order No. 45, and is considering section 12.

Mr. Veeder — Mr. Chairman, I move to reconsider the vote by which the amendment I offered in Committee of the Whole last evening was defeated or lost. I ask that that motion be allowed to lie upon the table temporarily until the committee increases in numbers, in order that we may have it considered by as full a committee as possible, and not at the present moment. It is a very important matter, one that I am seriously and decidedly in favor of, and one which I believe will do away with a great deal of the question of pensions and of the retirement of judges. There are so many instances of the great capacity and fitness of judges who are approaching the age of the present limit that I sincerely believe that we are doing ourselves and the people of the State an injury by compelling those judges to retire from the bench at the age of seventy years. I, therefore, ask as a favor that the question on my motion to reconsider may be considered by the largest possible number of the members of this Convention, and that the putting of that motion be postponed for the present.

The Chairman — The Chair holds that the motion must be now put, unless gentlemen desire to debate the question. Gentlemen, those of you who are in favor of reconsidering the vote by which the amendment proposed by Mr. Veeder to section 12 was lost ——

Mr. Root — Mr. Chairman, I hope that that vote will not be reconsidered.

Mr. Veeder — Will Mr. Root give way for a moment? Does the Chair hold that I have not the right to make a motion to postpone the taking of that vote?

The Chairman — The Chair so holds. The gentleman from New York (Mr. Root) has the floor.

Mr. Root — I hope that vote will not be reconsidered; not because I do not think it is perfectly proper for the Convention to reconsider a question, if they wish to take further or other action upon it, but because, it seems to me, that no other action ought to be taken than that which we have taken. To impose a limit of seventy-five years would, I think, be childish. It is no limit at all. And to deliberate here for days upon the question whether we shall cut off pensions, or compensations, or retired pay, after the age limit is reached, and then to take off all practical age limit, seems to me to be absurd. Gentleman say that the people of the State will approve of our action in abolishing judicial compensation after the age limit. If we change the limit to seventy-five years we restore the pensions. I object, Mr. Chairman, to doing it for the benefit of any judge who is now sitting upon the bench and approaching the limit of seventy years, whether he sits on the bench of a court in the city of New York, or upon any other bench. (Applause.) No private or personal regard, respect or affection for any man would justify a member of this Convention in attempting to mold the form of our fundamental law to suit his affections or his private interests, or those of his friends. For these reasons, Mr. Chairman, I hope this vote will not be reconsidered.

The Chairman put the question on the motion of Mr. Vedder to reconsider, and, by a rising vote, it was determined in the negative.

Mr. Dickey — Mr. Chairman, I offer an amendment.

The Secretary — Mr. Dickey moves to add at the end of section 12 the following:

"The Governor shall have power to appoint to duty any Supreme Court judge or justice, with his consent, whose term of office shall be so abridged, and he shall receive no compensation therefor."

Mr. Dickey — The object of this amendment, Mr. Chairman, is to permit the Governor to continue at work those judges who have been retired because of reaching the age limit of seventy years, if they are willing and are able to work, so that they may do something to earn the money that is still to be paid to them. That is the sole purpose of this amendment. It will entail no expense upon the State. Some of them are able and willing to work, and are capable of doing as good work as they ever did; and this provision permits of their being called into service in case an emer-

gency arises. It seems to me the amendment should receive favorable consideration at the hands of this committee.

The Chairman put the question on the amendment offered by Mr. Dickey, and, by a rising vote, it was determined in the affirmative, by a vote of 52 ayes to 38 noes.

The Chairman — Are there any further amendments to section 12?

Mr. H. A. Clark — I have an amendment to section 12.

The Secretary — Mr. Clark offers the following amendment:

"In section 12, line 12, after the word 'the,' insert the words 'increased or,' so that said paragraph will read:

"The judges and justices hereinbefore mentioned shall receive for their services a compensation established by law, which shall not be increased or diminished during their official terms."

Mr. H. A. Clark — I do not care to enter into any long discussion of this question, for I think it was thoroughly discussed on a former occasion, and yesterday the discussion plainly showed the feelings of this Convention in relation to the salaries of the judges. There is no question but that a large majority of the members of this Convention are in favor of dealing fairly and honestly by the judiciary. They believe that when a man accepts an office with a fixed salary, such acceptance is a contract, an agreement, between him and the people, by reason of which that salary should be maintained during his term of office. I believe it is also an agreement on his part that for that salary he shall perform the services during his term of office; and if not satisfied with the compensation, he has the privilege of resigning.

Mr. Roche — I hope that the amendment of Mr. Clark's will be adopted. I think we should go back to the principle of the Constitution of 1846 in this respect, as well as to the almost uniform declarations of the present Constitution. This amendment is entirely in harmony with all the provisions of our Constitution, except the judiciary article; and we will present to-day, and have presented for some time, the very invidious spectacle of a Constitutional Convention, composed largely of lawyers, making distinctions in favor of members of their own profession, and in favor of offices which they almost, of necessity, must themselves fill; in other words, legislating in a different way, for their own interests, from what they legislate in regard to any other class of public officers. It is provided by the Constitution, in section 24 of article 13, that "the Legislature shall not, nor shall the common council of

any city, nor any board of supervisors, grant any extra compensation to any public officer, servant, agent or contractor." In the article of the Constitution relating to executive powers, it is provided that the Governor "shall receive for his services an annual salary of $10,000, and there shall be provided for his use a suitable and furnished executive residence." The section relating to the Lieutenant-Governor fixes absolutely his compensation at $5,000 per year, and declares that he "shall not receive or be entitled to any other compensation." Article 5, relating to the Secretary of State and other officers, provides that each "shall receive for his services a compensation, which shall not be increased or diminished during the term for which he shall be elected; nor shall he receive to his use, any fees or perquisites of office or other compensation." It is provided in section 9 of article 10 that "no officer whose salary is fixed by the Constitution shall receive any additional compensation; that each of the other State officers named in the Constitution shall, during his continuance in office, receive a compensation to be fixed by law, which shall not be increased or diminished during the term for which he shall have been elected or appointed." When, some years ago, a proposition was brought before the Legislature, at the instigation of our judicial officers for an increase of their salaries (an increase which was granted), many eminent lawyers took the position that it was in violation of the spirit of the Constitution and in violation of the letter of section 9 of article 10; but it was claimed that because the word "increased" was not found before the word "diminished" in the judiciary article, that, therefore, it was allowable to the Legislature to increase the salaries of judicial officers.

The Constitution of 1846 contained this provision, which remained the law of this State down to 1870:

"The judges of the Court of Appeals and justices of the Supreme Court shall severally receive, at stated times, for their services, a compensation to be established by law, which shall not be increased or diminished during their continuance in office."

When the proposition to alter that was before the Convention of 1867-8, it was very strenuously opposed, and I can do nothing better now than call the attention of the Convention to the remarks which were then made by Mr. John E. Develin, a very eminent lawyer, and a delegate from the city of New York in that Convention. He said:

"Mr. President, I move to strike out the words in the fifth line 'except judicial officers.' In the Constitution of 1846 it was expressly declared that no change should be made in the compensa-

tion of judicial officers. There is no more dangerous proposition than to give the Legislature the power to increase the compensation of those who shall define the meaning of the laws that are passed by it. All men are weak, and all men are subject to influences of money. All men are subject to the influences of an increased compensation, and when it comes up in high political times that judicial officers are to decide what is the meaning of a law that may affect the politics of the State or the interests of gentlemen who are high in office in the State, and a bait is held out to them that, if a decision is made this way or that way, their compensation will be increased, it will have a strong influence upon their views of the law and its construction. I think it is a dangerous provision to put in the organic law that the Legislature may increase, as it pleases, the compensation of the judicial officers of the State."

In spite of the warning of Mr. Develin and others that Convention did strike out the words "increased or," with the result that twice since the adoption of that Constitution the Legislature has been appealed to, at the instance of judges of the Court of Appeals and of the Supreme Court, to increase their salaries, and the increases have been granted.

Now, Mr. Chairman, I believe in paying the officers of our courts salaries which will be commensurate with their positions, salaries that will enable them to live as gentlemen, having reference to the dignity and honor of the places they fill, salaries that will enable them, with ordinary thrift and care, to lay up something, as I said the other day, for the inevitable rainy day; but I submit that we should not make a distinction between them and any other class of public officers. They are in receipt of large salaries. We are paying the judges of our Court of Appeals larger salaries than are being paid the judges of the Supreme Court of the United States. We are paying them larger salaries than are paid to the judges of the highest courts of Pennsylvania and Massachusetts. We are are paying to the justices of our Supreme Court larger salaries than are paid to the judges of the highest courts of some of the most important commonwealths in this country. Some of these judges are now receiving salaries which are at least twice as large as the moneys they earned when practitioners. They not only receive those large salaries, but the counties furnish them office room so that they have no rent to pay; they have clerks at the public expense, and many of them are located in places where there are adequate law libraries so that they are not compelled to buy books. They are entirely willing to keep those positions. They are not driven into them. They are very glad to obtain them, and I am

sorry to say that it is one of the scandals of our day in connection with our political affairs, that men seeking these positions pay extraordinarily high prices, which are nothing else than corruption funds, for the purpose of obtaining those places. Now, Mr. Chairman, I do hope that we will not permit the judges who are influential with the legislators and with the lawyers of the Legislature (and the lawyers, as a rule, are in the majority in our Legislature), to go and lobby before them for increases of their salaries, which cannot be granted to any other class of officers. I hope that we shall not see the spectacle of justices of the Supreme Court summoning former clients, well-to-do and influential clients, or large corporations for whom they had acted before they went on the bench, to use their influence in the halls of legislation to get their salaries increased beyond the sums at which they were fixed when they sought the office and for which they agreed that they would perform the duties of the office.

I know it has been stated, Mr. Chairman, that we should permit them an advance, because we elect the justices of the Court of Appeals and of the Supreme Court for long terms. But what difference does that make. Every man who seeks and accepts a position knows the length of the term, does he not? He is entirely willing to take it for the long term, and would be very glad if the term were twenty-one instead of fourteen years. How does the length of the term alter the principle that is involved here? It is said that the cost of living may be increased during this long term, and that what would be fair compensation when the man was elected might be inadequate in the course of ten or fourteen years. Now, Mr. Chairman, there might be some force in that argument if the salaries of the justices of the Supreme Court and of the Court of Appeals were what they were in 1867, or what they were during the early years of the war; but they have now been increased under the provisions of our present Constitution to sums amply sufficient to enable these gentlemen to support all the judicial style and dignity that is necessary. Is there any force in the argument? If it is true that we should not put on this limitation to increase in order that they may be enabled to meet the cost of increased living which may occur, then the reverse of that proposition is true, is it not? If the salary should be increased because of the high cost of living, then when the cost of living goes down the salary should be decreased, should it not? But yet you propose to put in this Constitution, and you have it in your Constitution now, that the salaries shall not be diminished. You thus put an effectual bar on the State receiving the benefit of low prices of

living, and you prohibit the State from reducing the salaries. That argument, if there were any force in it, would apply equally well to a Governor who may be elected eight or ten years from now, or to a Lieutenant-Governor. The prices to-day of every yard of calico, of every pound of butter, of every ton of coal, of every barrel of flour, are much less than they were twenty or twenty-five years ago, and yet we do not hear of any proposition to reduce or diminish the salaries of the judges of these courts because prices have fallen. Not at all.

Now, Mr. Chairman, I believe in equality in this thing. Let us keep these men out of the temptation of lobbying and seeking to influence legislators. Men are weak, and judges of courts do not, when they go upon the bench, become angels with wings on them. Let us have equality in this thing. Let not members of the legal profession make this very invidious distinction, with regard to the judges of these courts. As they are now receiving substantial salaries, and as they were very glad to obtain the positions they hold, let us make a provision in the Constitution which will remove the possibility of any inequality or of scandal or abuse in connection with this subject.

Mr. Mereness — Mr. Chairman, if I understand this judiciary article, the increases already provided for amounts to the following sums: The increase in the salaries of the three judges in Brooklyn will amount to $9,600, of the twelve judges in New York to $30,000, of the three judges in Buffalo to $3,600. It is a provision for an increase of $43,200 per year, and, if this Constitution shall have the good fortune to be adopted by the people, in the next twenty years the increase will amount to nearly a million dollars. If the article is adopted, the salaries of the justices of the Supreme Court of this State will amount to the enormous sum of $845,800 per annum. Now, Mr. Chairman, we have already had an example of an increase in the salaries of the judges of the Court of Appeals, because nearly every one present is aware of the fact that a few years ago these salaries were increased from $7,000 per annum to $10,000 per annum, which, with the allowance, made the salary virtually $9,000, and makes it $12,000 now. I am willing Mr. Chairman, to make a comparison between the judges who were elected when the salary was $9,000 per annum and those who have been elected since. Under the former system Judge Church, Judge Allen, Judge Folger, Judge Rapallo and the elder Judge Peckham were elected; since that time, I am frank to say that the comparison would not be in favor of the more recent accessions to the bench.

It has been said that the people adopted the Constitution which

allowed the judges to get their salaries increased; but I would like to call the attention of delegates to the fact that the constitutional provision was adopted at a time when the respective political committees of the great cities of this State could bunch the tickets in favor of or against propositions to amend the Constitution, and they went to the ballot-box with rubber bands around them, and without any idea on the part of most of the voters what the proposed constitutional amendments were.

I will not take up the time of this Convention by going over the arguments on this subject, because, when the general subject was before us on a former occasion, it was plainly demonstrated that this idea was a fundamental one, because it is recognized in several other places in the Constitution of this State, as well as in the Constitutions of sixteen other States, and it seems to me that it is ridiculous for this Convention of lawyers, after having provided for this great increase in the salary list of the judges of this State, to ask the people to create this privileged class. It seems to me that we had better cut that out. There will be enough other objectionable features in the proposed Constitution, in all probability, and it seems to me that at least we had better eliminate this objectionable feature.

Mr. Root — Mr. Chairman, this provision regarding judicial salaries was reported exactly as it now is in the Constitution, for the reason that the Convention then had before it another amendment, the whole subject of increasing and diminishing salaries. It was so reported without any vote upon the question as to whether the word "increased" should be put in or left out, although that was suggested and discussed in the committee, because the committee did not wish to put themselves in the position of acting on a matter already under discussion in the Convention. If the committee had come to a vote, I am satisfied, from the individual expression of their opinions, that that vote would have agreed with the views expressed by the gentleman who has just spoken. A large majority of the members of the Judiciary Committee would have voted and now are ready to vote to make the amendment which has been suggested, so that the salaries of the judges shall neither be increased nor diminished during their terms of office. (Applause.) My own personal views about it are that, although it is possible that some exigency may arise in which it might be fair to increase the salaries, nevertheless, the evils that may result from enabling members of the judiciary department to use their official power to attempt to secure an increase of salaries are so much greater than any contingent evils the other way, that we

ought to put them in a position of independence, both one way and the other. Therefore, Mr. Chairman, I shall vote for the amendment.

The Chairman put the question on the amendment offiered by Mr. Clark, and it was determined in the affirmative.

The Chairman — Are there any further amendments to section 12?

Mr. C. A. Fuller — Mr. Chairman, I offer an amendment.

The Secretary — Mr. Fuller offers the following amendment: On page 9, line 14, after the word " court," insert the words " including judges and justices of inferior courts not of record."

Mr. C. A. Fuller — The amendment which I propose will cause that part of the section to read as follows:

" No person shall hold the office of judge or justice of any court, including judges and justices of inferior courts not of record, longer than until and including the last day of December next after he shall be seventy years of age."

I do not stand here to advocate this amendment in any dogmatic way, nor to say that it certainly ought to prevail. If it should be that this matter had been called to the attention of the Judiciary Committee and they had intelligently discussed it and decided that these inferior judges and justices should not have the age limitation put upon them, I believe in that; but, sir, a great body of the litigation of the State is carried on in these inferior courts throughout the State. I suppose that there are 5,000 or 6,000 justices of the peace in the State of New York, and they have a considerable jurisdiction. They may try cases where the amount involved does not exceed $200. They try a good number of criminal causes. They are committing magistrates. And I think, since this is, I might say, pre-eminently the people's court, the people are entitled to officers holding those positions who are still in the full maturity of their powers. I think the action of this Convention shows that it is its sense that after the age of seventy there is a liability that the intellectual powers may decline, that there may not be that power to apply the mind to important questions put upon a person holding a court that would be held by a person of younger years. The justices of these courts take their own minutes, keep their own records and make their own documents, and oftentimes they are engaged in trials from early in the morning until late at night, which is a great strain upon any person engaged in such immense labors. Cases are tried in these courts sometimes that

call for as great ability as in any other courts of record, and, therefore, it seems to me that it would be wise to make this clearer in the Constitution. In the judiciary article that was adopted in the Constitution submitted in 1869 this matter was left in such condition that as late as 1884 the Supreme Court of this State decided that these officers were rendered ineligible after the age of seventy, and it required the Court of Appeals to decide that the construction of the section did not include them in this prohibition.

Mr. Cady — Mr. Chairman, I would make the suggestion to the delegate who has just proposed this amendment that a more appropriate place may be found for it in section 17, which relates to justices and judges of inferior courts than in this part of the article, which relates to judges of the Court of Appeals and justices of the Supreme Court. A similar provision in relation to county judges and surrogates is made in section 14, and I think that this amendment ought to be deferred for the sake of symmetry until that part of the article relating to justices and judges of the inferior courts is reached. I make that suggestion.

The Chairman put the question on the adoption of the amendment offered by Mr. Fuller, and it was determined in the negative.

The Chairman — Are there any further amendments to section 12?

Mr. I. S. Johnson — Mr. Chairman, I move to amend section 12 by inserting in line 14, page 9, after the word "court," the words "except as herein provided."

We have this peculiar anomaly just now of having provided that no person shall hold the office of judge or justice of any court longer than until and including the last day of the December next after he shall be seventy years of age. We have just provided that the Governor may designate one of these persons, who must, by this Constitution, cease to be a judge, to perform the duties of a judge. If this is to be done, it seems to me that we should have some provision in this by which he may be continued as a judge; and hence I have suggested the insertion of the words "except as herein provided."

Mr. Root — Mr. Chairman, will not the effect of those words be the nullification of the whole provision? Because it is otherwise provided that the justices shall hold their office for fourteen years. The amendment proposed by Mr. Dickey and adopted, is in the nature of an exception to this general proposition. It does not seem to me that it is necessary to enforce the exception by saying in an independent clause that it is an exception.

The Chairman put the question on the adoption of the amendment offered by Mr. Johnson, and it was determined in the negative.

The Chairman — Are there any further amendments to section 12? If the Chair hears none, the Secretary will read section 13.

The Secretary read section 13 in the language following:

"Sec. 13. The Assembly shall have the power of impeachment, by a vote of a majority of all the members elected. The court for the trial of impeachments shall be composed of the President of the Senate, the Senators, or a major part of them, and the judges of the Court of Appeals, or the major part of them. On the trial of an impeachment against the Governor or Lieutenant-Governor, the Lieutenant-Governor shall not act as a member of the court. No judicial officer shall exercise his office, after articles of impeachment against him shall have been preferred to the Senate, until he shall have been acquitted. Before the trial of an impeachment, the members of the court shall take an oath or affirmation truly and impartially to try the impeachment according to the evidence, and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office, or removal from office and disqualification to hold and enjoy any office of honor, trust or profit under this State, but the party impeached shall be liable to indictment and punishment according to law."

The Chairman — Are there any amendments to section 13? If the Chair hears none, the Secretary will read section 14.

The Secretary read section 14 in the language following:

"Sec. 14. The existing County Courts are continued, and the judges thereof now in office shall hold their offices until the expiration of their respective terms. In the county of Kings there shall be two county judges, and the additional county judge shall be chosen at the next general election held after the adoption of this article. The successors of the several county judges shall be chosen by the electors of the counties for the term of six years. County Courts shall have the powers and jurisdiction they now possess, and also original jurisdiction in actions for the recovery of money only, where the defendants reside in the county, and in which the complaint demands judgment for a sum not exceeding $2,000. The Legislature may hereafter enlarge or restrict the jurisdiction of the County Courts, provided, however, that their jurisdiction shall not be so extended as to authorize an action therein for the recovery

of money only in which the sum demanded exceeds $2,000, or in which any person, not a resident of the county, is a defendant.

Courts of Sessions, except in the county of New York, are abolished from and after the last day of December, 1895. All the jurisdiction of the Court of Sessions in each county, except the county of New York, shall thereupon be vested in the County Court thereof, and all actions and proceedings then pending in such Courts of Sessions shall be transferred to said County Courts for hearing and determination. Every county judge shall perform such duties as may be required by law. His salary shall be established by law, payable out of the county treasury. A county judge of any county may hold County Courts in any other county when requested by the judge of such other county."

Mr. Lincoln — Mr. Chairman, I have a substitute which I wish to offer for the first paragraph of section 14.

The Secretary read the substitute offered by Mr. Lincoln in the language following:

"The existing County Courts are continued, and the judges thereof now in office shall hold their offices until the expiration of their respective terms. In the county of Kings there shall be two county judges, and the additional county judge shall be chosen at the next general election held after the adoption of this article. The successors of the several county judges shall be chosen by the electors of the counties for the term of six years. The County Courts shall have general original jurisdiction in law and equity in all cases where the defendants reside in the county, subject to such appellate jurisdiction of the Supreme Court or Court of Appeals as may be prescribed by law. Such County Courts shall also have such appellate jurisdiction as may be provided by law, subject, however, to such provision as shall be made by law for the removal of causes into the Supreme Court. They shall also have such further original jurisdiction as shall, from time to time, be conferred upon them by the Legislature."

Mr. Lincoln — Mr. Chairman, the object of this proposed amendment is to give to the County Courts general original jurisdiction in law and equity in local actions, or in actions in which the defendants reside in the county. This amendment is, in substance, the same as the overture (No. 172), which was introduced by me and which went to the Judiciary Committee. The committee, instead of reporting this amendment increasing the general jurisdiction of the court, saw fit to increase simply jurisdiction so far as money demands were concerned, and raised the money limit from $1,000

to $2,000, leaving the jurisdiction substantially as it was before in other respects. Now, it seems to me that the time has come in the history of this State when we ought to put our County Courts back upon the same basis, at least, occupied by the old Courts of Common Pleas, and when we ought to give to those courts the jurisdiction which may be necessary to enable suitors to transact all business in that court as to local actions which they may see fit to do, so that if a person wishes to bring an action in a County Court, he shall not be driven out of it by a technically equitable objection, but shall be able to pursue his litigation to the end in that court, and there will be the same right of appeal from the judgment of the County Court as from the judgment of the Supreme Court at a trial term. Now, I suppose it is well known that the County Courts in 1846 superseded the old Courts of Common Pleas, and it may be worth while for us to follow for a moment the history of the old Courts of Common Pleas in this State. Those courts originally in the colony of New York had extensive jurisdiction. They were courts of original jurisdiction and had power to hear, try and determine almost any kind of an action. The Constitution of 1777 made no special provision for this class of courts nor for any other courts, in fact. It recognized the existing courts, and the Legislature of 1787 passed an act relating to Courts of Common Pleas in the various counties of the State, in which it gave power to those courts to "hear, try and determine, according to law, all actions, real, personal and mixed suits, quarrels, controversies and differences arising within the several and respective counties for which the same are or shall be held." So that the only limitation upon those courts, according to that provision of the early statute, was as to the locality of the action, and the Supreme Court, in construing the section relating to the jurisdiction of the Court of Common Pleas, held that that court was a court of general jurisdiction. The revision of 1828 continued the jurisdiction of the County Courts in this language, which I will read from the Revised Statutes:

"There shall continue to be a Court of Common Pleas in each county of this State, which shall possess the powers and exercise the jurisdiction which belong to the Courts of Common Pleas of the several counties in the colony of New York, with the additions, limitations and exceptions created and in force by the Constitution and the laws of this State, and every such court shall have power (1) to hear, try and determine, according to law, all local actions arising within the county for which such court shall be held, and all transitory actions, although the same may not have arisen

within such county." This section contains other provisions relating to the jurisdiction of the court, but I have read enough to show the general scope of the statute as to the jurisdiction of the Court of Common Pleas that makes it a court of general original jurisdiction. That court continued until 1845, or until the 1st of July, 1847, when it went out of existence by virtue of a constitutional provision adopted by the Convention of 1846. And the framers of that Constitution seemed to have intended — and they seem to have accomplished their purpose — the destruction of the Court of Common Pleas. They wiped it out of existence, and they gave us instead what they were pleased to call a County Court, and the County Court was limited in its powers and jurisdiction. I will read some of the provisions of the Constitution of 1846, so that it can be seen how the powers and the jurisdictions of the County Court were reduced:

"There shall be elected in each of the counties of this State, except the city and county of New York, one county judge, who shall hold his office for four years. He shall hold a County Court and perform the duties of surrogate. The County Court shall have such jurisdiction, in cases arising in Justices' Court and in special cases as the Legislature may prescribe, but shall have no original civil jurisdiction, except in such special cases."

Thus they reduced the County Court to a court which had jurisdiction, as a practical question, simply to hear and determine appeals from the Justices' Courts. Now, I have had occasion to examine, in my own county, the comparative business of the two courts, while the Court of Common Pleas was in existence, and the records of the court show that for the thirty years that that court was in existence, in Cattaraugus county, the Court of Common Pleas did five times the amount of business that was done in the Supreme Court. The necessary effect of the Constitution of 1846 was to somewhat degrade the court. The old Court of Common Pleas was a popular court. It was the people's court. The people went into that court for the redress of local grievances. It had ample jurisdiction and it had power to determine all those local questions, and, besides that, it had the confidence of the people; and I think Cattaraugus county is not an exception to the rule that the Court of Common Pleas was the people's court when it was in existence. The Constitution of 1846 enlarged the jurisdiction of the County Court to an amount not exceeding $1,000, and that is the rule to-day. The only change made to-day in the article is the increase of that limit from $1,000 to $2,000. Now, I think all these distinctions should be swept away, and that the County Court should

have general jurisdiction as to all actions within the county. It is claimed that if the County Court is given this jurisdiction, a plaintiff may have a choice of tribunals, which may, possibly, work to the detriment of the defendant. Surely, the choice of tribunals must always rest with the plaintiff, because he must begin the action. He does not have to go to the defendant to find out whether he may commence an action or not. But that suggestion is met, so far as common-law actions are concerned, by the provision as it now exists. The plaintiff has the choice of tribunals now. Under this provision, if agreed to, he may bring an action in the County Court, or he may bring it in the Supreme Court, or if it does not exceed $200, he may bring it in a Justices' Court. It is entirely optional with him. The County Courts ought to have the opportunity to do a larger business so that they may somewhat relieve the Circuit Courts and the Special Terms of the Supreme Courts in the various actions that are now brought there, but which might as well be brought in a County Court. It is claimed that the provision, as recommended by the committee, authorizes the Legislature to enlarge the jurisdiction of the County Courts. This question ought to be put where it will be beyond the control of the Legislature. If we are to make a constitutional court of the County Court, let us prescribe its jurisdiction in the Constitution also, so that it will not be subject to change or modification by the caprice of a Legislature. The statute now permits various actions to be brought in the County Courts, but, owing to the lack of equitable power in that court, parties are frequently driven out of court by the answer in the action, which sometimes raises an equitable issue, and the plaintiff may be obliged to back out of the County Court and begin somewhere else. He ought not to be subjected to that technical difficulty. Here is a state of facts which sometimes raises a technical question, clearly inconsistent and illogical. You may bring an action in a County Court to recover the purchase money for lands sold, if it does not exceed $2,000, under this limitation as proposed, but you cannot bring an action in a County Court to set aside the very same deed on account of fraud or mistake. I say, a court which has the jurisdiction of an action to recover money, ought to have jurisdiction of an action to recover the land itself. Another inconsistency, Mr. Chairman, still more marked, I want to point out. There are thirty-three counties in this State where the county judge performs the duties of a surrogate, unless a separate officer is provided for, which may be done where the population of a county exceeds 40,000. Now, as a matter of fact, as I make the computation, there are thirty-three counties in the State where

the county judge is also the surrogate. Every lawyer knows that there is no class of business presented to any court of a more complicated character than that which comes before the Surrogates' Courts. They have to pass upon questions relating to the probate of wills, the transmissions of estates, the construction and the validity of wills, various questions relating to the collateral inheritance tax law, questions of powers, questions of trusts, questions of undue influence, questions of fraud, questions of mistake, questions of mental capacity and a variety of questions that arise in the administration of the duties of the office of surrogate, and yet your Constitution contains this inconsistency — the same man is vested by your Constitution with power to take charge of all these controversies; he is presumed competent to pass upon all those intricate questions, but the same man, when acting as a county judge, is deprived of the power to pass upon questions involving equitable considerations. Now, I insist that there is no logic in that situation. It is utterly illogical and it is time it was abolished in the State of New York.

Mr. Cady — Mr. Chairman, I trust that the amendment as proposed to this article will not prevail. The subject was given very careful consideration by the committee ——

Mr. Lincoln — I will yield the floor to the gentleman from Columbia.

Mr. Cady — Oh, I beg Mr. Lincoln's pardon. I supposed that he sat down.

Mr. Lincoln — I was about through. What I propose, Mr. Chairman, I have already indicated, and I need not elaborate further. It is substantially to raise the County Court to the position occupied in our jurisprudence by the old Court of Common Pleas and to put our County Courts upon a consistent basis. Attempts have been made, as I suggest, since the Constitution of 1846, to raise the character of the court and to increase its powers and put it upon a basis where it may do more business. That is what I am seeking to do. Now, I think I have voiced the sentiments of the country members of this Convention, members of the country bar, when I say that we could do much more business, and do it much more conveniently, if we had an enlarged jurisdiction of the County Court. Special Terms of the Supreme Court are not convenient for us. If we had access to the County Courts in these various classes of actions that I have suggested, and in all other actions which we wanted to bring, we would relieve the calendars of the Supreme Court and be able to do our business much

more cheaply, more conveniently and more rapidly, and those things are always important in the administration of justice.

Mr. Maybee — Mr. Chairman, I desire to rise to a point of order. I have understood the rulings of the Chair heretofore to be that a substitute could not be considered until amendments had been considered to the original proposition. I desire to offer an amendment.

Mr. Lincoln — Mr. Chairman, I supposed that my provision would be deemed an amendment to the entire section, although a substitute for the first paragraph of the section.

The Chairman — Does the gentleman (Mr. Maybee) desire to offer an amendment to Mr. Lincoln's amendment?

Mr. Maybee — I desire to offer an amendment to the original proposition. Mr. Lincoln stated that he offered his proposition as a substitute.

Mr. Lincoln — For a part of the section, the first section.

The Chairman — For the first paragraph.

The Secretary read the amendment proposed by Mr. Maybee in the language following:

"Amend section 14 by substituting "three thousand dollars" for "two thousand dollars," in lines 5 and 9, page 11.

The Chairman — The amendment is not in order, unless you make it as an amendment to Mr. Lincoln's substitute. It will be so received.

Mr. Cady — Mr. Chairman, I was about to say when I observed that I had interrupted the gentleman (Mr. Lincoln), that I trust that this amendment will not prevail. Very careful attention was given to the amendment in the Judiciary Committee, and after careful deliberation it was unanimously concluded that no such change ought to be made in the system of County Courts. I think that the scope of the report of the Judiciary Committee is sufficiently well understood by delegates to lead them to the conclusion that the purpose of the committee was, as far as possible, to establish and maintain in the State one great court of original jurisdiction and powers, entirely a Supreme Court, giving at the same time as many local courts of qualified and limited jurisdiction as might be necessary for the varied local wants of the people. Now, so far as the courts of the cities are concerned, we have provided for the abolition of four, two in the city of New York, one in the city of Brooklyn and another in the city of Buffalo. It would hardly seem to be consistent with a plan for the abolition of those local courts

that in the same breath we should create in all the other counties of the State courts having original jurisdiction equivalent to that of the Supreme Court, and yet local in their character, and to a certain extent local in their jurisdiction. I believe that the people are sufficiently well satisfied with the present powers of the County Courts and desire no radical change in them. Within certain limited and circumscribed spheres they perform necessary and important duties, duties which could not well be performed by the justices of the Supreme Court or by that court itself, and which may well be performed by courts of the character of a County Court. We have proposed an increase of their jurisdiction in money actions to $2,000, and it would seem to the Judiciary Committee that that is a sufficient increase for all the purposes of the same.

Mr. Woodward — Mr. Chairman, I wish to speak upon this question. Unfortunately, I do not practice law where gentlemen have the advantage of the increased number of judges proposed, as in New York and Brooklyn. We have no justices of the Supreme Court residing in our county. If we wish to apply to the Supreme Court for any purpose, we have to go to Buffalo or Rochester, and we very seldom have Special Terms in our county. At the time the Circuit Court is held, we usually have a little Special Term business done, and that is all the Special Terms we have, and it is very seldom that we can get a case involving equity principles tried before the courts, for the reason that the Supreme Court is so much engaged elsewhere that it cannot stop to hear our cases. Buffalo or Rochester or some other place has larger and more important cases, perhaps. It is, therefore, very convenient for us frequently to commence actions in the County Court, and when we can do that it saves time, because that court is not so much occupied but that it can hear cases promptly. I will give you an instance of the operation of the law as it stands now, the County Court having no jurisdiction. If the Second Division of the Court of Appeals has decided correctly, a County Court cannot even correct an erroneous word in a mortgage. The statute gives it power to foreclose a mortgage. A mortgage was put into my hands to foreclose, where there had been a mistake of a single word. Instead of the whole premises an undivided half was inserted. The mortgage was drawn by the mortgagor, and he set a boy to drawing it. It was put upon record, and the record paid for according to agreement, and the mortgagee did not see the mortgage until it became due, and he had occasion to foreclose. It was put in my hands, and I was told to foreclose it in the cheapest manner I could. For that reason I thought best to foreclose in the County Court, as a mortgage

could be foreclosed there, but the question whether I could have that amendment in the County Court arose. I went to the judge and he examined the statutes and thought it could be amended there and the foreclosure made. I examined the statutes and I thought so, too. I submitted the question to some other legal lights, and they all thought so. Unfortunately, I commenced the foreclosure of that mortgage in the County Court, and the county judge decided that we could amend, and the amendment was made and the whole mortgage foreclosed. There was no dispute but that it was a mere oversight of the boy that drew the mortgage; there was no dispute but that the mortgage covered the whole premises; no question about that made by the defendant or any one else. The proof all showed that the contract was that it should cover the whole premises, and that there was a mere mistake of a boy, and yet the County Court had not jurisdiction to foreclose that mortgage, so the Supreme Court, at General Term, decided. One of the judges, however, wrote a dissenting opinion. I thought it was the ablest opinion of the two. He held that the County Court had the jurisdiction, and I found some other judges who thought that it was erroneously decided, as well as a good many lawyers. I chose to take it to the Court of Appeals. Unfortunately, I happened to strike the Second Division of the court. If I had gone to the First Division, I think I might, perhaps, have got a different decision. They held that the County Court had not equity powers, and, therefore, could not correct. I claimed that the justices of the peace could correct a mistake in a case that was before them, but they did not see fit to hold with me, and, consequently, I had to go back and commence a foreclosure in the Supreme Court. I did so, and finally sold the whole premises, but it cost a good deal to do it.

Mr. C. H. Truax — Mr. Chairman, I rise to a point of order. One of the rules says that no member of the Convention shall get between a speaker and the Chair.

President Choate — Was there anything left for the client?

Mr. Woodward — There wasn't much left for the client when we got through. (Laughter.) Now, I would give the County Court some jurisdiction; give it equity jurisdiction, as well as legal jurisdiction. Do not our county judges know enough to dispense equity, as well as law? If they do not, they ought not to be on the bench. We should elect better men. But they do; you will see that they do from the fact that our county judges are taken as Supreme Court judges; they are selected from the County Courts in many instances; they are thought by the people sufficiently com-

petent to go upon the Supreme Court bench after a little practice in the County Courts; and why should they not? I, therefore, favor this proposal in behalf of the convenience of clients. I would have gone into the Supreme Court with this case, but I was requested, for the benefit of the defendant, to foreclose the mortgage as cheaply as I could, right in our own county, to save going to Buffalo or Rochester. But the County Court had not jurisdiction in a case where there was more than $300 or $400 at stake. I could not have got to the Court of Appeals, only as a I got permission from the General Term to go there. There being a dissenting opinion, they allowed me to go there. If the Second Division had correctly decided it, I think they would have held that the County Court had the power. But I have not any doubt to-day but that we have the power. I do not think it requires any equity to correct a mere verbal mistake; but, lest it should be held by the courts, or the Second Division of the court, that they have not such power, I would put in a clause in this judiciary article giving the County Courts some jurisdiction in equity. If you do not give them jurisdiction for more than a $1,000 in equity, give them jurisdiction in equity. I have tried, as referee, a great many causes, where equity was, perhaps, one of the main things in the case. I never found any great difficulty in deciding the equities of a case. I have had a great many cases involving equities in the courts. I have never found any difficulty in having the courts understand the equity of the case.

Mr. Hamlin — Mr. Chairman, I have listened to the remarks of gentlemen in regard to this proposed amendment, and I heard, with interest, the remarks of Mr. Lincoln upon the historic past of the County Court; but, sir, I believe this amendment, as proposed by the committee, should remain as it is. The County Courts of our State have served a very good purpose for a great many years, and certainly in my locality there is no desire, and there is no object in the amendment proposed by Mr. Lincoln. It is very difficult in our local County Courts to force any litigation of an original character into them. It is rarely that we use them at all. Occasionally an action for foreclosure is allowed, or partition is brought in the County Court; but, sir, it is very exceptional that there is any demand upon the County Courts for any adjudications of the character proposed by this amendment. It seems to me desirable that there should be one court of original equity jurisdiction in this State, and I do not believe, sir, paying due respect to the distinguished county judges who are in this court, that it would be, on the whole, desirable that there should be broad equity powers

placed in the hands of the County Courts in this State. Now, as I say, there is no demand for this particular amendment, as it seems to me. It would be, I believe, a step in the wrong direction, and I earnestly hope that this Convention will stand by the report of its committee in this case. As far as my own locality is concerned, I should be perfectly willing that the original amount of $1,000 should remain. For some reason, either because of the local character of the judge, or because of his character as an officer, it is very difficult to force into County Courts actions of an original character. Therefore, I say that I trust, there being no necessity for this amendment, that the report of the committee will be confirmed.

The Chairman again read Mr. Maybee's amendment, and put the question on its adoption, which was determined in the negative.

The Chairman then put the question on the adoption of the amendment proposed by Mr. Lincoln, and it was determined in the negative, by a rising vote, 49 to 62.

Mr. Veeder — I offer the following amendment:

The Secretary read the amendment offered by Mr. Veeder in the language following:

Amend section 14, page 11, line 12, after the word "county," to "counties." And after the words "New York," same line, insert the words "and Kings." The same amendment in line 15, page 11, section 14.

Mr. Veeder — It will be observed, Mr. Chairman, that we ask simply in the county of Kings the same exception as by this paragraph of this section is given to the county of New York. Our Court of Sessions, as at present constituted, has criminal jurisdiction, even in homicide cases, and the greater part of the criminal business is conducted there. Our Court of Oyer and Terminer is a very infrequent court, and I am advised by those who are more familiar with the subject than I am that it is very essential that the integrity of our Court of Sessions should be preserved, and not restricted, as provided by this section. I ask the favor of the Convention that the county of Kings be excepted the same as is the county of New York.

Mr. Jesse Johnson — Mr. Chairman, I am not in favor of the proposed amendment. The reason for abolishing the Court of General Sessions has been fully stated. The reason which exists for abolishing the Court of General Sessions is the same reason which has influenced the Convention in abolishing the Court of

Oyer and Terminer; it is to abolish the anachronism, the absurdity of allowing the same judge, in the same place, on the same day, to sit practically in the same business, in two different capital cities. It is a wise, a just provision, which has met the favor of the Convention. Now, sir, we are not here, after adopting principles, to put patches on our letter of adoption, to make our Constitution a matter of patch work, and seams, and irregularity. And if there is to be anything of that kind done, I desire that Kings county shall not be the county to set the example. I was opposed, sir, as I have said here, to the proposition that would except Kings county as to the term of the surrogate. Let the terms be uniform throughout the State, and let it be uniform that the Court of General Sessions is abolished, except where good cause exists to the contrary. The reason which exists for excepting New York is, that there is no County Court in the city and county of New York. The judge who sits as the judge of Sessions there occupies no dual station. To abolish the Court of Sessions there would be to abolish the court; to abolish the Court of Sessions here is merely to abolish the form, the procedure of side justices and reconvening; therefore, sir, I hope that Kings county will be made no exception to the general rule, and that the amendment will not prevail.

Mr. Dickey — I would like, Mr. Chairman, to ask the mover of the proposition, Mr. Veeder, whether his amendment now contemplates the retaining of the justices of Sessions in Kings county?

Mr. Veeder — Not at all.

Mr. Towns — Mr. Chairman, I am not, like Mr. Johnson, a member of that committee of perfection known as the Judiciary Committee, whose pride of opinion seems to have convinced them that they ought to stand here against patches, even when those patches might add to their beauty. There is just as much reason, Mr. Chairman, for the existence of the Court of Sessions in Kings county as there is for the existence of the Court of Sessions in New York county. But it seems to me that Kings county will take its usual position, that of being left, when the deals and the dispensation of favors are going around in any body of this State; and it is generally the case that our worthy sons, or unworthy sons, rise up to put her in that abject position. The Court of Sessions in Kings county has unlimited jurisdiction. It is one of the most active courts in this State. It tries criminals accused of any crime, in any degree; and to take that jurisdiction away, or to change it in any way, would be to burden the Supreme Court, which I understand you are now trying to relieve of its burdens, with the trial of crimi-

nal cases and block up the civil calendar. I think that this exception is a very wise exception and that it should prevail.

Mr. Jacobs — Mr. Chairman, perhaps I am one of the unworthy sons of Brooklyn to which the last speaker has referred. I think if he would occasionally take the trouble to read an amendment, before commenting upon it, it would save him and the Convention considerable annoyance. We do not propose to abolish any of the criminal jurisdiction now existing in the Court of Sessions. We simply propose that the county judge who presides at the Court of Sessions shall continue to dispatch criminals to Sing Sing and the penitentiary as a county judge, without the assistance of any one else. In this very amendment it is declared that all the powers now vested in the Court of Sessions shall be passed over and vested in the County Court, and the county judge will be the same criminal magistrate, with the same power; and I think to the eminent satisfaction of the good citizens of Kings county, whatever it may be to the criminal. Therefore, I hope, sir, that Kings county will not be made an exception; that we will be left in harmony with the judicial system which this committee has wisely marked out, and that we will simply abolish the hollow form of calling up two side justices who really do not do anything, except to draw their salary. That will leave the county judge untrammeled, with any empty barren forms, and let the business go right straight along, and make an end of it. And if to support that system is unworthy of a representative of Kings county, I hope I will always be found among unworthy men.

Mr. Cochran — Mr. Chairman, I sincerely trust, sir, that this amendment which has been proposed by Mr. Veeder will prevail. I think, sir, that it is misunderstood, also. The object is not to retain the present side justices in the Court of Sessions, for they are by this amendment abolished. We do desire, however, to retain a distinctively criminal court. We do not feel, that this merging of the civil and and the criminal business together into a County Court is going to be a good thing for the county or for the County Court, as your suitors are not going into the County Court to have their cases tried, where the great mass of the criminal business is at the same time being tried. The amount of criminal business that is now done by the Court of Sessions in Kings county, I think, is not realized by this Convention; and if you take that *nisi* business and put it in with the civil business the result will be that the civil business will be eliminated entirely from the County Court and put back into the Supreme Court, and we shall have afforded the court no relief at all. We do not desire, by our proposed amendment to

this constitutional amendment, to retain any judges further than they do. We do not by our amendment contemplate any additional expenditures, and, in fact, every decrease in expense which is contemplated by the committee's report is included within our proposed amendment; and I submit, sir, that we should have in Kings a distinctively criminal court, and I trust that the amendment of Mr. Veeder will prevail.

Mr. Powell — Mr. Chairman, like the gentleman from Kings, Mr. Johnson, I hail from the county of Kings. Unlike the gentleman from Kings, Mr. Johnson, I am not a member of the Judiciary Committee. Nor have I hesitated on one or two occasions to lay the hand of criticism on the ark of the covenant which that body bears in this Convention. But the purpose of this proposed amendment, to except the county of Kings from the provisions of the article introduced by the Judiciary Committee, is simply absurd; and, if I am rightly informed, and I think I am, and I do not hesitate to proclaim it to this Convention, the sole purpose of this proposed amendment is to keep one man in office who will be thrown out of office if the amendment proposed does not pass.

Mr. Cochran — Mr. Chairman, may I ask the gentleman a question?

Mr. Powell — And I ask ——

Mr. Cochran — It certainly is an error.

Mr. Powell — It has been suggested by the gentleman from Kings (Mr. Cochran) that it would be a most unfortunate thing if in our County Court we were compelled to have our criminal business and our civil business mixed together. I should like to ask the gentleman if he has ever been into our County Court at the present time, when the same judge, sitting on the same seat, was one minute engaged in the business of the Court of Sessions and the next minute engaged in the business of the County Court, flying like a shuttlecock from one court to the other, so that one minute you were in the Court of Sessions and the next minute in the County Court, so that you were kept constantly vibrating between the two, and it was only with the utmost difficulty that a person in court could tell in which court he was at any particular minute; going in there to argue motions before the court, having to wait until some one was sentenced to State's prison or to the pentientiary, a wonderful conglomeration of legal business, everything mixed up with everything else, so that no one but the judge knew where we were, and sometimes there was doubt as to whether the judge himself knew exactly which court he was holding at any particular

minute of time. Now, it has been suggested by one of the gentlemen from Kings, that there is just as much need in Kings county for the Court of Sessions as there is in the city and county of New York. That statement, gentlemen, is an imputation upon the county of Kings and upon the city of Brooklyn. We are proud of the fact that in the city of Brooklyn there is very little crime as compared with the great city of New York. We are a less criminal city; we are a more moral city; we are a Republican city on the other side of the East river. We always like to recall what is pleasant, and that is a pleasant fact to those of us who are from Kings county. I think it would be a most serious mistake to except the county of Kings from the proposed amendment as introduced by the Judiciary Committee; and whatever may be the particular view, and whatever the particular motives which conduce to those particular views on the part of the Democratic members from the county of Kings, every Republican member of this Convention from that county is opposed, first, last and all the time, to the adoption of the amendment which has been proposed by the gentleman from Kings, Mr. Veeder.

Mr. Root — Mr. Chairman, the plain fact about this situation is, that the county of Kings stands in exactly the same relation to this section that every other county in the State occupies. It has a county judge; the Legislature has proposed, and the people will vote this fall upon, and amendment to make another county judge. We adopt that proposed amendment in this article, and ask the people to approve, making another county judge. The county judge in that county sits in the Court of Sessions, and the Court of Sessions has no separate existence except by virtue of the side judges. In every respect the situation is precisely what it is in all the other counties of the State, except the county of New York; and in the county of New York there is no County Court and no county judge, so that we cannot apply the amendment to it. Now, sir, there is just as much reason for excepting every other county of the State as there is for excepting the county of Kings; and while it is very disagreeable, Mr. Chairman, to resist the requests and importunities of any of the gentlemen whom we like personally, and whose personal interests we should be glad to promote, to have the existing state of affairs continued so that they may remain in office, we cannot make a Constitution in that way; and having proposed a system for the entire State, we cannot do anything in the way of making a Constitution that is worth having, if we make exceptions for every good fellow or kind friend who wants to be excepted for the benefit of his personal interests. (Applause.)

Therefore, Mr. Chairman, I am delighted that the gentleman from Brooklyn, Mr. Powell, has concluded to climb into the ark and ride with the son of Jesse, and I am willing to go along with him, in opposing this amendment. (Laughter.)

Mr. Veeder — I submit, Mr. Chairman, with all due respect to the gentleman, the chairman of the Judiciary Committee, that he makes a mistake when he says there is no county judge in the city of New York. It is especially recognized in case of disability of the surrogate there that the chief judge of the County Court, the Court of Common Pleas, is the county judge. Now, sir, I cannot understand the trouble my friend Mr. Powell has in having so much confusion when he goes into the County Court. It is as simple as A B C, the proceedings in the County Court, and if there is any trouble there at all in his case, it must be because of the youth of his experience and not the condition of the court. Now, sir, we do not desire to retain the side justices. But there has been conferred upon the Court of Sessions of the county of Kings, and the jurisdiction exists, to try all classes of criminal cases; and, sir, if this court is abolished, and no provision at all made, I submit it will lead to endless confusion and mistake. As has been remarked by my colleague, Mr. Towns, the civil business of our district occupies the whole time of our Supreme Court justices, and there should be left to the county of Kings its County Court with all its criminal jurisdiction. I deprecate very greatly indeed the course that has rendered it necessary for this great victorious Republican party, who claim to be able to carry this State, who claim to be able to carry all the counties of the State, to read politics in a proposition of this kind. Let us try to keep the judiciary out of politics if we cannot do anything else.

Mr. Cochran — Mr. Chairman, I would not intrude again upon this Convention if it were not that a gentleman on this floor has seen fit to attribute a motive to our favoring this amendment. I desire to say, sir, that we have no such motive in view; and if the gentleman would study the amendment more carefully he would see that every clerk that is now in the Court of Sessions would be merely transferred to the county clerk's office, and there would be no abolishing of clerks or increasing of them; and I regret with my colleague from Kings, Mr. Veeder, that he should find it necessary to oppose an amendment which he knows to be so just; that he would ask for a division of this House on party lines; and I trust, sir, that the gentlemen of his own party will rise up against him and vote him down.

Mr. Foote — Mr. Chairman, the gentlemen advocating this amendment say they do not desire to retain the side justices of the Court of Sessions in Kings county. Now the necessary effect of the amendment proposed is to retain the side justices. The article as proposed by the committee provides for abolishing the Court of Sessions and conferring all its jurisdictions upon the County Courts. In no other part of this article is any provision made for abolishing the side justices. They are abolished by virtue of the clause which abolishes the Court of Sessions. Now, it appears that the criminal jurisdiction of the Courts of Sessions in Kings county would be somewhat interfered with by the adoption of this article. Gentlemen have seemed to fail to observe that all the jurisdiction of the Court of Sessions is vested in the County Courts. Hence that jurisdiction would still be retained as it exists to-day.

Mr. Dickey — I call for another reading of the proposed amendment.

The Secretary read again the amendment offered by Mr. Veeder.

The Chairman put the question on the adoption of the amendment offered by Mr. Veeder, and it was determined in the negative.

Mr. H. A. Clark — Mr. Chairman, I desire to offer the following amendment.

The Secretary read the amendment offered by Mr. Clark in the language following: Amend section 14, line 20, page 11, by adding after the words "county treasurer," the words "which salary shall not be increased or diminished during his official term."

Mr. H. A. Clark — Mr. Chairman, I wish to change that amendment.

The Chairman — The Chair will permit the gentleman to withdraw his amendment if there are no objections.

Mr. Clark — The amendment is withdrawn at the present time.

Mr. Gibney — Mr. Chairman, I desire to offer the following amendment.

The Secretary read the amendment offered by Mr. Gibney in the language following: Amend section 14, at lines 5 and 9, by striking out "two thousand dollars," and inserting instead "ten thousand dollars."

Mr. Gibney — Mr. Chairman, I think if there is one method of facilitating the trial of causes it would be by the $2,000 limitation on the County Courts; and I think if the Judiciary Committee had considered this subject sufficiently to give relief to litigants in the

courts below, they could not do a better thing than to eliminate in fact this $2,000 altogether, and leave any person who resides in a county liable to be sued for any amount, the same as in the Supreme Court. The Convention, Mr. Chairman, will understand that now no person can be sued in the County Court unless he is a resident of that county. I think, sir, that is a sufficient limitation already. I do not ask now anything more than an increase in the amount for which a person may be sued in a county, namely $10,000. And I believe, Mr. Chairman and gentlemen, that if this provision is adopted it will do more to relieve the Supreme Court of business than almost any other provision that has been spoken of in this Convention. In the county of Westchester where I reside with a population of over 100,000, we have a County Court. We have a calendar in the Supreme Court four times a year, averaging not less than 120 and 130 cases. The Supreme Court sits but one week, rarely two weeks, at any session, and there are, no doubt, ten or twelve cases on that calendar which could be tried, and would be tried, in the County Court by the lawyers except for this limit in the jurisdiction; and the reason of it is that lawyers would gladly bring their cases in the County Court if this money amount was a little more. We know, Mr. Chairman, that lawyers are in the habit of, and always wish, probably, in their complaints to ask for a large sum of money, notwithstanding that juries may not give them one-third or one-half of what they ask. If this limitation were removed I am sure that there could be a great many causes brought in a County Court that are not brought there now without asking this Convention to increase what is called its equity jurisdiction. Therefore, I do not think that this Judiciary Committee or this Convention would make any mistake in granting this relief, namely, to allow a suitor there to sue for the sum of $10,000, or not to exceed that, instead of $2,000.

The Chairman put the question on the adoption of the amendment offered by Mr. Gibney, and it was determined in the negative.

The Chairman — Are there any further amendments to section 14? If not the Secretary will read section 15.

The Secretary read section 15 of the article in the language following:

"Sec. 15. The existing Surrogate's Courts are continued, and the surrogates now in office shall hold their offices until the expiration of their terms. Their successors shall be elected by the electors of their respective counties, and their terms of office shall be six years, except in the county of New York, where they shall continue

to be fourteen years, and in the county of Kings, where they shall hereafter be fourteen years. Surrogates and Surrogate's Courts shall have the jurisdiction and powers which the surrogates and existing Surrogate's Courts now possess, until it be otherwise provided by the Legislature. The county judge shall be surrogate of his county, except where a separate surrogate has been or shall be elected. In counties having a population exceeding 40,000, wherein there is no separate surrogate, the Legislature may provide for the election of a separate officer to be surrogate, whose term of office shall be six years. When the surrogate shall be elected as a separate officer his salary shall be established by law, payable out of the county treasury. No county judge or surrogate shall hold office longer than until and including the last day of December next after he shall be seventy years of age. Vacancies occurring in the office of county judge or surrogate shall be filled in the same manner as like vacancies occurring in the Supreme Court. The compensation of any county judge or surrogate shall not be diminished during his term of office. For the relief of Surrogate's Courts the Legislature may confer upon the Supreme Court in any county having a population exceeding 400,000, the powers and jurisdiction of surrogates, with authority to try issues of fact by jury in probate causes."

Mr. Root — Mr. Chairman, I move to strike out in lines 2 and 3, on page 12, the words "and in the county of Kings, where they shall hereafter be fourteen years." Those words were included by the committee, under a misapprehension, and the committee wishes them withdrawn from the section. I think there is no substantial controversy upon that matter.

Mr. J. Johnson — Mr. Chairman, I rise to second that motion.

Mr. Cochran — Mr. Chairman, I might say that the chairman of the Judiciary Committee only anticipated what the minority of this Convention wanted to prevent the majority on the committee from possibly doing. We are opposed to any increase of the surrogate's term to fourteen years, or the increase of the term of any other judges in our county, and we hope this amendment will prevail.

The Chairman put the question on the adoption of the amendment offered by Mr. Root, and it was determined in the affirmative.

Mr. Mereness — Mr. Chairman, I desire to offer an amendment to section 15.

The Secretary read Mr. Mereness's amendment as follows:

In section 15, in line 20, on page 12, before the word "diminished" insert the words "increased or."

Mr. Mereness — Mr. Chairman, it will be apparent at a glance that the only object of this amendment is to incorporate in this section the same provision that was almost unanimously incorporated into the previous section in reference to the other judges, and I think if this is not done it will be the only place in the Constitution where this distinction could be made.

Mr. H. A. Clark — Mr. Chairman, there would be an inconsistency in the Constitution unless this amendment were adopted. It may not have occurred to all of the delegates in this Convention that the compensation paid to county judges and surrogates is paid by the county, while their salaries are fixed by the Legislature. Here is a case where there is no home rule in counties. The salary is provided for by the Constitution to be paid out of the county treasury, although it is fixed by the Legislature. I do not think that there will be any great opposition to this amendment. It certainly will appear to the members of this Convention that if the salaries of the justices of the Supreme Court are neither to be increased nor diminished during their term, the same rule should apply to county judges and to surrogates. The members of the Legislature find it difficult to withstand the applications made by county judges and surrogates for increase in salaries. To illustrate, the members from certain counties are requested by their county judges and surrogates to see that their salaries are changed. The Legislature has no particular interest in it. It is special legislation which should be prohibited so far as possible. If the members from a county introduce a bill for a change of salary, members from other counties, having no interest in the matter, permit them to fix the salary as they see fit. It seems to me that it is perfectly proper, as in the cases of other judicial officers, that when the officer accepts the position with a fixed salary that salary should remain the same during his official term.

Mr. Root — Mr. Chairman, it seems to me that the same considerations which led to including this word "increase" in the article relating to the salaries of the judges of the Court of Appeals and justices of the Supreme Court apply with even greater force to county judges and surrogates who are elected for shorter terms, and who are in more intimate relations with the authorities who have to do with salaries, and I shall, therefore, support this amendment, and I think the great body of the Judiciary Committee will do the same.

The Chairman put the question on the adoption of Mr. Mereness's amendment, and it was determined in the affirmative.

Mr. A. H. Green — Mr. Chairman, I propose on page 12, line 2, to strike out the word "fourteen" and insert in place thereof the word "six," to make it harmonious with the surrogates of all other counties. I do not see why that distinction should be made, nor do I see any reason now for putting on the public these long terms in any instance. I am opposed to it, and hope this amendment will be adopted.

The Chairman put the question on the adoption of Mr. Green's amendment, and it was determined in the negative.

The Chairman — Are there any further amendments to section 15? The Chairman hears none, and the Secretary will read section 16.

The Secretary read section 16, as follows:

"Sec. 16. The Legislature may, on application of the board of supervisors, provide for the election of local officers, not to exceed two in any county, to discharge the duties of county judge and of surrogate, in cases of their inability or of a vacancy, and in such other cases as may be provided by law, and to exercise such other powers in special cases as are or may be provided by law."

The Chairman — Are there any amendments to section 16? The Chair hears none and the Secretary will read section 17.

The Secretary read section 17, as follows:

"Sec. 17. The electors of the several towns shall, at their annual town meetings, or at such other time and in such manner as the Legislature may direct, elect justices of the peace, whose term of office shall be four years. In case of an election to fill a vacancy occurring before the expiration of a full term, they shall hold for the residue of the unexpired term. Their number and classification may be regulated by law. Justices of the peace and judges or justices of inferior courts not of record, and their clerks, may be removed for cause, after due notice and an opportunity of being heard by such courts as are or may be prescribed by law. Justices of the peace and District Court justices shall be elected in the different cities of this State in such manner, and with such powers, and for such terms, respectively, as shall be prescribed by law; all other judicial officers in cities, whose election or appointment is not otherwise provided for in this article, shall be chosen by the electors of cities, or appointed by some local authorities thereof."

The Chairman — Are there any amendments to section 17?

Mr. C. A. Fuller — Mr. Chairman, I offer an amendment to section 17.

The Secretary read Mr. C. A. Fuller's amendment as follows:

Add at the end of section 17 the following: "No justice, judge, or justice of the peace, named in this section, shall hold his office longer than until and including the last day of December next after he shall be seventy years of age."

Mr. C. A. Fuller — Mr. Chairman, when this proposition was voted on before, I understood it to be, at least on the part of many who voted that way, for the reason that it was offered at the wrong place. I do not care to renew the remarks that I made at that time, except to say that if this is adopted, that it will apply to all judicial officers throughout the State.

The Chairman put the question on Mr. C. A. Fuller's amendment, and it was determined in the negative.

Mr. Deyo — Mr. Chairman, I offer the following amendment:

Mr. Deyo's amendment was read by the Secretary as follows:

Page 13, line 17, insert after the word "as," the words "are or," so that it will read, "as are or shall be prescribed by law."

Mr. Choate — Mr. Chairman, before that motion is put will Mr. Deyo explain the object of his amendment?

Mr. Deyo — It seems to me, Mr. Chairman, that all existing provisions of law applicable to those inferior courts should continue to apply to them; and if the section is to read as it does now, "as shall be," it is simply prescribing that they shall have the jurisdiction hereafter given.

Mr. A. B. Steele — Mr. Chairman, it seems to me that this Convention does not want to adopt an amendment of that kind. To illustrate, there was a proposition or a proposed amendment, submitted to the Convention by myself, and it met with considerable encouragement, and especially by the lawyers, providing for a District Court to take the place, at least to a certain extent, of the now useless or burlesque Justices' Court. I believe it is a matter that will, at least at some time, be brought about, so that there may be more dignity to our inferior courts. The matter was submitted to the Judiciary Committee, and as I understand, after an examination, they said that that could be provided for by the Legislature under section 18, and among other reasons assigned was, that there was nothing in the Constitution that prevented the Legislature from taking the jurisdiction from the justices of the peace and conferring it upon local inferior courts, provided the Legislature saw fit to establish those in counties. Now, if this amendment is passed, as I understand it, it constitutionally confers upon justices of the peace

the powers they now have, the jurisdiction they now have. So that if that is done it will be impossible for the Legislature, should they see fit in the future, to deprive them of their jurisdiction and confer it upon inferior courts. Well, do we want to do that? It seems to me not. It seems to me that we should leave it so that they have the jurisdiction conferred by law, and then if the Legislature at any time in the future should see fit, in their wisdom, to establish these District Courts in counties where it may be proper, that they should have the right to do it. I am opposed to the amendment of Mr. Deyo.

The Chairman put the question on the adoption of Mr. Deyo's amendment, and it was determined in the affirmative.

Mr. Pratt — Mr. Chairman, I move to amend section 17 by striking out in line 15 of page 13 the word "shall," and insert in place thereof the word "may." As the present section reads, it seems to me, it compels the election of justices of the peace in every city of the State. The courts of justice of the peace are being rapidly superseded in all the smaller cities of the State by special courts organized with substantially the same jurisdiction as justices of the peace have heretofore had. This provision, if allowed to stand, will compel the election of justices of the peace in every city notwithstanding other courts are organized having the same jurisdiction.

The Chairman put the question on the adoption of Mr. Pratt's amendment, and it was determined in the affirmative.

The Chairman — Are are there any other amendments to section 17? The Chair hears none, and the Secretary will read section 18.

The Secretary read section 18 as follows:

"Sec. 18. Inferior local courts of civil and criminal jurisdiction may be established by the Legislature, but no inferior local court now existing or hereafter created shall be a court of record. The Legislature shall not hereafter confer upon any inferior or local court of its creation any equity jurisdiction or any greater jurisdiction in other respects than is conferred upon County Courts by or lature may direct."

"Except as herein otherwise provided, all judicial officers shall be elected or appointed at such times and in such manner as the Legislature may direct."

Mr. McClure — Mr. Chairman, I offer an amendment to section 18.

The Secretary read Mr. McClure's amendment as follows:

Mr. McClure moves to amend section 18 by striking out in line 24, of page 13, the words "now existing or."

Mr. McClure — Mr. Chairman, the object of this amendment is to leave with the courts of record, now being courts of record and designated as inferior courts, the advantage of having them remain courts of record. The matter has been explained thoroughly to the Judiciary Committee, and, as I understand, it is agreeable to them that this should be adopted. There are courts of record, inferior courts of record now, of great value to the community, and the exemplification of their record is a matter of necessity in the interest of litigants. I hope this amendment will prevail, which will leave those courts of record which are now courts of record.

Mr. Root — Mr. Chairman, on the whole, I think it may be an interference with the existing court, without sufficient consideration and examination into the special inconveniences which would result if we kept in the words now existing, and I think we must yield to the demand to have these words stricken out.

Mr. T. A. Sullivan — Mr. Chairman, may I ask to what courts this provision will apply?

The Chairman — The City Courts of New York.

The Chairman put the question on the adoption of Mr. McClure's amendment, and it was determined in the affirmative.

Mr. Roche — Mr. Chairman, I offer an amendment to this section.

The Secretary read Mr. Roche's amendment as follows:

On line 24, page 13, after the word "record" insert "the judges or magistrates of said courts, including the successors of those now in office therein, shall be elected by the electors of the localities or districts in which such courts are or may be established."

Mr. Roche — Mr. Chairman, I respectfully invite the attention of the committee, and particularly the Judiciary Committee, to this article. Under this section, which is substantially the section now in the Constitution, the Legislature has from time to time created very important courts, with very large jurisdiction, for the populous cities of the State. In some cases the judges or magistrates are elected, and in others they are appointed. Here in the city of Albany you have the office of recorder, which is a very important office, with large jurisdiction, both civil and criminal. The recorder is elected. In Cohoes you have a recorder who is elected. In Troy we have Justices' Courts, and the justices are elected by the people,

and police magistrates, with large jurisdiction, who are appointed by the mayor. Now, we have asserted our belief in the capacity of the people to elect their judicial officers from the highest to the lowest. Most of these courts are located, as I have said, in cities. You permit the people residing in those cities, which constitute quite often the major portion of the population and wealth of the county, to elect the county judge and the surrogate. Now, I insist that what it is safe to allow the people to do in reference to these important officers, it is equally safe and proper that they should be allowed to do with reference to these local courts. There is another thing about it, Mr. Chairman, you give the people as well as the profession a better chance. If the officer is to be appointed by the mayor, the position can be used by that officer for his own benefit, whether it is personal business or political advantage. John Adams said that he who appoints the judges may have what law he pleases, and there is a great deal of truth in the saying of that wise old statesman. A man may be elected mayor in a locality who is in a particular kind of business which meets with great competition. He may put on the bench, particularly of the criminal courts, a person who is in his power, some person who is his particular friend, who may use the business and the power of the court to forward the political or business interests of the head of the city government, making distinction and discriminations between his interests and his business and those of his competitors. Particularly will this be so in lines of business over which the excise boards in localities have more or less control. Now, it seems to me, Mr. Chairman, that this great power should not rest with any individual; it should be left with the people. Let each political party present to the people the names of worthy candidates taken from among the legal profession for these important positions. The people then have an opportunity to select from among them all, and the selection is not left to one individual in the locality. I hope, therefore, Mr. Chairman, that the proposition will receive the favorable consideration of the committee.

Mr. Holcomb — Mr. Chairman, I offer an amendment to the amendment offered by the gentleman from Rensselaer, to the effect that the terms of the persons now in office shall not be affected thereby. Add that at the end.

Mr. Root — Mr. Chairman, this amendment ought not to be adopted by any body, constitutional or otherwise, without a careful examination into the convenience and the wishes and the circumstances in every city of the State. The idea that we should in a moment here undertake to introduce into the legislative power of

accommodating special localities, by creating local and inferior courts, a hide-bound rule, seems to me to be altogether beyond toleration. We establish a fixed system as to the courts of general jurisdiction, and we leave to the Legislature the power to regulate the inferior courts. How can we say what ought to be done in meeting the special exigencies in each case? How does the gentleman from Rensselaer know, and what does he know about the wants of these local and inferior courts in the city of New York and in the city of Brooklyn? It is a matter that we ought not to pass upon here, and if we could pass upon it intelligently, it ought not to be taken from the Legislature. Let us leave something to the Legislature of the State to do.

Mr. Holcomb — Mr. Chairman, I am entirely at one with the chairman of the Judiciary Committee. I offered my amendment with this idea, that if the amendment of the gentleman from Rensselaer (Mr. Roche) were to be adopted, certainly there should be a saving clause in it. The litigants should not be interfered with. I am opposed to the amendment entirely.

The Chairman put the question on the adoption of Mr. Holcomb's amendment, and it was determined in the negative.

The Chairman put the question on the adoption of Mr. Roche's amendment, and it was determined in the negative.

The Chairman — Are there any further amendments to section 18? The Chair hears none, and the Secretary will read section 19.

The Secretary read section 19 as follows:

"Sec. 19. Clerks of the several counties shall be clerks of the Supreme Court, with such powers and duties as shall be prescribed by law. The justices of the Appellate Division in each department shall have power to appoint and to remove a clerk who shall keep his office at a place to be designated by said justices. The clerk of the Court of Appeals shall keep his office at the seat of government. The clerk of the Court of Appeals and the clerks of the Appellate Division shall receive compensation established by law and paid out of the public treasury."

The Chairman — Are there any amendments to section 19?

Mr. Lester — Mr. Chairman, I move to amend section 19 by inserting after the word "place," in line 10, the words "within such department," so as to compel the location of the clerk's office in a department to be within the limits of that department.

The Chairman put the question on the adoption of Mr. Lester's amendment, and it was determined in the negative.

The Chairman — Are there any further amendments to section 19? The Chair hears none, and the Secretary will read section 20.

The Secretary read section 20 as follows:

"Sec. 20. No judicial officer, except justices of the peace, shall receive to his own use any fees or perquisites of office; nor shall any judge of the Court of Appeals, or justice of the Supreme Court, or any county judge or surrogate hereafter elected in a county having a population exceeding 100,000, practice as an attorney or counselor in any court of record in this State, or act as referee.

"The Legislature may impose a similar prohibition upon county judges and surrogates in other counties.

"In counties where the county judge and surrogate shall be prohibited from practicing law, the Legislature may extend the term of office to not exceeding ten years.

"No one shall be eligible to the office of judge of the Court of Appeals, justice of the Supreme Court, county judge or surrogate, who is not an attorney and counselor of this State."

Mr. C. A. Fuller — Mr. Chairman, I offer the following amendment:

The Secretary read the amendment as follows:

On page 14, in line 19, after the word "elected," strike out all down to and including the word "thousand," in line 20. Also, on page 14, strike out lines 22, 23, 24, 25 and 26.

Mr. Fuller — Mr. Chairman, the object of this amendment to the section is to prohibit county judges and surrogates in any county from practicing law, from doing business in the Supreme Court. It is true that the section as it now stands provides that the Legislature may impose a similar prohibition upon county judges and surrogates in other counties, the other counties being those not having a population of 100,000. Now, sir, I think it will be a wise prohibition to forbid these judicial officers from coming into court and competing with other attorneys in the trial of causes in the Supreme Court. Any one can see that it is very likely to occur that the person who holds the office of county judge one week, sitting upon the bench and trying civil and criminal cases, and the next week stepping in to the bar of the Supreme Court and there trying causes for his personal clients against other members of the bar, puts him at an advantage and the other lawyers at a disadvantage. Then again, embarrassments arise in this way, without his fault or connivance. Very likely he has clients for whom he is doing business, who will come before the Supreme Court, who happen to be parties in causes that are being tried before him while sitting as presiding judge of

the County Court; and, in my opinion, it is too much of a strain upon human nature to require a man holding the scales of justice to hold them evenly when there is this great impediment dragging upon his skirts in favor of one party to the disadvantage of the other. Therefore, I hope that this Convention may put into the Constitution a provision looking to the correction of this state of things.

The Chairman put the question on the adoption of Mr. Fuller's amendment, and it was determined in the negative.

Mr. Dickey — Mr. Chairman, I offer the following amendment: On page 15, strike out lines 1, 2 and 3.

Mr. Chairman, I will state my reasons for offering this amendment.

The clause now reads;

"No one shall be eligible to the office of judge of the Court of Appeals, justice of the Supreme Court, county judge or surrogate, who is not an attorney and counselor of this State." Most of the delegates to this Convention undoubtedly think that those offices ought to be limited to attorneys and counselors, and in practice the offices would be filled by them. But, putting this provision into the judiciary article, it seems to me we are legislating for a class, the lawyers of the community, and saying to the people that they cannot elect anybody to any one of these places unless he belongs to that class of attorneys and counselors. I think it may be safely submitted to the people to select proper candidates for the places; not necessarily an attorney or counselor, but if they see fit in their wisdom to elect somebody else to any one of these places it ought to be their right and privilege to do so. For these reasons I have offered this amendment.

Mr. M. E. Lewis — Mr. Chairman, I move to strike out, or at the proper time I shall move to strike out, the words "one hundred thousand," and insert in lieu thereof the words "fifty thousand."

Mr. Spencer — Mr. Chairman, the amendment offered by Mr. Dickey, I think, ought to be adopted. I do not see that the provision is of any particular value, as I assume that the people will elect lawyers to these offices, if they can find a lawyer within the county. Now, so long as the county of Hamilton is permitted to remain a county within this State, the difficulty may arise that the people in that county may not be able to find any lawyer to fill the office of county judge and surrogate. As I understand it, the incumbents of the office of surrogate for a great many years have not been lawyers; and the time has been when the county judge of

that county was not a lawyer, for the reason that there was no lawyer residing in the county; and I think the chronic condition in that county is that when they do have a lawyer as county judge he resides or spends his time in the adjoining county, hiring a house a few rods over the line so as to be able to say that he is a resident of the county. I, therefore, am in favor of the amendment proposed by Mr. Dickey, but for this reason only.

Mr. Dickey — Mr. Chairman, I call for a rising vote upon my amendment.

Mr. Root — Mr. Chairman, I desire to say a word upon this subject. There have been several times nominated for judges, justices of the highest courts in this State, recently, men who were not lawyers. There have been recently, in western States, men nominated and elected to high judicial office who have gone to a law school after they were elected in order to try and qualify themselves for such a position. Inasmuch as the question whether there shall be lay judges on the bench or only professional judges is a question of principle properly belonging in the Constitution, and as it is a practical question, arising in these days by nominations to office, it seems to me highly appropriate that we should declare which is the principle to be adopted and followed in this State, and I believe the provision ought to stay there.

The Chairman put the question on the adoption of Mr. Dickey's amendment, and it was determined in the negative by a rising vote.

Mr. M. E. Lewis — Mr. Chairman, I now renew my motion to strike out the words "one hundred thousand," and insert the words "sixty thousand." The number of counties affected by the present arrangement of 100,000 is only ten. I believe there are other counties which may safely be forbidden from permitting their county judges and surrogates to practice law. If the number be fixed at 60,000, the counties to be affected will be twenty-three in number. In all those counties, I believe, the population is wealthy enough to have them paid such salaries as will attract men to the offices.

Mr. Ackerly — Mr. Chairman, I hope this motion will not prevail. Take, as an illustration, our county, which has a population of over 60,000. We only pay our county judge $1,500. Last winter the board of supervisors were willing that his salary should be increased to $2,000. The Legislature passed an act increasing it to $2,000, and the Governor vetoed it. Now, in justice to himself, he would have to resign his office, if that is passed, because, as you have adopted or proposed to adopt the article, no one can increase or diminish his salary, and I say that you cannot get an efficient

man to fill his place in that county for $1,500, if he is cut off from practice in the Supreme Court, and I suppose that other counties will be on the same footing. So I hope it will be voted down.

Mr. Nichols — Mr. Chairman, if I thought there was any possibility of the passage of this amendment, I should like to see the matter returned to the Judiciary Committee for further consideration. It seems to me, however, that the proposition is so very plain, in view of the peculiar construction of the act, as it now is, that we ought not to spend any further time in discussing it. As has been said by the gentleman who has just taken his seat, it will be utterly impossible for the surrogates who are now serving throughout the State of New York in counties of less than 100,000, to continue in their offices. We have invited them into the judiciary assuring them that they may practice law. We have said to them, your salaries cannot be increased. This proposition means that they must either vacate their offices or surrender their practice. That is unfair to the incumbent, as a primary proposition, and it is unfair to the community, as a secondary proposition. Our surrogates throughout the State are competent men. You cannot increase their salaries, and, if you drive them out of office, you will get inferior men for those positions. It is the worst sort of economy. It seems to me the proposition ought to be defeated without hesitation.

Mr. E. R. Brown — Mr. Chairman, there has been such a general disposition shown here to tear this article to pieces that I am fearful that this proposition may be adopted, and that is my only excuse for rising. I will take occasion, however, to say one thing in addition touching this point. It would be a very improper amendment, so far as my county is concerned, but, on the other hand, if the committee had seen fit or should see fit now to propose an amendment which should compel the fixing of salaries of county judges by general acts, and permitting the Legislature to divide the counties into classes for that purpose, so that there would be some uniformity in the matter, I think it would result in much better compensation to those officers and a better class of officers, and, as a consequence, the State would be armed with a better judiciary. I sincerely trust, however, that no such proposition, as is now before the House, will prevail. It ought not to prevail, although I believe the subject is one that should receive further attention.

Mr. Marshall — In explanation of the section, as it has been adopted by the Judiciary Committee, and to answer the remarks made by the gentleman from Monroe (Mr. M. E. Lewis), I would

call attention to the fact that while there is an absolute prohibition, in respect to county judges or surrogates hereafter elected in counties having a population exceeding 100,000 from practicing, there is also a provision in lines 22 and 23 in section 20 that the Legislature may impose a similar prohibition upon county judges and surrogates in other counties, the reason of this provision being that the Legislature could then make provision by law which would fix the salaries of the county judges and surrogates in such counties at such amounts as will make it proper for the passage of a law prohibiting those officers from practicing after the changed salaries go into effect. So that it will be possible to have this salutary principle applied to all counties in the State, but until proper provision is made to compensate the judges, and until provision is made to take care of such cases as have been suggested by the gentleman from Suffolk (Mr. Ackerly), it is only proper to put into the Constitution the permissive provision contained in lines 22 and 23, as reported.

The Chairman put the question on the adoption of Mr. Lewis's amendment, and it was determined in the negative.

Mr. Hirschberg — Mr. Chairman, I move to amend the section by inserting between the lines 19 and 20 the words "and twenty," making it read "one hundred and twenty thousand," instead of "one hundred thousand." My object in offering that amendment is this: The limitation at 100,000 affects ten counties, of which the smallest county has a population of 123,756, according to the census of 1892; that is the county of Oneida. So that fixing the limit at a population of 120,000 will not take this reform away from any county to which it is given by the article, as reported by the committee. On the other hand, of the counties of the State under 100,000 to-day, there is no county which can possibly be affected by it during the life of this Constitution, excepting the county of Orange. The county of Orange, according to the census of 1892, has a population of 97,760. It is exceedingly likely that its present population is about 100,000. So that if this amendment is adopted, as it comes from the committee, the probabilities are that the county judge to be elected this fall will find at the commencement of his term, after he has been elected for six years, a salary fixed by the county at the sum of $1,500, which can never be increased during his term; that his practice will be taken away from him during the term for which he was elected. It seems to me that that is an injustice, and that it is hardly necessary that there should be a provision in the organic law for the purpose of affecting one only of the counties of the State. Now, as to the other counties under

the county of Orange in population, there are but three counties, which, according to the census of 1892, had a population even approaching the figure of 90,000. There is not one between 90,000 and a 100,000, not one in the entire State. The three counties having a population of over 80,000, and there are only three, are the counties of St. Lawrence, Steuben and Ulster. St. Lawrence, at 86,254; Steuben, 82,468, and Ulster, 87,652, lacking, respectively, 13,746, 17,532 and 12,348 from coming under the reform designated in this article. I have looked at the growth of those counties and I find that taking the census, as it appears in the Legislative Manual for the current year, in 1860 St. Lawrence had 83,689 population; Steuben, 66,690, and Ulster, 76,381. Giving these counties the same increase of population in the succeeding years that they have managed to attain in the past thirty-two years, it would take St. Lawrence county 160 years to have a population of 100,000, and it would take Steuben and Ulster each over thirty-five years to attain a population of 100,000. So that not only no county now existing in the State having a population of over 100,000 will be affected by the change to 120,000, but no county under 100,000 will be deprived of the benefit of this reform by the change during the next thirty-five years. Therefore, I ask the Convention to adopt those figures instead of those recommended by the committee, because it affects no county in the State, except that from which I come, and the objection to affecting that county by them is that it is right on the verge of 100,000, and will not be able to regulate the affairs of its county officers without the knowledge of the United State census that is to be taken, and the effect may be during the term of the present incumbent.

Mr. Root — Mr. Chairman, would not the object which the gentleman from Orange (Mr. Hirschberg) wishes to attain, be equally well attained by putting in the words "according to the then last State enumeration," after the word "thousand," in line 20, on page 14? That is, as I understand it, the difficulty that he finds that his county of Orange is liable soon to run into the 100,000 class, and he mentions other counties which may before a great while. But the difficulty he finds is that they never can tell how soon they may be changed in class. I can see that there is a difficulty in not having some fixed standard of population to refer to. And, if in line 20, after the word "thousand," we include the words "according to the then last State enumeration," it would read in this way ——

First Vice-President Alvord here resumed the chair.

The President *pro tempore* — At the request of the presiding officer of this Convention, I am asked to give five minutes to a matter of business that must necessarily be done.

Mr. McClure, from the Special Committee on State Forests, presented a report, which was read by the Secretary as follows:

To the Constitutional Convention:

The Special Committee on State Forest Preservation, which was directed to consider and report what, if any, amendments to the Constitution should be adopted for the preservation of the State forests, respectfully reports:

That your committee has had presented to it many valuable arguments and statements bearing upon the matter, and, after careful consideration, has unanimously reached the conclusion that it is necessary for the health, safety and general advantage of the people of the State that the forest lands now owned and hereafter acquired by the State, and the timber on such lands, should be preserved intact as forest preserves, and not, under any circumstances, be sold.

Your committee is further of the opinion that, for the perfect protection and preservation of the State lands, others lands contiguous thereto should, as soon as possible, be purchased or otherwise acquired, but feel that any action to that end is more properly within the province of the Legislature than of this Convention.

Your committee recommends the adoption by this Convention of the following, as an amendment to the Constitution, namely:

O., I. No. 393, P. No. 452.—" The lands of the State now owned or hereafter acquired, constituting the forest preserves, shall be forever kept as wild forest land. They shall not, nor shall the timber thereon, be sold.

(Signed) DAVID McCLURE,
Chairman.

Dated *August* 23, 1894.

The report was received and referred to the Committee of the Whole.

Mr. McClure — Mr. President, I move that the report be made a special order for Saturday morning next.

The President put the motion of Mr. McClure, and it was determined in the affirmative.

Mr. Hedges, from the Committee on Militia, to which was referred the proposed constitutional amendment, introduced by Mr. Cochran (introductory No. 333), to amend article 11 of the Constitution, relating to the militia, reported in favor of the passage of the same, with some amendments.

Mr. Cochran — Mr. President, as the report is very lengthy, I move that the reading of it be dispensed with, and that it be placed on file.

The President put the question on the motion of Mr. Cochran, and it was determined in the affirmative.

The committee also returned proposed constitutional amendment No. 233, introduced by Mr. Tucker, the same being embodied in the foregoing report.

Mr. Gilbert moved that general order No. 69 be reprinted, it having been printed incorrectly.

The President put the question on the motion of Mr. Gilbert, and it was determined in the affirmative.

Mr. Gilbert made a similar motion in regard to general order No. 70, which prevailed.

The Convention here took a recess until three o'clock.

DATE DUE

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