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New York (State) Constitutional convention, 18
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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,

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CONSTITUTIONAL CONVENTION

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MAY 8, 1894, TO SEPTEMBER 29, 1894.

AFTERNOON SESSION.

Thursday Afternoon, August 23, 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 23, 1894, at three o'clock P. M.

Vice-President Alvord called the Convention to order.

Mr. Wiggins — Mr. President, I desire to be excused from attendance on Saturday next.

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

Mr. McClure — I find that since the matter of the forest preservation report was set down for Saturday morning that several gentlemen, including two or three members of the committee, will be absent on that day. I, therefore, desire to have the time changed, and Monday evening fixed for that report as a special order.

The request of Mr. McClure was concurred in.

Mr. Kinkel — Mr. Kurth has been called away suddenly, and desires me to ask the Convention to excuse him from attendance the balance of the day and to-morrow morning.

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

Mr. M. E. Lewis — I desire to be excused for Saturday.

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

Mr. Kellogg— I ask to be excused for Friday and Saturday of this week, in consequence of sickness in my family.

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

Mr. Barrow — I ask an excuse for Mr. Hawley, who is absent from the Convention by reason of illness, until he recovers.

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

Mr. Holls — I wish to offer a report from the Committee on Education. It is quite lengthy, and I move that it be not read, but that it be printed and placed upon the files of members.

It was so ordered.

Mr. Bush — I ask leave of absence for Saturday, on account of other engagements as member of a committee.

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

Mr. Root — I move that one thousand extra copies of the report of the Committee on Education be printed for use and distribution by members of the Convention.

The President *pro tempore* put the question on the motion of Mr. Root, and it was determined in the affirmative.

Mr. Veeder — I ask to be excused for the Saturday afternoon session.

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

Mr. Carter — I ask to be excused from attendance at the session of Saturday next.

The President *pro tempore* put the question of Mr. Carter to be excused, and he was so excused.

Mr. Putnam — I ask to be excused from attendance at this evening's session.

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

Mr. Chipp — I ask to be excused from attendance on Saturday afternoon.

The President *pro tempore* put the question on the request of Mr. Chipp to be excused from attendance, and the request was refused.

The President *pro tempore.*— The chairman of the committee will please resume his seat.

The Convention went into Committee of the Whole, with Mr. Acker in the chair.

The Chairman — The Convention is still in Committee of the Whole on general order No. 45 (O., I. No. 383, P. No. 422), and is considering section 20.

Mr. Spencer — Will amendments be in order at this time?

The Chairman — Mr. Hirschberg has an amendment pending which will be voted on first. The Secretary will read the amendment.

The Secretary — Mr. Hirschberg moves to amend by inserting in line 19 of page 14, after the words "one hundred," the words "and twenty," so that it will read, "in a county having a population exceeding one hundred and twenty thousand."

Mr. Abbott — Mr. Chairman, I agree with the proposition of the gentleman from Orange, but upon different grounds from those stated by him. He figures that the county of St. Lawrence will have a population exceeding one hundred thousand within sixty years. I expect that our electric city of Waddington will have a large population, exceeding one hundred thousand, in two or three months. For that reason, I support the amendment.

Mr. Root — Before the recess I had suggested another form of expression to accomplish the same result which the gentleman from Orange (Mr. Hirschberg) wished to accomplish. He has satisfied me that his form is the better, and I withdraw the suggestion which I made. The committee, in reporting this provision in the form in which they have, attempted to reconcile many different opinions, arguments and wishes, and they thought that they had reached the best and safest middle and conservative course. I have heard no suggestion which indicates that the figures which the gentleman from Orange mentions (that is, one hundred and twenty thousand) will not accomplish the desired result just as well as one hundred thousand, and if no gentleman from any of the counties of the State where they have county judges has any objection to make to it, I am sure I have not, and I have not heard that any of the other members of the Judiciary Committee have, and I, therefore, see no reason why this amendment should not be adopted.

The Chairman put the question on the amendment moved by Mr. Hirschberg, and it was determined in the affirmative.

Mr. Spencer — Mr. Chairman, I propose to amend by adding to line 3, on the top of page 15, as follows: "That this provision shall not apply to the county judge and surrogate of the county

of Hamilton." With your permission, I will make a statement why I propose this amendment.

Mr. Veeder — Is a motion to strike out now in order?

The Chairman — After this amendment is acted on it will be.

Mr. Veeder — I move to strike out lines 1, 2 and 3 of page 15.

The Chairman — I think that has been voted upon once, and voted down.

Mr. Veeder — Then I move to reconsider it.

The Chairman — Wait until this amendment of Mr. Spencer's is disposed of. The Secretary will read Mr. Spencer's amendment.

The Secretary — After the word, "court," in line 2, of page 15, insert the words "or except in the county of Hamilton, to the office of," so that it will read:

"No one shall be eligible to the office of judge of the Court of Appeals, justice of the Supreme Court, or, except in the county of Hamilton, to the office of county judge or surrogate, who is not an attorney and counselor of this State."

Mr. Spencer — I will say, Mr. Chairman, that, as I understand it, there is no admitted lawyer resident of the county of Hamilton. It is possible that some person there has been admitted, or was admitted a great many years ago, but is not in a position, or of such character, that the people of that county would elect him to any office of this character. I would state for the information of the House that there are but two counties in the State with a greater area of territory than the county of Hamilton. It contains 1,740 square miles, separated by large tracts of wild forest land owned by the State; and scattered over that wide area of land there are only 5,216 people. The total valuation of the personal property of the county is $6,950. All the litigation as to all matters that would require the intervention of a court, as to real estate in that county is, by present provisions of the law, disposed of in the county of Fulton. So that this Convention can readily see that the law business of that county is very small indeed, and that there is no call for any lawyer to live in that county. I have heard that no man who is competent to pass an examination and be admitted to practice as a lawyer, under the rules as they now exist, could be hired or induced by any salary which is paid in that county to reside within that county or to become a citizen of it. I have examined the records of the criminal courts of that county, and I find that last year but one person was convicted, and that upon his own confession. The present county judge has never been a lawyer. He

was county clerk for many years, and he fills the office of judge acceptably. I think that this amendment ought to be accepted by the committee.

Mr. Dickey — I desire to speak upon this proposed amendment. I am constrained, Mr. Chairman, to oppose this amendment. If a layman is good enough judge or surrogate for Hamilton county, he is good enough for surrogate or county judge of another county. I object to this special legislation. If they have no lawyers up in Hamilton county, as soon as it goes out from this Convention that they have none, they will flock to it from other counties where they have an over abundance, and the woods will be full of them; so that they will have plenty of candidates. It looks bad to me to put into the Constitution a special provision excepting one county. I think, as I said before, when I moved to strike out these entire three lines, that the whole people ought to be eligible to those offices — everybody alike. But unless that is done as to all counties of the State, I do not want one to be privileged above the others, and, therefore, I shall vote against the amendment.

Mr. McClure — I hope that the suggestion made by the gentleman from Orange will not be followed by an inroad into the woods of Hamilton by the lawyers of the State. I am interested in preserving the forests. The trouble has been that the forests have been gradually stolen from the people by people who went in there. I don't want this invitation to go broadcast to the lawyers.

Mr. Veeder — Following up the line indicated by Mr. McClure's argument, I move to strike out the word "not," in line 3.

The Chairman — The motion is not in order. There is a motion pending before the committee.

Mr. Veeder — There is only one motion pending.

The Chairman — There can be only one motion pending at a time.

Mr. Veeder — Then I give notice that I desire an opportunity to make that motion when it is in order.

The Chairman put the question on the amendment offered by Mr. Spencer, and by a standing vote of fifty-four ayes to thirty-nine noes, it was determined in the affirmative.

Mr. Veeder — Mr. Chairman, I now move to strike out the word "not," in the third line. Is it possible, Mr. Chairman, that the lawyers of this Convention will not trust the people and the good sense of the people as to whom they will select for judges? Must we have a clinch in the Constitution — we lawyers — so as to get

into the offices? Is it possible that such a provision as this is about to be incorporated into the organic law of the State? The great majority of the members of this Convention are lawyers. Are they going to send out broadcast to the people of this State the announcement that they will not trust them in the selection of their judicial officers? A greater absurdity I never heard of, and I declare that it would be decidedly better to adopt my amendment and declare that a lawyer is not eligible to any office. There is no provision in the Constitution at present, and I think there never was a provision in the Constitution declaring that lawyers only are eligible to certain offices. I submit that it is time that the lawyers called a halt on their endeavor to grasp everything.

The Chairman put the question on the amendment offered by Mr. Veeder, and it was determined in the negative.

The Chairman — Are there any further amendments to this section?

Mr. Roche — I offer the following amendment:

The Secretary — Mr. Roche offers this amendment: On line 3, page 15, after the word "surrogate," insert the words "District Court justice or judge or magistrate of any court provided for in section 18 of this article."

Mr. Roche — The object of this amendment is to extend the courts to which this provision will be applicable. Now, as was stated this morning, some of the most important courts of the State are those which have been constituted under section 18 of this article, or whatever may be the corresponding section of the present Constitution. I mentioned this morning such courts as those of the recorder in Albany, and the recorder in Cohoes, and there are District Courts in New York city, there are justices of the Justices' Court in Troy, police magistrates of Troy, and there are other important courts that have very large jurisdiction, both in criminal and civil matters in the populous localities of this State. There is no good reason that I am aware of why, if we make this provision applicable to county judges and surrogates, it should not also be applied to the judges and magistrates of these important courts. I believe that any man who has power to send a person to the penitentiary for a year, or to fine him two hundred and fifty dollars, should be a person somewhat learned in the law. He should know something about personal rights and personal liberties. He should know something about the science of government. Now, sir, I do not think we ought to leave this in such a position that a man can be graduated from a saloon or blacksmith

shop or clerk's desk to the bench, there to pass upon the civil rights or the personal liberty of the citizen. Not that a man who may have kept a saloon, or a man who may have earned his living at a forge, or a man who may have got a salary at a clerk's desk may not be an intelligent citizen, and in every way a respectable citizen, but because of the fact that from his occupation, the work of his life, and, perhaps, his education, he is not fitted to pass upon these questions. Here is an opportunity to do something now for our profession, while at the same time we are doing it for the public. The people at large are interested in having for judicial officers men who know something about the law which they are put upon the bench to administer. I fully agree with what was said by the learned chairman of the Judiciary Committee this morning. I have seen in this judicial district, within a dozen years, a man in one of the most important countes of the district, elected to the office of surrogate, who was not an attorney and counselor of the court — a man called upon to pass upon most important questions relative to wills and their probate, trusts, dowers, and all the various important questions that come up in the Surrogate's Courts of this State, and particularly in the large and growing counties of the State. I believe thoroughly in the spirit of this amendment. I do not believe that it is at all undemocratic. There is no question here of not trusting the people. The trouble with some of these courts is that we have not trusted the people; that we have left it to the officers, to the mayors of cities, to name them, when they should be elected by the electors of the several localities. But however it may be, whether they be elected or appointed, let this Convention do something in the popular interest in the way of elevating the bench, and seeing that men are secured for these positios who know something about the science of government and about the law which they are to administer. This provision cannot, of course, apply to justices of the peace, because they are governed by another section of the Constitution.

Mr. Holcomb — Mr. Chairman, the civil justices of the city of New York are compelled by statute to be lawyers, and they are all elected by the people now. I make the point of order that this very matter was disposed of when section 18 was under consideration. Then the Convention resolved that the amendment applying to those local officers should not be passed. Mr. Schumaker, of Kings, informs me that the civil justices in Kings county are also elected by the people. It is impossible, as was stated by the chairman of the Judiciary Committee this morning, to have any amendment placed here that will govern and control all the different

localities of the State. They are too diverse in their interests. I sincerely hope that this amendment will be voted down.

Mr. T. A. Sullivan — What is true of the Civil and Police Courts of the city of Brooklyn is also true of the Civil Courts of the city of Buffalo. They are both local courts, and one of the qualifications of the justices to preside there is that they shall be attorneys of several years' standing — five years, I believe. I ask for the reading of this amendment so that we may all better understand it.

The Secretary — The amendment offered is, in line 3, page 15, after the word "surrogate," to insert the words "District Court justice or judge, or magistrate of any court provided for in section 18 of this article."

Mr. Dean — I desire to offer a substitute for the proposed amendment.

The Secretary — Mr. Dean offers as a substitute for the amendment: "That no man shall be eligible to any office in this State unless he shall be an attorney and counselor-at-law."

The Chairman put the question on the amendment offered by Mr. Roche, and it was determined in the negative.

The Chairman — The amendment offered by Mr. Roche having been lost, there is no occasion for the substitute offered by Mr. Dean. Are there any further amendments to section 20?

Mr. Veeder — For the purpose of having it explained, I move to strike out lines 24, 25 and 26 of page 14. That paragraph is as follows:

"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."

We have just adopted a provision that that prohibition extend to county judges and surrogates in counties having a population exceeding 120,000. How many counties are there in the State to which that will apply? Is this not a concealed method by which county judges and surrogates may have their terms of office extended to a period of ten years? In other words, you put in a prohibition against their practicing law; and here you make it a reason why they can go to the Legislature and have their term of office extended for a period of ten years. Why not put it in the Constitution and submit it to the people? Why disguise this? Why hide this? Why attempt to conceal the fact that you intend to allow the several county judges and surrogates to apply to the Legislature for an extension of their terms of office? There has

been a great deal said here against the right of the people to apply to the Legislature to interfere with the salaries of judges, to determine whether they shall be diminished or increased; yet you leave open the privilege to county judges and surrogates to apply to the Legislature for increased terms of office. You go before the people as a candidate for office and are elected for a term of six years, and then you sneak into the Legislature and get an extension of four years more.

Mr. Marshall — The purpose or the reason for the insertion of the words which have been criticised by the gentleman from Kings, was to provide for those cases where a county judge or surrogate was prohibited from practicing as an attorney and counselor-at-law. The idea of the committee was that an officer who is prohibited from practicing his profession would not be properly taken care of if he should be elected for a short term of only six years, and deprived of the right of practicing his profession during that period, and find himself at the expiration of six years for which he might be elected, out of office and out of practice. A ten years' term of office was, therefore, thought to be a fair equivalent for the right taken away from the officer of practicing his profession.

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

The Chairman — The gentleman from Onondaga has the floor.

Mr. Veeder — Then I ask him if he will allow me to ask him a question?

The Chairman — The gentleman from Onondaga has the floor.

Mr. Marshall — It was, therefore, thought, for this reason, that it would be a proper equivalent to the attorney, who had been elected to the office of county judge or surrogate, if the right to practice as an attorney was taken away from him, to extend his term of office for ten years. The Constitution, however, does not extend his term. So that in every case where the Legislature should provide, as it is authorized to provide by this section for the prohibition, it might, at the same time, take care of the officer against whom the prohibition is aimed.

Mr. Veeder — I wish to submit this inquiry. Does not the gentleman, or the lawyer — because, as you have got it now, only lawyers can get the office — does not the lawyer, when he is making application to his constituents for nomination, know that the term of office is six years? And does he not know the population of his county? He ought to know that much if he is a lawyer. And, then, has he not all the facts before him when he accepts the nomination? Does he not know that he cannot practice law if he is

elected to office? Where, then, is he interfered with or disturbed, or any right of his infringed upon? He goes voluntarily to the convention and seeks the nomination for a term of six years, and then goes to the Legislature and says, "I want four years more, because I cannot practice law."

Mr. Marshall — That was not the intention.

The Chairman — Mr. Veeder has the floor.

Mr. Veeder — I am willing that Mr. Marshall should have the floor.

The Chairman — I am not, while you are speaking.

Mr. Veeder — It is unfortunate that the Chair will run the whole thing. I want to say that I cannot understand where a lawyer who gets this office is at all interfered with. He knows in the beginning that he can have but six years in the office, and he knows that he cannot practice law if he takes the office. I am sure that this is not only a ridiculous proposition, but decidedly an unfair one.

Mr. Marshall — It was not the intention of the committee, as I understand it, to enable the Legislature to extend the term of office of one who had been elected for the term of six years, but the purpose was to enable the Legislature, in counties where it has prohibited the county judge or surrogate from practicing law, to extend the term of office of such county judge or surrogate for ten years, but it was not intended to have any relation to existing terms of office. That will be made more apparent when we read line 18, of section 20, which refers to any county judge or surrogate hereafter elected. The whole scope of the provision is prospective, and not retrospective; and the intention was not to enable the Legislature to extend the term of office of one who had been elected for a term of six years, but to make a provision which would regulate the term of office of the county judge in such counties as the Legislature may in the future enforce the prohibition against the county judge or surrogate practicing his profession.

Mr. H. A. Clark — It seems to me, Mr. Chairman, that this paragraph, which is asked to be stricken out, is an invitation for the extension of the term of office. It calls the attention of every county judge and surrogate to the fact that he can have his term of office extended from six to ten years, provided he will give up his practice as a lawyer. It calls the attention of every attorney within his county to the fact that if he can combine with the county judge or surrogate to have his office extended to a term of ten years, it may be beneficial to him. I believe in a uniform Constitution, and one that will apply to every county in the State so far as possible.

I do not think that the office of county judge and surrogate should be extended beyond the term of six years. I am in favor of the amendment.

Mr. Crosby — Mr. Chairman, I understood from gentlemen who appeared before the Judiciary Committee that it was not the purpose or intention of that committee to in anywise interfere with the local control of the citizens of counties having a county judge discharging the duties of surrogate, but, on the contrary, to leave that entirely for those counties to regulate according to their own wishes.

As the matter is now regulated by the statute, the separation of the office of county judge and surrogate is left with the board of supervisors of the county. This amendment seems to abrogate the statute in spirit, but there is a provision inserted providing that the Legislature may authorize the election of a separate officer for surrogate — a power which is given now to the board of supervisors. There is something peculiar about the language of this proposed amendment. Having reference to the portion of this section which restricts the practice, you will find that the language in line 18 is "county judge or surrogate." By referring to line 24, we find that, for some reason, it reads, "in counties where the county judge and surrogate shall be prohibited from practicing law." There the word "and" is used, uniting the two together, and making this provision refer to only eight counties of the State of New York having a population of over 40,000 inhabitants. There are only eight counties with a population of over 40,000 inhabitants without a separate surrogate. So this refers to the smaller counties of the State; and all the counties, except eight in number, having a population of over 40,000, are not included in, or affected by the proposition.

Mr. Marshall — May I interrupt the gentleman?

Mr. Crosby — I yield the floor to Mr. Marshall.

Mr. Marshall — After conference, some members of the Judiciary Committee, who have had an opportunity to consult upon the question, have made up their minds that they would come down without any further hot shot from the gentleman from Delaware (Mr. Crosby), and they, therefore, consent to the adoption of the amendment offered by Mr. Veeder, striking out lines 24, 25 and 26 on page 14. (Applause.)

Mr. Veeder — I do not know as it will do any harm now, but lines 22 and 23 are very clever. It says that "the Legislature may impose a similar prohibition upon county judges and surrogates in other counties." That is, in any county. I do not know that that

should be left to the Legislature. We say that it shall apply to counties where the population exceeds 120,000; then why should we turn the whole subject over to the Legislature?

Mr. Root — I rise to a point of order, that the matter before this committee now is the amendment offered by the gentleman from Kings, to strike out lines 24, 25 and 26.

Mr. Veeder — I thought that was agreed to.

Mr. Root — It has not been voted upon.

The Chairman — The point of order is well taken.

Mr. Veeder — I am going to enlarge it.

Mr. Marshall — We do not consent to any enlargement.

The Chairman put the question on the amendment offered by Mr. Veeder, and it was determined in the affirmative.

Mr. Veeder — I think we ought to do the same with lines 22 and 23, and I make that motion. I would like to hear whether the chairman of the Judiciary Committee thinks they should be retained.

Mr. Root — I do not know of any subject upon which there have been more conflicting opinions and wishes expressed to the Judiciary Committee than upon this subject prohibiting surrogates and county judges from practicing law. Gentlemen came before the committee and represented that great evils resulted from it. Other gentlemen represented that their counties were poor, and that they were not able to pay the county judge a sufficient salary to induce an attorney to give up the practice of law. We finally came to the conclusion that instead of adopting either extreme view, we would do what the Convention has approved — prohibit it in counties which were large and wealthy, but leave it to the Legislature to inquire into the conditions and wishes of people of other counties, and if those people want to pay an adequate salary for the purpose of having their county judge and surrogate give up the practice of the law they can do it, and if they do not want to, they can go without it. I think this provision is just and reasonable, that it will meet the wishes of the people, and that it ought to stay here.

Mr. Veeder — The danger, to my mind, of leaving that power in the Legislature is great. The county judge or surrogate in a county not affected by the constitutional provision may, by some decision or other, offend some politician — and I am told that politicians have some influence with the Legislature — and he may induce the Legislature to prohibit that county judge from practicing law as a punishment for having done right. I submit it is a dangerous privilege to confer upon the Legislature.

Mr. H. A. Clark — I do not wish to take up the time of the Convention, but merely to ask a question. If those two lines are stricken out will not the Legislature then have the right to impose the prohibition contained in them?

Mr. Root — I will answer that by saying that it would be left in doubt. I think if we did not impose the prohibition ourselves, a limited prohibition, the Legislature would have that power. But, inasmuch as we do propose a limitation in certain counties, the question would be left in doubt as to whether we did not, by implication, take that power away from the Legislature as to other counties. We want it to be clear.

The Chairman put the question on the motion of Mr. Veeder to strike out lines 22 and 23, page 14, and it was determined in the negative.

The Chairman — Are there any other amendments to section 20? The Chair hears none. The Secretary will read section 21.

The Secretary read section 21, as follows:

"Sec. 21. The Legislature shall provide for the speedy publication of all statutes, and shall regulate the reporting of the decisions of the courts; but all laws and judicial decisions shall be free for publication by any person."

The Chairman — Are there any amendments to section 21? The Chair hears none. The Secretary will read section 22.

The Secretary read section 22 as follows:

"Sec. 22. Justices of peace and other local judicial officers, provided for in sections 17 and 18, in office when this article takes effect, shall hold their respective offices until the expiration of their terms."

The Chairman — Are there any amendments to section 22? The Chair hears none. The Secretary will read section 23.

The Secretary read section 23, as follows:

"Sec. 23. Courts of Special Sessions shall have such jurisdiction of offenses of the grade of misdemeanors as may be prescribed by law."

The Chairman — Are there any amendments to section 23?

Mr. Maybee — I move to amend section 23.

The Secretary — Mr. Maybee offers the following as a substitute for section 23:

"Courts of Special Sessions, except in the county of New York, are abolished, and their jurisdiction conferred on justices of the

peace and such local courts or magistrates as may be designated by law, and such justices of the peace and local courts or magistrates shall have such jurisdiction of offenses of the grade of misdemeanors as may be prescribed by law, and the same rights of trial by jury as now exist in cases triable in the Court of Special Sessions shall continue in cases triable before justices of the peace and local courts and magistrates specified in this section."

Mr. Maybee — I simply desire to state that my object in offering this substitute is to make it uniform and consistent with the provision that has already been adopted abolishing Courts of Sessions and conferring their jurisdiction upon county judges. It seems to me, in order to preserve uniformity in this entire article, that if the Court of Sessions is to be abolished, the Court of Special Sessions should also be abolished.

The Chairman put the question on the motion to substitute for section 23 the amendment offered by Mr. Maybee, and announced that the motion was lost.

Mr. Cookinham — I was about to remark that the gentlemen of the Judiciary Committee who sit near me agree to the amendment, and I was about to remark, also, that the amendment probably renders the article a little more logical and symmetrical, and I think there should be no objection to it. I think it should be adopted.

The Chairman — The Chair declared the motion lost.

Mr. Maybee — Then I move to reconsider the motion.

Mr. Root — I hope that the subject will be reconsidered, and that the gentlemen who are familiar with these courts (as I am not, for we do not have them, or at all events, I have very little knowledge of them in my own city) have really fully considered the question. If they have, and think that this alteration preserves all the necessary and important jurisdiction, I see no objection to it.

Mr. Griswold — Just a word of inquiry to the chairman of the Judiciary Committee. I see that the language here is "Courts of Special Sessions shall have such jurisdiction of offenses of the grade of misdemeanors as may be prescribed by law." Now, when you say of any grade that they may have jurisdiction of it as they have of other offenses, you make it exactly of the grade of misdemeanors, and I ask whether it would not be better to say, "jurisdiction of the grade less than felonies?"

Mr. Marshall — This is exactly the language of the present Constitution.

The Chairman put the question on the motion of Mr. Maybee

to reconsider the vote last taken, and by a rising vote of sixty ayes to forty-seven noes, it was determined in the affirmative.

The Chairman — The motion to reconsider is carried. The question now is upon the motion made by the gentleman from Sullivan county, Mr. Maybee.

Mr. Griswold — I ask to have that substitute read again.

The Secretary read as follows:

"Courts of Special Sessions, except in the county of New York, are abolished, and their jurisdiction conferred on justices of the peace and such local courts or magistrates as may be designated by law, and such justices of the peace and local courts or magistrates shall have such jurisdiction of offenses of the grade of misdemeanors as may be prescribed by law, and the same rights of trial by jury as now exist in cases triable in the Courts of Special Sessions shall continue in cases triable before justices of the peace and local courts and magistrates specified in this section."

Mr. Maybee — At the suggestion of members of the Judiciary Committee, I desire to add after the word "abolished," the words "from and after the last day of December, 1895."

Mr. A. B. Steele — Mr. Chairman, as I understand this amendment, it clinches the suggestion that I made this forenoon, that the jurisdiction conferred upon justices of the peace should remain inviolate for all time to come. I understand that there is quite an element here in this Convention who believe that should not prevail; they believe, upon the other hand, that there should be some remedy in our inferior or Justices' Courts; they believe that we should in some manner have some relief, at least in the Legislature, whereby a man who sits as a trial court, who sits at the trial, perhaps, of some man who is charged with some offense, will know something about the law or at least something about the admission of evidence. Now, Mr. Chairman and gentlemen, I am not interested in this matter personally, because the time is past in which I have to try cases in these inferior courts — I hope it has passed — but I have been through the matter from the beginning to the end. For the first ten years of my practice I tried more cases by far in Justices' Courts and in inferior courts than in any other place. In fact, my practice was substantially there, and for the last ten years I have occasionally been obliged to try cases in those courts. Will you pardon me just a moment, if I refer to a very few instances. First, and to start with, the practice in the country is usually for the justice who tries the case to have his

office in the same office with a lawyer, and, therefore, he is that lawyer's justice. Almost invariably in the actions brought before that justice, or in the criminal proceedings taken before that justice, the party is represented on one side or the other by that lawyer — and usually in starting the case. I ask you, gentlemen, what chance has a stranger, what opportunity has the client of a stranger for defense, if he is trying the case against the partner, you may say, of the justice; because the justice, having his office in the same office with the lawyer is, in one sense, a partner — at least a partner in the interest of getting as much business as he can. I know an instance that occurred very recently where that matter was tested. A young man was charged with larceny — with having taken ten dollars from a till or drawer. The complainant went to see a lawyer, and the lawyer advised him to have the man arrested and brought before a certain justice — the justice occupying the same office with him. The arrest was made. The only evidence in the case of the young man's guilt was that the proprietor of the store when counting his money thought that he was ten dollars short; he believed that he was; he was willing to take his oath that he believed so. He then called up one of the employes in his store, and inquired about the taking of money out of the till, and the employe said that he thought he heard the drawer-till move. The young man went on the stand in his own defense, and denied absolutely the charge. But the justice, being in the same office with the lawyer of the complainant, found the young man guilty, and thereby cast a stain upon his character that will go with him to the grave. I know of another instance, a civil case, brought in one of these inferior courts, where the justice of the peace wrote out his docket before the party appeared, supposing that the defendant would not appear, and when the time came and the appearance was made, it happened that only the plaintiff appeared, and he read to him his docket, and, with an oath, said: "There, swear to that, will you?" That is an actual occurrence. Many more of these occurrences could be cited. I suppose it might be said, "Why not call a jury?" Yes; that is true. But when I was in practice I could go into a town and I might call a jury, but the lawyer for the complainant would get all his friends on the jury — he would select the jury and select the justice as well, and that is the way the cases were tried. If a stranger goes into a place and the friend of the justice is selected as counsel for the plaintiff, then the defendant or a person who lives out of the place, stands no chance whatever, except on appeal, and that is very expensive. Now, Mr. Chairman, it seems to me this Convention ought not to go so far as to deprive

the Legislature of the opportunity to investigate these inferior courts, and if they conclude that there is abuse there which ought to be remedied, then they ought to have that right; and you ought not to adopt this amendment which forever reposes in justices of the peace the criminal jurisdiction that they now exercise.

Mr. Becker — Mr. Chairman, it seems to me that this is a matter in which we should make haste slowly. Since 1847, the Constitution of this State has contained a clause which simply provides in the language embodied in the amendment proposed by the Judiciary Committee, that Courts of Special Sessions shall have such jurisdiction of offenses of the grade of misdemeanors as may be prescribed by law. Let us pause for one moment to consider the legal effect of that provision. Is it not clear that the Legislature itself has all the power in that matter that my friend Steele desires it should have? Would it not be possible for the Legislature, under existing provisions of the present Constitution to make such inquiry and investigation as may be deemed advisable, and to pass such laws limiting the jurisdiction of those courts as it sees fit? It says that "Courts of Special Sessions shall have such jurisdiction of offenses of the grade of misdemeanors as may be prescribed by law." Does not that open the door to prescribing, now or hereafter, any jurisdiction, little or great, as the Legislature may see fit, subject, however, to other provisions of the Constitution? Now, if it is desired to change the law in that respect, if it is desired to create any other court which shall have jurisdiction of civil and criminal cases, that right has ever since 1847 been conferred by the provisions of section 19 of article 6, which section in substance and effect, as regards this matter, is embodied in the amendment to article 6, proposed by the Judiciary Committee. That section reads as follows: "Inferior local courts of civil and criminal jurisdiction may be established by the Legislature." Under this existing provision which should, under the well-known canons of construction of statute and Constitutions, be considered and construed together, the full power and authority has been vested, and is now vested, and will be vested if the article proposed by the Judiciary Committee is adopted, in the Legislature to do everything that is required in the way of reform or amendment in these particulars. On the other hand, into what unknown sea of difficulty, doubt and danger do we plunge if we undertake to make this absolute change at this time, and on this very slender and very brief consideration. In my city jurisdiction over offenses of the grade of misdemeanors is conferred upon a local magistrate known as a police justice, who is also, by that same statute described, when he holds the Police Court,

as holding it as a Court of Special Sessions. In other cities similar jurisdictional powers prevail in inferior local magistrates. If by one stroke of the pen you undertake to abolish these courts — although the language may be drawn by my friend, Mr. Maybee, in whose accuracy in drafting and in whose ability as a lawyer I have the fullest confidence — although the amendment be so drawn as to apparently confer certain powers which are prescribed by law, a serious question may arise as to the status of cases now pending and which may be pending at the time this provision takes effect, in those courts. I think this is a very dangerous matter. I trust that on sober, second thought, the Convention will not undertake to wipe out hastily, and without full examination, provisions of law which have been known for nearly fifty years, which are understood by the lawyers and the people, and which have been so many times construed by all our courts; and especially where we have, as I think, under existing provisions of the Constitution, ample remedies still existing in the Legislature. I hope that this amendment will not prevail.

Mr. H. A. Clark — Mr. Chairman, I think there is great danger of our acting too hastily in reference to this section. The statute now provides for a justice of the peace doing certain things as a magistrate, for his transacting certain other business as a justice of the peace, for his transacting certain other business as a Court of Special Sessions. Now, this Convention has done away with the Court of Oyer and Terminer, and given the Supreme Court the jurisdiction formerly held by the Court of Oyer and Terminer. It has done away with the Court of General Sessions, and has conferred that jurisdiction upon the County Court. To be logical, if it makes those changes, it should do away with the Court of Special Sessions and confer its jurisdiction upon the court of the justice of the peace. But that is not the amendment. The proposition is to confer the jurisdiction upon the individual and not upon this court. It is proposed by this amendment to do away with the Court of Special Sessions, and to give to the individual, to the magistrate holding the office of justice of the peace, the power to try people for misdemeanors. This certainly is a mistake, and ought not to be done without due consideration. It would not be logical, it would not be in keeping with the rest of the Constitution, to confer criminal jurisdiction upon the individual. If it is changed at all, it should confer it upon his court. As a court, he has the power to summon a jury to sit, but he has no such power as a magistrate; he has no such power as an individual. If there is any change to be made in this, then this amendment certainly should

be amended. I hope no amendment will be adopted. I have been in favor, so far as I could consistently, of agreeing in all respects with the Judiciary Committee, and of carrying out the ideas that they have expressed in their article; and I believe that we will make no mistake if we leave this section as it now stands.

Mr. E. A. Brown — It seems to me, Mr. Chairman, that there is a misapprehension in relation to this proposed amendment as part of the scheme presented by the Judiciary Committee. The Court of Oyer and Terminer has been abolished simply because it was an empty name. The Supreme Court sitting at bench was the Court of Oyer and Terminer and was the Circuit Court. Also, in the county, Courts of Sessions have been abolished, as I understand the chairman of that committee. Under the system as it now is, the inferior court to the Court of Sessions is the Court of Special Sessions, and that is constituted simply of a justice of the peace. A justice of the peace has civil and criminal jurisdiction, and when he sits to try civil cases he is a justice of the peace, and if a criminal is brought before him he is a Court of Special Sessions. Now, as I understand, this proposed amendment, it is simply to perfect the symmetry in relation to this matter. I understood the chairman of the Judiciary Committee to say that he was unfamiliar with these inferior courts; but those of us who have had longer experience in them I think understand that matter entirely. A justice of the peace can empanel a jury to try a civil case or a criminal case. Now, what sense or reason is there in attaching a different name — for it is all in the name — to a justice of the peace sitting to try a civil case, and calling him a justice for that one case, and then when he tries a criminal case, calling him a Court of Special Sessions. It is just like striking off the head of the ticket and saying that you will abolish the office of President and retain the office of Vice-President. We propose to strike down the Court of Sessions and still maintain in this Constitution the Court of Special Sessions. That is all there is of it. It is a plain, simple proposition. We all agree with the wisdom of the Judiciary Committee in abolishing the Court of Oyer and Terminer between the County Court and the Court of Sessions; now, why not in all good conscience and good reasoning, abolish the difference between the court of the justice of the peace and the Court of Special Sessions?

Mr. Cassidy — I think the distinction is more than a distinction in name between Justices' Court and the Court of Special Sessions. A jury in a Court of Special Sessions is drawn in an entirely different way from a jury in a Justices' Court. An appeal from an action in Special Sessions is taken in an entirely different way from an

appeal from a Justices' Court. It will only produce confusion in the Code of Civil and Criminal Procedure, with reference to the manner of drawing juries, and with reference to appeals; and merely for the sake of euphony to tumble over a dozen statutes, and to change a dozen or a score of sections in the Criminal Code, seems to me the utmost folly. I cannot see any great harm coming to the people from preserving the Court of Special Sessions, as it has been preserved in this judiciary article.

Mr. Maybee — I desire to ask the gentleman a question. He says that a jury in a criminal case before a justice of the peace is drawn in a different way than in a civil case. Does he not know that, as the law is, the jury in each case is drawn in the same way?

Mr. Cassidy — I do not, nor does the gentleman from Herkimer.

Mr. A. B. Steele — I think there is a little misunderstanding here, with reference to the provisions of this amendment. In my remarks before I did not intend to be understood as speaking against the provision reported by the Judiciary Committee, but against the proposed amendment of Mr. Maybee. The principle objection that I have to that is the fact that this proposed amendment, if incorporated into the Constitution, perpetuates the jurisdiction that justices of the peace now have, or that the Special Sessions now have. It provides that that jurisdiction shall continue for all time to come. Therefore, if Mr. Maybee's proposed amendment is adopted, the Legislature cannot abolish the office of justice of the peace, but must continue it so long as this proposed constitutional amendment is in force.

Mr. Spencer — It seems to me that there is some misapprehension in regard to the matter that is now before the Convention. If I understand the proposition of the gentlemen who have been speaking, it is simply to bring the matter in harmony and nothing more nor less — so that the provision applicable to the Special Sessions shall correspond with the changes that have already been made by this committee, in respect to County Courts and Courts of General Sessions. When that has been said, all has been said that possibly can be said in favor of this amendment. In addition to what has been said by Mr. Cassidy, as to the danger of going too fast in this matter, I wish to say that in many cities, and, especially in the smaller cities, the adoption of this amendment would bring confusion to the Police Courts of those cities; and that, if we are to adopt this amendment, I see no other course but to send this matter back to the Judiciary Committee and have it fully

and safely consider it. You cannot hastily adopt this amendment with safety.

Mr. Root — I have been making inquiries from a number of gentlemen in the Convention and find that there are in various cities of the State Courts of Special Sessions presided over by police justices and other officers who are not justices of the peace. If you adopt this amendment, we would be wiping out courts without knowing anything about it, and would send their jurisdiction into the air, with nobody to exercise it. I think the only safe course is for us to hold by the provision in the Constitution, as we find it, and the committee has reported it. (Applause.)

The Chairman put the question on the motion to substitute the amendment proposed by Mr. Maybee, and it was determined in the negative.

The Chairman — Are there any further amendments to this section? If not, amendments to printed No. 422 generally are in order.

Mr. Towns — I have a substitute which I wish to offer for the entire article.

The Chairman — A substitute is not in order until amendments are offered.

Mr. Towns — I offer it as an amendment to the article.

Mr. Root — I ask that it be read.

Mr. Towns — I move to strike out all after the enacting clause, and insert this amendment.

The Chairman — The Chair holds that a substitute cannot be offered until amendments have been offered.

Mr. Towns — I understood the Chair to say that amendments were in order, and I offer this as an amendment.

The Chairman — The Chair does say so, but it holds that making a substitute in the form of an amendment cannot be done. Amendments are now in order.

Mr. H. A. Clark — Mr. Chairman, I have an amendment to offer.

Mr. Towns — I move to amend the first section ——

The Chairman — There is an amendment already pending. The gentleman from Tioga (Mr. Clark) has offered an amendment which the Secretary will read.

The Secretary — Mr. H. A. Clark moves to amend section 10, page 14, line 7, after the words "Supreme Court," by adding the words "and County Courts."

Mr. H. A. Clark — Mr. Chairman, this amendment relates merely to declaring the clerks of the several counties clerks both of the Supreme Courts and of the County Courts. It is a fact, I think, that in every county of the State the county clerk is the clerk of the Supreme Court and also clerk of the County Court. It seems to me that the Constitution should contain, after the words "Supreme Court," the words "and County Court." I examined the old Constitution, the one that we are now living under, and I do not find those words in it. I assume that the county clerk is the clerk of the County Court by virtue of some statute which I have not had the opportunity to examine. I have consulted one or two members of the Judiciary Committee, and those whom I have had opportunity to consult seem to agree with me that those words should be contained in this section.

The Chairman put the question on the amendment moved by Mr. Clark, and, by a rising vote, it was determined in the negative, yeas, 38; nays, 55.

Mr. McKinstry — I offer the following amendment:

The Secretary — Mr. McKinstry moves to amend section 14, in line 20, page 11, after the words "shall be established by," by adding the words "the board of supervisors," and in line 13, page 12, after the words "shall be established by," to insert instead of the word "law" the words "the board of supervisors."

Mr. McKinstry — The purport of this amendment is to have the salaries of the county judge and surrogate fixed by the board of supervisors in the respective counties, instead of by the Legislature. We have heard a great deal about home rule here. Now, let us have some of it. This Convention has been appealed to by gentlemen and delegates from the cities to permit them to have home rule, and we would like to have it. I want to say that it is as obnoxious to have our matters interfered with in the counties as it is to gentlemen from the cities. We think that the people in the country know what is necessary there; they know also what their officers are doing, and what they are earning. As this matter now is, it is not left to the Legislature, but practically it is left to the member or to the Senator from the district, and very often he does not represent the people. The board of supervisors of the district to-day fixes the salaries of several of the county officers, of the county treasurer, the county clerk and also the superintendent of the poor. If they can fix those salaries, they can fix the salaries of the county judge and surrogate. We want now to see how many of you are in favor of home rule. Now, the county judge, surro-

gate and county district attorney, all three, belong to the same learned profession.

Mr. Hirschberg — Mr. Chairman, I think the amendment offered by Mr. McKinstry is very wise. There never has been any reason why the salaries of the county officers should be fixed by the Legislature at Albany instead of by the local legislatures in each county — except a feeling on the part of individuals that the local boards are narrow and niggardly in their treatment of the subject. That is not an adequate reason. They influence the matter now quite efficiently and as powerfully as they would, if the power were vested in them directly. A bill was passed last winter affecting the salaries of an official in one of the counties and it was vetoed by Governor Flower because it was opposed by the board of supervisors. The boards of supervisors regulate these salaries now, notwithstanding the fact that the formality of an act of the Legislature is necessary. In my own county the salary of the county judge was $3,000 a year many years ago, but the board of supervisors passed a resolution directing that it should be reduced to $1,500. The members of the Legislature were instructed to have such a bill introduced and passed, and it was passed. It would be impossible to have a bill reported and passed in the Legislature to-day without the affirmative assent of the board of supervisors. The proposed amendment is entirely proper, is logical, and no good reason can be assigned why each county should not regulate the pay of its county officials, and the fear that they would not give them enough is not a sufficient objection. If any good reason can be assigned, I would like to hear what it is.

Mr. Nicoll — Do you understand that this amendment affects the city of New York?

Mr. Hirschberg — No, sir.

Mr. Nicoll — Why not?

Mr. Hirschberg — If it does, it can easily be excepted.

Mr. Nicoll — I quite agree with your proposition as to home rule.

Mr. Hirschberg — I did not suppose there was a board of supervisors in the city of New York.

Mr. Nicoll — For some purposes I believe the common council have the same powers.

Mr. Hirschberg — I supposed that the salaries in New York were fixed by the charter.

Mr. Dean — I dislike to stand up here in opposition to my distinguished friend, but I am seriously opposed to allowing the farm-

ers of Chautauqua county, or of Cattaraugus county, or of any other county, to fix and regulate the salaries of important officers. I do not believe in it. It seems to me more dignified to leave it just as the Judiciary Committee has left it — in the hands of the Legislature to establish salaries by law.

Mr. Hirschberg — I should have added to what I have already said the additional reason that the fact that the committee has provided by the organic law that a salary shall not be increased or diminished during the term of office, is an additional reason why the power should be left to the board of supervisors. An official goes into office at the same time that the Legislature commences its session. The supervisors have their sessions intermediate the election and the commencement of the official terms. A provision such as has been inserted here, without this additional provision, is tantamount to saying that a change shall never be made in the salary of any county official.

Mr. Bush — Mr. Chairman, I do not fully agree with the gentleman from Orange, that it is a good thing to permit the board of supervisors, under the article as we have adopted it, to regulate the salaries of the county judges and surrogates. I think, upon reflection, the gentlemen from the country districts will agree with me. Now, if the salary is to be regulated by the board of supervisors, and after it is once fixed cannot be increased or diminished, we will bring the question right into the county where party lines are very strongly drawn, and there will be constant agitation upon this subject every time a county judge is elected. We will assume a case. We will assume that, at the coming election, a county judge is to be elected. He may be a Democrat, while the board of supervisors is Republican. There is nothing in the world to prohibit that Republican board of supervisors from cutting the salary down one-half. The county judge must take his seat, but that salary cannot be changed, increased or diminished while he holds his term of office. And so, in every case where the board of supervisors is of contrary political faith to the county judge, that question will be coming up, and wherever there is strong political bias, strong party feeling, if the man elected county judge has made enemies in the opposite party, you will find that question of salary brought up in the board of supervisors every time. It will be a great danger and scandal to the community, and should not be permitted in connection with an office of the standing and dignity of county judge or surrogate. For that reason I think it is more conducive to the peace of the community, and more consonant with the dignity of the position of judge or surrogate, to leave that

matter to the Legislature — where the whole matter can be considered, and local feeling separated entirely from the decision of the question.

Mr. Hirschberg — Does not that same thing apply to district attorneys, county treasurers and all the rest of the county officials? Why except the county judge?

Mr. I. S. Johnson — I hope, Mr. Chairman, that this amendment will pass. I believe distinctly in the doctrine of home rule as suggested by the gentleman from Chautauqua; and I believe that the gentlemen from New York, and from other sections of the State who are constantly asking us to give them home rule, should be willing to concede to the country districts the right to fix the salaries of all of their county officers. There is no reason why the county judge should be excepted. In my own county, I well remember the time when a county judge was elected on a certain salary, and the board of supervisors met and immediately afterwards saw fit to raise his salary five hundred dollars. He was not satisfied with that, but went to the Legislature for an increase, and the Legislature added seven hundred dollars more to the salary. Hence I do not agree with the gentlemen in the statement that the Legislature will always be governed by what the county needs. In that case, the board of supervisors fixed the salary; the Legislature was informed of what it had fixed it at, and in disregard of the wishes of the board of supervisors, which had increased the salary once, the Legislature added another increase to it. I hope this amendment will pass, and that each county will be given authority to fix the salaries of all of its county officers.

Mr. Nichols — It seems to me, Mr. Chairman, that the officers known as judicial officers in the several counties in the interior of the State, outside of the cities, ought to be removed in the matter of their compensation as far as possible from the board of supervisors. My reason for that opinion is this: Not that the board of supervisors will deal unjustly with them, and not that they might not fairly be trusted with the important charge of fixing the compensation of these officers, but I believe that the judiciary should be removed as far as possible from the authority that fixes its compensation. I believe that the surrogate and the county judge ought not to be permitted, and ought not to have, the power to go before the board of supervisors at any time and ask the supervisors to raise their salaries. They are their clients; they are their friends; and the result of a proposition of that sort would necessarily be embarrassing to the supervisors on the one hand,

and would be prejudicial to the officers who sought the board of supervisors on the other. There is another objection to the proposition, and it is this: That if any county now desires to have conferred upon the board of supervisors the power to fix the salaries of these officers, it may go to the Legislature and procure the passage of an act, under the Constitution as it is to-day, authorizing the board of supervisors to exercise the authority of fixing the salaries of those officers. It seems to me that these are cogent reasons why this amendment should not prevail and that the Constitution should be left as it was when we convened here in this body. These are the reasons which suggest themselves to me. This question was carefully canvassed in the committee, while the Committee on County, Town and Village Government had the matter under consideration, and by a very considerable majority they concluded that the provision of the Constitution as it now is should prevail. I hope, therefore, that the report of the committee in this regard will be sustained.

Mr. Abbott — I agree with the remarks of the gentleman from Ulster, with the single exception that I think there is a fallacy in his assumption that this year there will be any Democratic county judge elected. Aside from that, I agree with his argument. It seems to me that the proposition involved in this amendment is erroneous, for this reason — or at least is mischevious for this reason: that under the present practice the board of supervisors, meeting as they do immediately after the election, the man who is elected county judge of any county is very likely to think that he is insufficiently paid and to immediately solicit an increase in salary, and bring everything to bear upon this question that he can to influence the board of supervisors to increase his salary. Under the amendment proposed by the committee that element of personal solicitation will be removed from the matter entirely, because action must be taken at least nine months before the election, and when nobody knows whether he is going to be elected judge or not, and when he has not the personal interest in the matter that he has immediately after the election. For that reason it seems to me that the provision of the committee is the wiser provision, and I am in favor of supporting it.

Mr. J. Johnson — Mr. Chairman, I think I should fail in my duty to the citizens of Kings county if I were to vote for a proposition that would give to the board of supervisors of that city unlimited power as to salaries, and fix that in the Constitution. And I so express myself without at all, as I understand it, interfering with the proposition of home rule to the extent that I have had the

privilege of advocating it in this Convention. I should be altogether willing to support a proposition that the Legislature shall not change the salary of the county judge or of any officer of the county without the concurring action or consent of the legislative body representing the taxpayers who are to pay the charge. I think that such an amendment as that should be framed, and I hope that it will meet the wishes of the gentleman moving this resolution, and will release the county, as it should be, from the possibility in any way of having the State authorities saddle an additional charge on the county for a service that is entirely local to that locality.

Mr. O'Brien — I have but a word to say upon this question, Mr. Chairman and gentlemen. I come from one of the interior counties of the State, and I come from a county in which the board of supervisors is a board of exceptional intelligence and ability, and has been such for many years; but I agree thoroughly with the gentleman from Steuben (Mr. Nichols), when I say that in my opinion it would be better for the county officials themselves not to be placed in the position of being applicants to the board of supervisors for additions to their salaries. It seems to me that it is entirely unnecessary; and that the more dignified position for the judiciary of the State, whether general or local, is to leave their interests in that respect in the hands of the Legislature, where they now are.

Mr. Bowers — This question in the Judiciary Committee was adjusted very largely by the delegates representing the districts which it is now claimed seek the benefit of the present amendment. The delegates from New York and Kings counties did not deem it their duty to interfere, and did not interfere, but accepted the judgment of others who were more conversant with these questions. Certainly we can have no objection as a principle to any county having home rule to the most unlimited extent. It is one of the things that we wish, and shall continue to ask at the hands of this Convention. At the same time this amendment ought to be corrected, if it is to be passed, and if it is really wanted by the delegates from the counties not having large cities within their borders, so as not to apply to the counties of New York and Kings. If those counties are excepted I presume that my associates on the Judiciary Committee will excuse me from voting on it, and it can be left to be settled, as it ought to be settled, by the delegates representing the districts to be affected by it.

Mr. Smith — I am glad that an opportunity to support this amendment is offered me. I am glad of the opportunity to

support the amendment, because it is founded upon principle. I have repeated here, time and time again, what I believe should be the lines upon which we should make a Constitution — that it should be made of principles. This amendment involves the principle of the right of contract. These county officials are to be paid by the county. They are elected by the county. I might say that they are employed by the county. The amount to be paid them for salaries is their rate of wages. It is wholly a local matter. It is entirely a matter that should be determined within county lines. When nominations are made for these local offices, they are made to be approved by the electors of the county. They are made in view of the wages to be paid by the county for the services to be rendered. It is wholly a matter for the county to decide and dispose of. The State has nothing to do with it. There is no reason why the State should interfere to regulate the rate of wages paid in a county by the county, to its employes — none whatever. It is simply a matter of principle. Found it upon principle, and you relieve it of all embarrassment. I repeat that it is wholly a matter for the people of the counties. It is not creditable for representatives here to impugn the integrity of the people of their counties. There is a principle which lies at the foundation of all government by the people, and that is, that the people are capable of governing themselves in every locality in respect to the affairs of that locality; that the people of the State are capable of governing themselves in respect to the affairs of the State; and so of the nation. This is wholly a matter of principle, and it should be left entirely to the counties; and if you depart from this principle and resort to the practice of impugning the integrity of the people by casting reflection upon their honesty, you depart from the great doctrines that should guide us in our action. I am in favor of this amendment. (Applause.)

Mr. Doty — Mr. Chairman, it seems to me that there is a very much larger question involved in this proposition. It is not a local question, in my judgment, whether the most efficient service in the office of surrogate and county judge is obtained. It seems to me that it is, contrary to the statement of the last speaker, a matter in which the State has a very large interest. In addition to that, I desire to say that I have never heard of a county that desires to have committed to its board of supervisors, and taken away from the Legislature, the matter of fixing compensation. It seems to me that it would introduce into the board of supervisors a very vicious and a very unfortunate element, and would create continual contention, and that the inevitable effect of it will

be to secure a class of men as surrogates and county judges who will not be satisfactory. As a delegate from the country I say that we do not, in my judgment, ask that this matter be deferred to the action of the boards of supervisors.

The Chairman put the question on the amendment moved by Mr. McKinstry, and it was determined in the negative.

Mr. Choate — Mr. Chairman, I move that the committee now rise and report, recommending the passage of this article as already amended.

The Chairman put the question on the motion of Mr. Choate, 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 has under consideration, proposed constitutianal amendment No. 422, entitled "To amend article six of the Constitution, relating to the judiciary," have gone through with the same, have made some amendments thereto, and instruct me, their chairman, to report the same to the Convention and recommend its passage. I therefore make such motion.

The President — You have heard the report of the chairman of the Committee of the Whole, recommending the passage of article 6 as it stands amended. The question is on agreeing to that report.

Mr. Lincoln — Are amendments to the report of the Committee of the Whole in order?

The President — Not in order.

Mr. Lincoln — Is a motion to amend the report in order?

The President — I think not.

Mr. Lincoln — Then I move that the Convention recommit to the Committee of the Whole this judiciary article, with instructions to amend section fourteen by striking out the first paragraph and inserting therein the amendment proposed by me this morning, and which the Secretary has; or, I move to recommit to the Judiciary Committee, with instructions to report, if that is the proper motion.

Mr. Root — I am sure, Mr. President, no one can be more anxious than I am to have this judiciary article finally passed upon. But I am told by several gentlemen that they have amendments which they wish to offer to the article, and that they understood that there would be an opportunity to offer amendments generally, but that they were unexpectedly cut off by the motion to report with the recommendation for the passage of the article. I certainly

do not wish that this article, in which every member of the Convention has an interest, should be submitted to final consideration and vote of the Convention without every delegate feeling that he has had a full opportunity to propose any changes that he wants made. (Applause.) And so, at the risk of whatever confusion or result may follow, I want this to go back to the Committee of the Whole, and if it is possible, that it shall be done now, in order that this amendment may be offered. I therefore move that the Convention disagree to the report of the committee, and recommit this proposed amendment to the Committee of the Whole, with instructions to sit immediately.

Mr. Cookinham — Mr. President and gentlemen, I suppose the parliamentary way of voting upon every amendment that has been offered in Committee of the Whole is for the mover to make a motion, here and now, that the bill be so amended as he may desire it. It is not necessary for the bill to go back to the Committee of the Whole. Any amendment that was offered in Committee of the Whole may be here and now offered, and a vote may be had upon that.

The President — The Chair will rule that any amendment acted upon in Committee of the Whole may be offered now. Was this amendment offered in Committee of the Whole?

Mr. Lincoln — It was; and I offer it again now.

Mr. Root — The difficulty is that there are several gentlemen who had amendments to offer which they did not offer, and they say they were unexpectedly cut off. It is in order that they may have that opportunity that I made the motion. If they can be permitted to make their motions now and here, then that is all that I care for. All that I want is that they shall have full opportunity.

Mr. E. R. Brown — I think that the suggestion made by the chairman of the Judiciary Committee is an eminently proper one; but I would like to suggest to this body that it would not be conducive to agreeable sentiments towards the judiciary article on the part of those whose amendments had not been carried, and it might not be beneficial to the article itself, to absolutely close the door at this time to the consideration of the main question which has been submitted here. It seems to me that if the matter should lie over for a day or two, so as to give opportunity for consultation among the gentlemen who are principally interested in these matters, and for consultation with the Judiciary Committee with the view of reaching a substantial agreement upon points of difference, it would be most desirable. I sincerely hope that the

matters in controversy which cannot be considered under the rules, either in Committee of the Whole or before this Convention, will not be pressed to a too hasty conclusion.

Mr. Alvord — It seems to me, Mr. President, that the way out of the difficulty is to move to disagree with the report of the Committee, and after that shall have been passed (as I understand there is hardly any objection to it upon the floor of the Convention), then the gentleman from New York can move that we go again into Committee of the Whole on the bill.

Mr. Root — Mr. President, my motion is that we disagree to the report of the Committee of the Whole, and recommit the bill to the Committee of the Whole, keeping its place as a special order.

Mr. Alvord — I have no objection to that motion, but it would be more consistent with parliamentary rule to pass the first proposition, and then the next.

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

The Convention thereupon went into the Committee of the Whole with Mr. Acker in the chair.

The Chairman — The Convention is now in Committee of the Whole on No. 422, and the Chair will hold that amendments are in order.

Mr. Peck — I offer an amendment.

The Secretary — Mr. Peck offers this amendment:

"Insert in place of section 2" ——

Mr. Peck — Perhaps I had better state for the benefit of the Convention, and for the purpose of saving time, the effect of the amendment. It is intended in the first place to make the intermediate court, which is called the Appellate Division of the Supreme Court, a court. And, in the second place, to reduce the number of judges of the intermediate court so that the additional judges already provided for in the first section of this article shall produce a sufficient number of judges for all the departments except the first. It is not a measure offered for the purpose of increasing the number of judges to be elected. I make this motion because on a study of the article for the purpose of discovering its strong and its weak points, I find this paradoxical state of things, that the strongest item of this scheme is the weakest. In other words, that the provision for an Appellate Court, with the limitation imposed upon the Appellate Division of the Supreme Court, and

with its powers as a court of last resort, is a very strong and a very necessary provision in our system of courts. But when I come to the development of that idea, when I come to the study of the method in which that court is to be formed, I think we have in this provision the weakest part of the article. I think that if this measure fails anywhere, it will fail at what we choose to call the General Term. I think that no lawyer here will deny that General Terms have failed. I think that the mere fact that a desire is so generally expressed for a reorganization of that part of the court is proof of the fact they are unsatisfactory. In this article we have nothing but the old General Term increased by two judges. In other words, we have a court composed of judges elected from a foreign constituency, for a different purpose, sitting in courts to decide causes of parties who have nothing to do with the formation of the court. Now, in reviewing the necessity for fixing the number of judges of the Court of Appeals, we have from many sources what were considered by the most eminent men in this Convention, the necessities for a perfect Court of Appeals; and the first of those was, that there should be judges elected for long terms — that is, that it should be a stable court; that we should have men sitting together long enough to understand each other's methods, to appreciate each other's qualities. Why was this element excluded from this Appellate Division? We have here a court of five judges as an Appellate Court; and we have offered to us an Appellate Court of last resort for some purposes. Another, and a very important reason was that these judges could be elected ——

The President — Mr. Peck will continue his remarks after recess, which the Convention now takes until eight o'clock this evening.

EVENING SESSION.

Thursday Evening, August 23, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, in the Capitol, at Albany, N. Y., August 23, 1894, at 8 P. M.

Vice-President Alvord called the Convention to order, and called Mr. Acker to the chair, in Committee of the Whole.

The Chairman — The Convention is still in Committee of the Whole on (O., I. 383, P. 422) general order No. 45, considering the proposition as a whole, and the gentleman from Rensselaer (Mr. Peck) has the floor.

Mr. Peck — Mr. Chairman and gentlemen of the Convention, I have proceeded so far in my statement of this amendment which I have prepared, and have developed it far enough to excite the interest of several members of the Convention, who have asked me to allow the entire amendment to be read, in order that it might be fully understood. I will, therefore, ask the secretary to read it. I ask the members of the Convention to notice how small a change is made in the section, and that the system proposed by the committee is not interfered with in any substantial way, except as to the election of judges of the Appellate Division.

The secretary read the amendment as follows:

Section 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. There shall be an Appellate Division of the Supreme Court, consisting of three judges in each of the departments. In each department, two shall constitute a quorum, and the concurrence of two shall be necessary to a decision. There shall be chosen by the electors of the several judicial departments, justices for the Appellate Division of the Supreme Court in each department, and a presiding judge therefor, who shall be residents of the department respectively. From time to time, as the terms expire or vacancies occur, successors shall be chosen by the electors of the several departments. The Governor may make temporary designation from time to time, in case of the absence or inability to act of any justice of the Appellate Division, from those elected as justices of the Supreme Court not of the Appellate Division in that judicial 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 the hearing and decisions 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 Term, and by the General Terms of the Court of Common Pleas for

the city and county 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 remove and appoint a reporter. The justices of the Appellate Division in each department shall have power to fix the time and places for holding special and trial terms therein, and to assign justices in the departments to hold such terms, or to make rules therefor."

Mr. Peck — I had proceeded so far with a discussion of this question as to have passed first the point that while this is an intelligent and philosophical anl lawyer-like scheme of judiciary, and the intermediate Appellate Division is a very strong and important feature of such a system yet in its development, in my judgment and to my view, it is the weakest portion of this whole article. I would say in addition to what I said then, that I believe that the name which is proposed to be given to so important a court of last resort, in many particulars, is a very unfortunate one. As has already been stated by the chairman of the Judiciary Committee, a name of a court is important; and yet we have here a name which holds out to the people of this State, not that they have an appellate tribunal, not that they have a court for the consideration of their appeals, but that they have a division of some other court, a part of some other system, not a court in itself. Now, that is not, it seems to me, a controlling idea, and therefore I have not included it in my proposed amendment, because I desire to follow the lines laid down by the committee in every respect possible, except in a change in the appointment of the judges for this new department of the court. I had already said that this new Appellate Division was substantially an amplification of the General Terms which have already failed, and the proof of which was, that the Judiciary Committee of this Convention had thought it was necessary to recognize that fact. Now, gentlemen, I believe that it is impossible to reorganize courts on that basis so as to make them satisfactory courts, or courts which will accomplish any limitation upon appeals to the Court of Appeals. I believe that these courts should be independent, and that they should be formed as courts, and I think that if any member of the Judiciary Committee had been asked to form a court, an intermediate court for the sifting out of appeals to the Court of Appeals, and given *carte blanche* to make just such a one as he would propose, that no single member of that committee would ever have thought of proposing any such scheme as this; in its development, I mean, in its personnel. I had also called atten-

tion to the fact that many of the members of this Convention, in the course of the discussion upon the number of the judges of the Court of Appeals, had dwelt upon the organization of that court, and pointed to it as in every respect a model organization, every word of which I am glad to indorse. I think that the success to a very large extent of the Court of Appeals has depended upon the method of its organization. I was proceeding to contrast the ideas which have formulated the Court of Appeals with those which dominated in proposing this Appellate Division of the Supreme Court. I had pointed out that many of the speakers had said and argued that it was essential to a court of that character, that the terms should be long, that the judges of the courts should become accustomed to each other's methods and peculiarities; that it should, in other words, become a stable court, a court of last resort, which was known to the community; that instead of choosing judges for it as they were chosen for the Court of Appeals, they were drafted into the new court for a limited number of years, a very limited number of years; and after that time, a majority of the judges of these courts were to go back to their brethren whom they had been overruling and criticising and reversing for years; and that they had, too, in acting on their cases, to bear in mind that they must soon go back to that condition. That it was, therefore, not a court like the Court of Appeals, comparable in any degree, on account of the short time that the judges were drafted into that court. In the second place, it had been said that an important factor in the success of the Court of Appeals, had been that it was selected from the whole body of the people. Well, now, these gentlemen who are drafted into this court in the manner prescribed by this article, are to be drafted from men who were elected in much smaller districts than those over which they will be called to preside, and without having in view any such tribunal or any such position. They have not been elected for any such purpose, and when they get there they will have been elected five years, six years ago, in some one district of an immense department, and will be known to very few of the litigants who are to appear in their courts. Therefore, the source of power, the election of these justices, will have been in the hands of a very small part of the people whose courts they shall administer, and they have not been elected with reference to any such use. That is a very great distinction between the organization of these courts and the Court of Appeals, which has well merited all that has been said of it in this Convention. And, now, I proceed to another point which it seems to me is

of great, if not overshadowing, importance, and that is this. It has been said that one of the foundations of the success of the Court of Appeals resides in its independence, in its freedom from politics. Now, gentlemen, these men have been elected from the whole body of the State, and elected on the nominations of political parties, of course. Having been elected for this purpose for so long a period of time, they become disassociated with party politics. But these proposed judges, every five years, have got to go around to the leaders of their party in their judicial districts, as well as in their departments, and get them to come to Albany and insist upon their being drawn from the body of the Supreme Court justices again and continued in that court. In other words, and we all know this is true, we have all seen judges themselves here in Albany on such occasions as that, instead of making a court independent of politics, we make a court into which politics periodically must enter and does enter. So that we have raised up here for our admiration not a court in any way comparable with the Court of Appeals in its organization, in its personnel or in its independence. We have seen the General Terms fail, and they failed miserably we all know, and these are the reasons why they failed. The people have not confidence in men whom they do not have an opportunity to vote for or consider in an election campaign. It is as important for the judge as for any other officer of the public that at some time he shall feel the public pulse and that the public pulse shall help to animate him. Therefore, I say that these courts have neither the respectability nor the stability that they ought to have as courts.

I propose, and I believe that in that proposition I am very far from standing alone in this Convention, that it is better to elect men for the same terms that we elect them in the other court of last resort, that we shall elect judges for an intermediate Appellate Court for that purpose, and in order to do it, without having it thrown up to me that I am a lawyer and that I am making places for lawyers, I reduce the number. I dislike to do it. I reduce the number of judges in these intermediate courts to three. I should like to have them four, but I reduce them to three, because in that way the additional judges provided for in the first section of this act furnish the material for three of these new department Appellate Courts. I take those men thus provided, and instead of electing them for judges of the Supreme Court at circuit, I would elect them as judges of the Appellate Division, and I would elect them in the departments over which they were to preside, and I would require

that every man of them should reside in that department, so that as often as they came before the people, as often as their successors came before the people, they would be weighed by the people. I believe in that way we would get a most satisfactory court of gentlemen selected for their particular duty out of a large territory. Perhaps the Convention has not realized what is meant by the suppression of one judicial department of this State under this article. It means that we are going to have certainly one department, a hundred and fifty miles in length out of the western portion of this State, and another department in the eastern portion of it, running north and south, almost as long. That means an immense territory out of which to select three appellate judges, and the conventions in the judicial departments, of which the counselors-at-law always have the ear, will select their best men, men in whom they have confidence for that purpose and in whose integrity for a term of fourteen years they are willing to stake their party's sagacity and professional wisdom. I think, therefore, that without changing the machinery of this article to any considerable extent, without at all infringing upon the plan where it is strong, that by electing these judges in these judicial departments, we will have a court modeled on our successful court and a court for the success of which we may well certify. I tell you, gentlemen, that if we go back to the bar and to the people who are influenced by the bar, with simply an amplified General Term, you will be met with great disappointment to say the least. You will be met with the question, why, how have you changed our system? It had failed. It was not doing its work, and how have you met it? Simply by amplifying a court so that it is very doubtful whether it gives it any increased efficiency, whether five judges are any more efficient than the three, and in every other respect, except in limitations, we have the same system. I think that it would be a very great mistake to report to the people a system without an improved intermediate Appellate Court. With the weight resting upon it in this system, as a means of limiting further appeals to the Court of Appeals, it would fail utterly. I have only a word more to say on that subject. If it does not recommend itself on statement, there is no argument which will recommend it to a lawyer. To lawyers, this thing either comes with a certainty at once or it probably will never come at all, and, therefore, I do not care to rest upon further argument. I wish to state the proposition. Now, I say that I have reduced the number of judges simply as a matter of economy. I do not believe in it. I myself believe that if we go to the people with a good court and say, now, gentlemen, the result of our

deliberations is a court that is entitled and always will be entitled to the same respect that the Court of Appeals has received and that it is not a part of anything else, it is not a term of some other court, but it is a court of men selected for the particular purpose and given permanency, independence and stability. I believe the people will welcome it, notwithstanding it might increase to same extent the judicial force. And while I have limited my amendment to the twelve new judges for the last three departments, I believe that this Convention can go forward and make a satisfactory court of four judges in every one of these departments, and that we will have the people behind us, because we can say to them: "Here is something which has been tried." The people of this State know what a court organized in that way means, and we will see, I believe, the acceptance of our work on those conditions, when on other conditions, if we simply go to them with a General Term of five appointed judges, we never will get it.

Mr. E. R. Brown — Mr. Chairman, just one word on this subject. I should not say a word in relation to it, except with the view of its being considered by the Judiciary Committee. I have no idea that a proposition of this kind, brought in at this time, will carry against the report of that committee, but if the matter should receive the attention of that committee, and afterwards the attention of this body, I would like to add one suggestion to the remarks that the gentleman has made. So far as the service of judges in the rural districts is concerned, this scheme of seelcting judges from the bench of the Supreme Court disorganizes to a very great extent the business of the Supreme Court at circuit. Now, in most of the counties of this State, it is impossible, entirely out of the range of possibility, to have more than one judge selected from a given county. For instance, you take the county of Oneida; there is one judge elected from that county in our district. That judge is designated to sit at General Term. As a consequence, they have no judge resident in Oneida county; whereas, if an appellate judge were chosen for the district to sit in the General Term it would not disturb the order of business in the district. The same with the other judges in that district, and if this matter, when it comes before the Judiciary Committee, if it shall so come for consideration, if the Judiciary Committee desire to look into that matter, I think they will find that it would give much greater satisfaction to the rural counties of the State to have these judges chosen immediately for the purpose of sitting in review than it would for the purpose of sitting in the Supreme Court, and then being taken away from the duties for which they were elected.

Mr. Root — Mr. Chairman, I hope the Convention will appreciate the full force of this proposition. It means that the plan which is proposed by the Judiciary Committee shall be rejected; rejected in its length and breadth and thickness, and that this measure should go back to the Judiciary Committee under the instructions of the Convention to formulate a new plan. The subject was fully and at length discussed and considered in the Judiciary Committee. They cannot discuss it and consider it any more fully than they have done. If you approve of the proposition made by the gentleman from Rensselaer (Mr. Peck), you send it back to the committee under your instructions, disapproving their plan, to form another. If that be your will, we bow to it, and we will do the best we can; but we will do it against the opinions and the wishes of three-fourths of the committee. And it means, Mr. Chairman, this, that the entire Supreme Court of this State is to be degraded into the third rank, that the name of Supreme Court shall be a misnomer, that it will have two separate courts above it, each separately elected and constituted by the people, and that all the judges of the Supreme Court shall be degraded into the position of circuit judges, and shall meet our proposed Constitution justly outraged, straining with every nerve to defeat a proposition which robs the Supreme Court of the State of the position is has so long held, of power and dignity; destroys it absolutely, and puts it into the position of a collection of ordinary circuit judges, from whom appeal is taken to a court above, and then to another court still further above it. We considered, sir, no matter what we might have thought it was wise to do if we were starting out in a new State to evolve out of our inner consciousness a judicial scheme, that it was wholly impracticable to apply this plan to the established condition of affairs in the State of New York. Therefore, we, by a very large majority of the committee, rejected this plan and reported the article as it is. I hope the Convention will not disapprove of our action.

Mr. Peck — Mr. Chairman, I will only detain the Convention a moment by saying that there is not one person in this Convention who would hesitate longer to degrade a justice of the Supreme Court, or the Supreme Court itself, by any action of this Convention, than I, myself. I do not believe that, by creating an independent Appellate Court, we affect the dignity, in the slightest degree, of a court of original jurisdiction co-extensive with the State of New York. I should despise myself if I were influenced in an action on fundamental law, by personsal considerations or the interests of friends or enemies.

Mr. Gilbert — Mr. Chairman, I happened to be one of the minority of the Judiciary Committee, which believed that the plan reported was not the best. I believe, Mr. Chairman, that the election of judges for this intermediate tribunal by the people of the several departments for exclusive appellate duty is of vital importance to the success of our proposed judicial system. I believe that without the change, substantially like that proposed by the gentleman from Rensselaer (Mr. Peck), our work is destined to prove unsatisfactory. The opinions of the chairman of the committee are entitled to receive, and do receive, great respect in this Convention and with the people at large, but I totally disagree with some propositions which he has submitted. In the first place, he tells us that to change the plan as proposed is substantially to undo the work of the committee. I suppose his idea is that it breaks in on the scheme of the judiciary article in such a way as to impair both its unity and efficiency. I believe, Mr. Chairman, that it does neither. I call attention to the admirable explanatory statement prepared by the chairman of the committee and presented with the report from the Judiciary Committee. What does he claim with reference to this intermediate court? He says, we propose to make this appellate tribunal a more efficient and satisfactory court of review than the old General Term. How? Among other things he says this is to be done "by giving it stability and independence through the establishment of fixed terms for its members." It is confessedly and undoubtedly of vital importance that this intermediate tribunal shall be stable and that it shall be independent. The plan proposed by the committee defeats both of those ends. The plan proposed by the gentleman from Rensselaer (Mr. Peck) secures both. It cannot be a matter of opinion. I challenge the intelligence of this Convention to contradict the proposition that both of these two things, stability and independence, are not secured by the plan proposed by the majority of the committee, but are secured by a plan substantially like that proposed by the gentleman from Rensselaer (Mr. Peck).

Let us look first at the matter of stability, which this explanatory statement properly puts in the forefront in respect of importance. What I believe, Mr. Chairman, should be done in order to secure a stable court is, that the people of the several judicial departments over which the appellate judges are to preside, should elect the judges of those several departments. Elect for how long? I answer: For the full term of fourteen years, and not, as is proposed by the committee, for a term of five years or less. The proposed amendment provides that the Governor shall appoint these appellate

judges for five years, or the remainder of the term for which the judge appointed is to serve. That may be for four years, or three years, or two years or one. That is the kind of stability that is provided, but not the stability that is demanded and needed.

I repeat, Mr. Chairman, what we want is that the judges elected to this appellate tribunal shall be elected to it for the full term of fourteen years, just as we do the Court of Appeals. We should not then have a court whose judges are in to-day and out to-morrow, but we shall have a stable court, one that will command the confidence, the intelligent confidence and respect of the people. Confidence is a thing of slow growth the world over. It grows like the splendid elm which we see in park and forest. It grows little by little. It takes time for the development of that majestic product in whose shadow we sit rejoicing when summer suns are hottest. So is it with the court. It must have time to grow in the intelligent confidence and respect of the people. How, for an example, does a college grow? I see before me the honored and distinguished representative of one of the foremost colleges in the land (Mr. Choate). How did Harvard college come to be what it is? It was not made any more than you can make an elm tree. It grew. It became great by the slow process of vital growth, and I tell you that confidence in a court must come in the same way — by the slow process of growth. It cannot come at its best where you have a kaleidoscopic court such as our General Term now is, a man in to-day and out to-morrow, and another one in his place. You must have a stable court so that the people of any given department, when they talk about their intermediate Appellate Court, will speak of Judge A and Judge C and Judge B; they are there; we sent them there; we have put them there for a period of fourteen years, and the time will come along a little in the future when they will say: There they have sat discharging their duty with conscientious intelligence; they have commanded our respect, and we believe that when we submit a cause to that court it will receive honest, sufficient and intelligent consideration and a righteous conclusion will be the result. We shall have increasing confidence in that court. It will not come in a day, we shall not have it in a year nor in three, but if you will give us an Appellate Court, elected by the people for that one purpose, for the full period of fourteen years, you are going to have a stable court, and year by year the confidence of the people in that court will grow, and in the great consciousness of that public confidence the court itself will become more and more efficient and worthy of such confidence.

Now, then, the other element which is needed, according to the statement above referred to, is this, namely, independence. Yes, we want stability and we want independence. Are you likely to get it, when the Governor can name the judges who are to sit in this court and in that and the other courts, somewhat as they move the more or less distinguished personages on the chessboard? That is not independence. We do not want a court where the members of it are put there by the Governor's fiat. We want men who, when they are once elected to that court, will feel that they are there to stay? They are there to stay through their terms without any disturbing influences tending to bias their judgment and pervert their conclusions. Let them be there, stable and independent, and we will have a Court of Appeals, this lower Court of Appeals, in which the people will have confidence, one of the effects of which will be to relieve the court of last resort.

The chairman of the committee tells us that the proposition now before us will involve a misnomer. Let us not be misled. The committee still propose, do they not, to call it the Supreme Court? If the name is wrong, give it the right name. If you do not want to call it the Supreme Court as you have done, call it something else. For my present purpose, I do not care what you call it. That is no part of my argument, but you can get a name that will fit the thing, can you not, or will you forego the thing because you cannot christen it? Nobody will claim that there is any sense in that. Give it a name that fits. The Supreme Court was always a misnomer in this State, because it was not supreme. There was another court above it.

Now, let me refer to another point. They say that to elect these appellate judges as suggested would be to degrade the trial judges of the court. I can hardly speak of this with patience. Here is a man chosen to preside at trials where property and liberty and life are at stake. He is put there to hold the scales of justice evenly when contending parties strive for mastery. He sits there above prejudice, above passion, above everything that can sway his judgment from the true line; and do you tell me that you can degrade the man whose sole object is to find out what is true, and do what is right? Why, that has the stamp of essential and eternal dignity upon it. You might as well talk about degrading the sun in its radiant course through the heavens, as to degrade the upright and competent judge who discharges those high judicial functions. If he is degraded at all, he himself has done it, and he ought to get off from the bench and let another take his place who can rise to the dignity of the position.

Now, gentlemen, do you ask me what plan I would propose? I should differ a little from the gentleman from Rensselaer (Mr. Peck). I would have the number five in this intermediate tribunal preserved; but I would have those five elected by the people of the respective departments in order that, as already stated, we may have a court that is both stable and independent, as the chairman correctly says it ought to be. That is the kind of court we want, and I will venture to say, gentlemen, that if this proposition could come before this Convention as an original proposition, with nobody behind it; let it be like John the Baptist, a voice in the Convention crying out for what is right and wise in this matter — simply a voice — and I venture to say that three-fourths of the members of this Convention would say that the plan proposed by the gentleman from Rensselaer, with some modifications in the direction suggested, is the way to secure the independent and stable court which all desire. Let the people choose their own judges. Let them choose them expressly and exclusively for this Appellate Court for the full term of fourteen years.

But it is said that there is some difficulty in working this plan out. Undoubtedly there is. But are we to stop because there is some difficulty about it? There is none which cannot easily be overcome. There was difficulty when you proposed to abolish the Superior Court of the city of Brooklyn, the Superior Court and the Court of Common Pleas of the city of New York and the Superior Court of Buffalo. There was some little embarrassment about it. But the Judiciary Committee was not terrified by it. Whatever difficulty there is in the way of providing five elective judges for this tribunal can as easily be met and overcome. Do you ask me how? For the purposes of my present argument I do not deem it necessary to go much into details, because I think the good sense of this Convention will bear me out in saying that all such matters can easily be taken care of when we get to them. We have only to follow the same general course adopted by the committee when we abolished the Superior Courts and the Court of Common Pleas above referred to, and the course adopted in other similar cases where old courts are superseded by new ones. It is always necessary to resort to some temporary makeshift. For example, let those judges who are now in the General Terms stay there for the remainder of their terms. Then, if there is no surplus of trial judges, let the rest of the appellate judges be elected by the respective departments. If there is a surplus of trial judges, I would have the Governor appoint some of them for the appellate tribunal, but with this provision, that whenever the term of any

of these appellate justices expires, his successor shall be elected for the term of fourteen years as an appellate judge. This plan will work itself out just as surely as the coming of a few years. It will work itself out as a brook in spring runs itself clear. All it wants is a little time. In conclusion, I have only to say: Let the people elect a stable, independent court, in which they shall come to have ever-increasing confidence, as the slow growth of years, giving to the judges the highest possible incentive to do their best possible work. They will understand that as the character of the court goes up, their character goes up. As the character of the court goes down, their character, their reputation will go down also. They become identified with the court. The excellence of the latter is the excellence of the judges who compose it. The people will point to it as they do to our present Court of Appeals, the mention of which calls to mind the names of the eminent men — few in number — who, for a generation, have interpreted the law of the State of New York. This has been and is a court, stable and independent, commanding the confidence of the people. There is no reason why the proposed intermediate tribunal, if elected for a similar term, should not likewise command the popular confidence.

Mr. Becker — Mr. Chairman, this question of providing that the judges of the Appellate Division of the Supreme Court should be elected, is presented to this Convention by the arguments of two gentlemen whom I personally respect, and whom I believe to be, perhaps, two of the most conscientious, painstaking and thoughtful members of this body. Coming from such source, it demands careful and conscientious consideration at the hands of this Convention. It had that consideration in the Judiciary Committee. The proposition stated in its smallest terms and clearest terms is this, that in the four departments erected by this bill the judges of the appellate jurisdiction should be elected for a full term of fourteen years, to serve as judges of that department, in each of the departments rather. The argument in favor of it, as far as I have heard in the committee or on this floor, is that that would tend to make them more independent and to give them more strength and power as judges of that division. There is undoubtedly some force in that argument; but like any other question of policy, which is really the question presented here, you must weigh, in considering it, all the conditions and understand all the conditions under which this division is created, and under which it must act. You have provided, in the first place, by previous action of this Convention, that all of these judges, in and out of the Appellate Division, should hold office for fourteen years. The amendment proposed by these able

and conscientious gentlemen is that they should sit in the Appellate Division for fourteen years. Under the terms of the amendment proposed by the committee, they sit in the Appellate Division only for a term of five years. So that at the outset you have to consider whether it is desirable in this particular branch of the Appellate Division, the so-called Appellate Division, that the term should be as long as fourteen years. Now, in considering that you have to consider what is the jurisdiction of that division. You have provided that the appeal to the Court of Appeals should be only on questions of law. You have stricken out from the possibility of appeal the numerous questions of practice that arise. You have stricken out from the appeal any question of fact whatever by saying that where there was a decision or verdict based upon a question of fact, that no power of review should exist beyond this Appellate Division. So that the sole tribunal, gentlemen, where the review comes and is final, mark you, on the question of fact, is the General Term of the Supreme Court, as well as on questions of practice. Now, the proposition presents itself in a practical way. Having invested that appellate tribunal with those particular powers, and having excluded from the jurisdiction of the Court of Appeals the right to review those powers, is it wise to put up there in that court, dealing with these questions of fact, dealing with these questions of practice, for a long term, in a separate place by themselves, without opportunity for change or exchange, a body of men called an Appellate Division? I believe that is not wise, and I understand it to be the belief of all but two or three of the Judiciary Committee. They thought, as said by one of the greatest judges in this State, that it would be a good thing, a wise thing and a proper thing for the judges of this appellate tribunal or any appellate tribunal having to do with questions of fact, that within reasonable periods of time they should come back and come in contact with the people in the Circuit Courts and in the Special Terms. Under the provisions of this amendment to the judiciary article proposed by the committee, these judges are excluded from Special Term duty; they are excluded from Circuit Court duty; and the crowning argument, the prevailing argument with the great majority of the committee was, I am sure, the thought that it was immensely desirable that these men should occasionally come back and be in touch with the people at the circuit and at the Special Term. They have to deal with these questions of fact. They have to deal with these questions of practice; and I believe that after a certain length of time, sitting solely in the daily review of printed books and printed cases and printed arguments, living by themselves, as they must do, working

together as they must do, that it is very desirable and very important that they should come back and be in touch with the people quite often. It was for that reason that when it was proposed in the committee that, even under the existing method of creating this division, they should be assigned to duty there for a longer period than five years, even seven years, half the term, that it was voted down, and the fixed term of five years was placed in this article, as it has existed in substance heretofore.

Now, these seem to me to be the controlling arguments on this question. In my judgment, and to my recollection, they were the controlling arguments before the committee; and if you are to create this Appellate Court as you have created it, if you are to vest in them the sole power of review of questions of fact, as you have done; if you are to vest in them the sole power to review questions of practice, as you have done, then I sincerely hope that you will keep them in touch with the people. It is the only way that you can do it practically, because, if you elect them at all, you must elect them for a long term or disrupt your whole article, that they should sit for the term fixed by this article and then go off, if they have not worked well, and then come back in touch with the people, and permit somebody who has been in touch with the people at the Special Term, at the practice term, at the trial term of questions of fact, to take their place. I sincerely hope that this amendment will not prevail.

Mr. Bowers — Mr. Chairman and gentlemen, I regard the present amendment as one of the most serious attacks that can be made upon the theory upon which the present proposed judiciary article is framed. I did regard the attack that was made upon the nine judges of the Court of Appeals as equally serious. I did regard the attack that was made in that respect by some of the members of the Judiciary Committee as most extraordinary. I cannot say that of the attack that has been made this evening by the gentleman from Franklin (Mr. Gilbert), because he gave us fair notice that on this proposition he differed with the committee; but, notwithstanding that, I feel that the symmetry of the article has been affected by the striking out of the two additional judges proposed for the Court of Appeals, I shall believe that the article, as proposed, even with seven judges there, is calculated to work great benefits to the people of the State. The theory of the article was that we had created in the State four Appellate Divisions, whose judgment should be final in many cases, and thus relieve the Court of Appeals from the clogging of its work, which now exists. We felt, also, that the General Terms of the State of New York did

not and could not do the work in a manner satisfactory to the bar. We had laid before us the complaints of many members of the bar as to the character of the General Terms, the way in which they hastened to finish their work, giving but scant consideration to the arguments that were made by counsel, and with the spectacle frequently presented of one of the judges stepping aside while his two associates decided an appeal from a judgment that had been rendered before him. The Judiciary Committee determined that it was essential to give that respect that should be given to the Appellate Division, that the judges who were to sit there should be of a sufficient number to prevent that spectacle hereafter, and should be so continuous in their terms that there should be no hastening of their work; so that throughout the entire year they will be engaged simply in the hearing and determination of appeals. It is a complete revolution in the present Appellate Courts, and is intended to, and almost beyond doubt will, give a totally different Appellate Court to the State, one in whose judgment the people will have far more confidence than they have now in the different General Terms. At the same time, Mr. Chairman, the Judiciary Committee appreciated that there was a great deal to be said in favor of the suggestion that it was better to have upon the appellate bench men who took part, or had recently taken part, in the trial of causes at circuit. And, therefore, it was provided that the associate justices should be appointed for only five years. This meets a criticism, frequently made against the court of last resort, that its judges have forgotten the tribulations and trials and surroundings of the disposition of cases at circuit. These were serious matters. The Judiciary Committee had before them serious complaints, and it dealt with them to meet, as best it could, the demands of the people.

Now, as to the question as to the election of these appellate judges much may be said. If the Governor of the State has the privilege of selecting from all the justices of the entire State the twenty-two who are to form the Appellate Division, if he be a fair and honorable man, as we will assume any Governor of this State will be, he has very great opportunity to select the best possible men to fill these positions; if anything better than we would get if we trusted to their election by the selection of new and untried candidates, and more than that, it would be exceedingly difficult to arrange for the election of these new judges in four different departments, creating an entirely new arrangement for the depositing of votes on election day, destroying almost all the judiciary system of the State, for-

bidding elections in the judicial districts and requiring elections in the four appellate departments not yet laid out. It was felt by the committee, and I have no doubt is the case, that we will get an Appellate Division of far better material if we leave it to the Governor to select than if we arranged for the election of these gentlemen in the four proposed departments. It is perfectly true that we should advocate the election of all important officials in the State, but we do elect these judges; they are elected in the different judicial departments, and it is only left to the Governor to select men who have been elected by the voters of the State and to point out what parts of terms they shall serve in the Appellate Division. It is not for a moment to be thought of that we should make those Appellate Divisions to consist of only three judges. It is true that it might be urged that with a final appeal to a court with only seven judges, that here is some defect in making the Appellate Division next to it consist of five, but the Convention in that regard have ordered otherwise, and I believe, sir, that if we strike out this provision, reduce the number to three and provide for their election by the people of the different departments instead of permitting the Governor to select, we shall have struck a blow at the entire article, and we might as well give it up in its entirety. I hope, sir, that these amendments will fail.

Mr. Cochran — Mr. Chairman, may I ask the gentleman from New York, Mr. Bowers, a question?

Mr. Bowers — Certainly.

Mr. Cochran — As I understand this proposed judiciary amendment, it is to the effect that the assignments to the Appellate Division shall be made by the Governor, and that the assignments to the Special Term and chambers and trial terms shall be made by the judges of the Appellate Divisions.

Mr. Bowers — I so understand the article.

Mr. Cochran — I also understand that in the city of New York the patronage which is at the disposal of the Special Term and chamber judges amounts to several millions of dollars annually.

Mr. Bowers — I understand that statement to be entirely erroneous and absolutely untrue.

Mr. Cochran — I will assume it to be correct for the purpose of my argument.

Mr. Bowers — You have asked me a question, and I have answered you. It is an absurd statement, that is all.

Mr. Cochran — I'll ask you now if you do not think that such

a system as is proposed here would be a dangerous concentration of judicial and political powers.

Mr. Bowers — A dangerous concentration of judicial and political powers? Permit me to say to you that, as I understand it, it exists to-day in the General Terms of the Supreme Court of the State of New York. We have simply followed existing provisions of law in that regard. The power to make these assignments is a mere matter of convenience. These judges will do it in the Appellate Division, or they will make rules for its being done by their associates, and I do not think the gentleman need be at all worried that any amount of patronage will be improperly disposed of.

Mr. Cochran — Do I understand the gentleman to say ——

Mr. Bowers — Does the gentleman practice in New York or Kings?

Mr. Cochran — Both. Do I understand the gentleman to say that the same system of appointment and designation of judges exists to-day that is embodied in this article?

Mr. Bowers — I understand that to-day the General Term makes the appointments.

Mr. Cochran — The gentleman does not answer my question.

Mr. Bowers — Well, it is as near as it can be. We propose that the Appellate Division shall make these designations, and to-day the existing Appellate Division, to which the General Term succeeds, makes them.

Mr. Cassidy — Mr. Chairman, I hope that what I shall have to say upon this subject will not have a tendency to defeat the object for which I am speaking. I was moved by what was said by my friend, Senator Gilbert, on this subject, but when I sought to follow his argument to its logical conclusion, I found myself in mid-air, at both ends of it. His reasoning, although good as far as it went, seemed to me to be truncated. It does not follow, Mr. Chairman, that the best lawyers make the best judges. How are we to determine who are best fitted for judges of our appellate tribunals? Is there any man who has the gift to look into the heart and intellect of a man without giving him any trial, and to determine whether he is a proper man for the appellate tribunal? If this question is not determined by experience, Mr. Chairman, I know not how it can be determined, and I know not what better experience can be had to determine a man's fitness for a place upon the appellate bench than a term or a part of a term in Supreme Court work. We have, in the two districts outside of New York city, forty Supreme Court judges from which to select ten Appellate Court judges; and I

believe, Mr. Chairman, that the Governor, I care not how much of a politician he may be, when he feels that the responsibility of selecting ten appellate judges from forty Supreme Court judges centers in him, and that he will be held responsible for making a proper choice, will make a better choice than the entire body of electors of the department could possibly make from men of no experience upon the bench. I do not think, Mr. Chairman, that I need to do more than suggest these points. Members of this Convention do not require that they should be pursued to their logical conclusions. They are able to reason for themselves.

More than that. It has been claimed here that the term of the Supreme Court judges ought to be shortened because we have often elected poor Supreme Court judges, and men become incompetent in that position. Now, if a Supreme Court judge is appointed to the appellate tribunal and is found to be unfitted for the place, he can be gradually sent back as a circuit judge, quietly, and some better man put in his place; whereas, if we were selected by the people, no matter how poor a judge he might be, and no matter how much the people might have erred in their choice, he must remain during the term of fourteen years. This, I think, would be a misfortune.

The Chairman put the question on the adoption of Mr. Peck's amendment, and it was determined in the negative.

Mr. Chipp — Mr. Chairman, I move to amend section 2, page 3, by striking out, after the word "determination," in line 15, the following clause, down to and including the word "counsel," in line 19. The lines which I have moved to strike out are these: "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."

In making this motion I wish it understood that I make no intimation or imputation upon the work of the Judiciary Committee. I am ready to acknowledge, sir, that the wisdom of this Convention is as foolishness to the wisdom of the Judiciary Committee, but I do think, sir, that perhaps, in some particulars, it may be found that suggestions can be made here which will be of value and will not serve to mar the work of this committee.

Under the present system, as I understand it, if I am correctly informed, the General Term in the city of New York disposes of all its business promptly. I understand that when an appeal is taken to that court it may be argued at the next ensuing term, and that the decision is promptly rendered, although that court consists now

of only three members. I understand that the General Term of the Second Department, consisting of three members, sits about four or five weeks during the year and promptly disposes of all of its business. I know that the General Term in the Third Department, consisting of three members, gives ample hearing to counsel, gives due consideration to every appeal brought before it, and that an appeal may be argued at the very next term after it has been taken. And yet in all these departments consisting of three members, the judges making up the General Term, hold circuits, hold Special Terms, do *ex parte* business, and in short discharge the multifarious duties of justices of the Supreme Court, *nisi prius*, and at chambers.

Now, I assume that the General Terms of the remainder of the State are conducted in a like manner; if this is so, all General Terms consisting of three members can dispose of all their appellate work and do *nisi prius* work and chambers work and Special Term work besides. It is difficult indeed to see how four General Terms of five judges, devoting all their attention to appellate work and devoting no attention whatever to Special Term work will find enough to do.

Another weak point, it seems to me, in this system is this, that the increase of work to be done by these newly-constituted Appellate Divisions does not depend upon the points of the system itself, but depends entirely on the character of the men who are to form them. If the judges now, as has been said, do not give sufficient consideration to cases, if they do not do their work well, how can it be said in advance that five judges would do their work better? If three judges are lazy, why may not five judges be lazy? If three men do not have business-like, proper ways of conducting the business of their court, how can you say in advance that five men will conduct the business of their courts in any better manner?

But, aside from this, Mr. Chairman, there is another point of importance. It is very important, especially that a General Term, or an Appellate Division as it is called in the amendment, shall be composed of judges who are in touch with the profession and in touch with the business of the departments over which they preside. I think it is a positive weakness in an Appellate Court that the judges are not compelled to hold circuits at times. I have had the opinions of several distinguished judges to that effect. According to them a Court of Appeals which simply devotes itself to hearing appellate business becomes at last a court of theorists. They do not understand the actual practice any more. They become rusty. Some of them, perhaps most of them, have never been practitioners in court, and sitting by themselves, cheek by jowl, as the President

expresses it, deciding cases on theory, on the law as it is written, they are apt to become mere theorists. They are apt to be out of touch with the profession and out of touch with the methods which prevail in courts.

Now, Mr. Chairman, I have heard it expressed, even by members of the Court of Appeals, that it is a pity that the members of the Court of Appeals could not have an opportunity to hold a circuit at times. The judges of the Supreme Court of the United States hold circuits in addition to their appellate duties, and I believe it has always been considered that this circuit work was an aid to the judges of the Supreme Court in disposing of the business which comes before that court.

I think, sir, that this provision in the proposed article is not only unnecessary but is extremely disadvantageous, and will be found disadvantageous to the judges of the Appellate Division themselves and to the interest of the people of the State.

Mr. Bowers — Mr. Chairman, I supposed that the bar of the State were pretty generally satisfied that it was a great evil in the present administration of justice in the General Terms that a judge from whom an appeal was taken should slip out from the bench and leave his associates to hear a case, and that all the members of the bar would be glad to have that evil remedied.

I invite the gentleman's attention to some of our departments in this State. He may go into the second, if he likes, and he will not only lose one judge who has heard the case below, but he is very lucky to have a single judge to hear his argument. We propose to get an Appellate Division that shall attend to its business and have only that business to attend to and nothing else to interest or amuse its members, and we propose to remedy the defect to which the gentleman has referred that they have no association with the trial of cases, by sending them back to try cases at the end of five years.

This particular amendment that is offered seems to be the most extraordinary of any that has been proposed in the Convention, for if there is any one evil that ought to be remedied it is the evil of the appellate justices sitting on the same bench where their decisions are reviewed.

Mr. Cookinham — Mr. Chairman, I desire to state one or two facts in answer to the gentleman, Mr. Chipp. He has complained that the General Terms would have nothing to do, or, at least, that they would not have enough to do to occupy their time. The number of cases appealed that it will be necessary for these courts to hear in one year is 2,555. The number that each General Term must hear on the average is 637. I ask the gentleman if a

court decides two cases every day of the year, if they have not done all they ought to do. And, therefore, the Judiciary Committee has provided by this amendment that they need not be bothered with business when they are in their offices, that they need not hear motions or *ex parte* matters unless by consent, and consent of the opposing counsel.

The Chairman put the question on the adoption of Mr. Chipp's amendment, and it was determined in the negative.

Mr. I. S. Johnson — Mr. Chairman, thus far in the discussion there has seemed to be no way for us to vote in Convention except to vote for the entire number of twelve additional justices of the Supreme Court, or none. I, therefore, offer the following amendment, and will briefly explain it without reading of it.

It amends section 1, by striking out the word "twelve," and inserting the word "five;" and, also, on page 2, by striking out the words "three" where they occur as to the first and second districts, and adding the word "one" as to the third. So that the additional justices to be elected would be but two in the first, two in the second and one in the third.

This matter of additional justices has been before the Legislature and has been before the public for several years. The result has been that the Legislature, at its last session, determined to submit to the people of the State a constitutional amendment providing for the election of four justices, two in the first district and two in the second. And it is for the purpose of having this matter in that condition, so that it may be properly considered when it comes before the Convention, that I now present this amendment; and I trust that the Judiciary Committee are not to continue to feel that every amendment that is offered here is an attack on the committee or on any of its members. While we have great respect for the Judiciary Committee, we must assume that the other lawyers in this body have some ideas upon the subject, and I apprehend that the committee will not feel at all hurt if this Convention or this committee shall see fit to change, in some respects, its report. And if it is to be changed in any respect, I think it should be in reducing the number of justices of the Supreme Court that are to be placed upon the State at large. This committee has seen fit to say that eighteen judges shall be taken from the cities and placed upon the State at large, thus adding a large expense to the taxes of the people after they are elected. I feel a deep interest in that subject. I know that the gentleman from Erie states that there will be a large saving on account of giving up the clerk's offices, but I wish to call attention to the fact that those clerk's offices are now all supported

and sustained by the three cities which are to be benefited by this amendment, and that in addition to the judges that are to be dumped upon the people, if I may use that expression, there are also to be four other clerks' offices of these several departments that are to be supported by the people. I don't think that there is any necessity for the number of judges provided for in this article. In my own district, the Eighth Judicial District, I do not know of any demand for an additional justice in that district, and I hear it spoken by members from other districts that there is no demand in those districts for an additional number. Hence, Mr. Chairman, I am opposed to this increase at this time.

Mr. Root — Mr. Chairman, it seems to me that if the Convention were disposed to make a change in this matter, it would have been much better for them to have adopted the amendment offered by the gentleman from Jefferson (Mr. Brown), which left to the Legislature power to add the additional judges that the gentleman from Wyoming proposes to strike out, and that it would be unfortunate for the committee, after rejecting that, to take recourse in this plan. Let me say that this addition is for the purpose of enabling us to constitute these Appellate Divisions, which shall be composed of justices who are cut off from doing ordinary Circuit and Special Term work. That is the price the people will pay for getting these new courts competent to perform the work which the General Terms have not satisfactorily performed.

The Chairman put the question on the adoption of Mr. Johnson's amendment, and it was determined in the negative.

Mr. Davies — Mr. Chairman, I move to amend section 20, by inserting after the words "one hundred," in line 19, page 14 — I think it is "one hundred and twenty," as amended — "and fifty." The section, as it now stands, forbids a county judge or surrogate from practicing in counties having a population in excess of one hundred and twenty thousand. I was not here when the matter was voted upon to-day. Now, in the county of Oneida our population is one hundred and twenty-three thousand and some odd. Our county judge gets the meagre salary of $3,000, and our surrogate gets $3,500. Up to the last session of the Legislature our county judge received, or had his salary lowered to $2,000. We had great trouble to get it raised to $3,000. Now, if this is allowed to stand as it is, the result in our county will be that we will get a very cheap class of judges. We cannot get a proper and suitable man, competent to fill the position, for the salary, and our people are very much opposed, in our county as well as in other rural districts, to the increasing of salaries. In addition to that fact there

has already been an amendment passed here prohibiting the increase of salaries during the incumbent's term of office.

I hope that the Convention will adopt the amendment which I have proposed.

Mr. Roche — Mr. Chairman, I hope the amendment will be defeated.

The Chairman put the question on the adoption of Mr. Davies's amendment, and it was determined in the negative.

Mr. Griswold — Mr. Chairman, I offer the following amendment.

The Secretary read the amendment as follows:

In section 9, page 7, strike out all after the word "Appeals," in line 21, down to and including line 7, page 8, and insert the words "shall have such jurisdiction and power as the present Court of Appeals." Also, add: "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, said court may certify such fact to the Governor, who shall thereupon designate seven justices 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."

Mr. Griswold — Mr. Chairman, that is as far as I wish to have the amendment read at present, if I may be permitted to interrupt the reading.

The Chairman — Will the gentleman from Greene inform the Chair whether this is a proposition for a second division of the Court of Appeals?

Mr. Griswold — It is, Mr. Chairman.

The Chairman — The Chair will have to rule that that proposition has been once before the committee and cannot be entertained. The rules expressly provide that equivalent propositions cannot be entertained.

Mr. Griswold — Mr. Chairman, I am not controverting the Chair, but some gentleman of the Convention moved that the examination of this proposed amendment should be postponed. That was after the gentleman from Onondaga had made the motion, and it had been carried, that we should take it up and proceed with it until through, and afterwards one gentleman proposed that there should be an intermission and that there would be time to examine, and one of the committee also suggested the same thing. However, I am not controverting the position of the Chair.

The Chairman — Are there any other amendments to this proposition?

Mr. Towns — Mr. Chairman, are substitutes in order?

The Chairman — Not until we have determined whether there are any further propositions to amend. The Chair desires to state that he is informed that the ruling of the Chair, when we come into Convention, will be that upon motion to agree to the report of the committee; no amendments will be in order, so that any amendment that gentlemen desire to propose should be proposed while we are in Committee of the Whole.

Mr. Towns — Mr. Chairman, I have an amendment to section 1 of this article, and section 2 and section 7. I will offer them as amendments or as substitutes, according as the Chair rules.

The Chairman — Are there any other amendments? The Chair hears none, and the substitutes of Mr. Towns will be received.

Mr. Towns — Mr. Chairman, in order not to trespass upon the precious time of this Convention, if you will permit me, I will read these substitutes to save time, or I will hand them up to the Secretary.

I wish to substitute for section 1 the following proposition:

"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 such additional justices as the Legislature of the State may from time to time deem necessary to discharge the business of the judicial district, and the justices transferred thereto by the fourth section of this article, all of whom shall continue to be justices of the Supreme Court during their respective terms, and of their successors, but the Legislature shall not increase the number of judges in any judicial district of the State to a greater number than the ratio of one to every hundred thousand inhabitants in said judicial district."

Mr. Chairman, you will perceive that I have here met the objections which have been advanced upon this floor as to the advisability of loading upon the people of this State eleven judicial magistrates, with salaries ranging from $17,500 to $8,000. In the amendment, as proposed by me, there is elasticity, because whenever the Legislature may deem that the population and the contiguousness of the district justifies it, they may add one judge in the ratio of one to

every hundred thousand. I have amended the next section as follows: I have divided the State into five judicial districts instead of eight, and I have made the first district the county of New York, and the second district the counties of Suffolk, Queens, Kings and Richmond. The others are to be divided as the Legislature may deem fit. By section 7 of this substitute, I have amended this production of the Judiciary Committee, which is no doubt destined to illumine the ages and to bless posterity, if we pass it as it at present exists, by the following provision:

"The appellate jurisdiction now exercised by the General Term of the Supreme Court in the different judicial departments of this State is hereby abolished, and all appeals after the 1st day of January, 1895, or the adoption of this Constitution, from any judgment, finding or decision of any judge, shall be to the Court of Appeals as hereinafter stated." I have thought, Mr. Chairman, that New York should range herself on the side of advancing thought in the judicial procedure of the universe; and the advancing thought not only in America and in every State in America, but in every country, save those that are under the Code Napoleon, is to have but one appellate tribunal, and not to go limping to the fountains of final justice, halting midway at some inferior tribunal for the purpose of either having your hopes dashed to the earth or unduly stimulated. I have amended the proposed judiciary article of this committee by the insertion of the following provision:

"The Court of Appeals is continued. It shall consist of a chief judge and associate judges now in office, who shall hold their offices until the expiration of their respective terms, and of eight additional associate judges and their successors. Such additional judges shall be chosen by the electors of the State."

In that way, Mr. Chairman, I meet the objections of these gentlemen who seem to be opposed to the appointment of judges by some political chief magistrate of the State, the Governor. "Such additional judges shall be chosen by the electors of the State at the first general election after the adoption of this article, except that no more than three judges may be taken from any one of the five judicial districts of the State. At such election each elector may vote for only one judge. 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. The Court of Appeals may sit in departments *in banc*, and shall always be open for the transaction of business. There shall be three departments, denominated respectively department one, department two, and department three. The chief judge shall assign five of the associate judges to

each department, and such assignment may be changed by him from time to time. The associate judges shall sit in either of the departments, and may interchange with other by agreement among themselves, or as ordered by the chief judge. Each of the departments shall have the power to hear and determine appeals on all questions raised therein, subject to the provisions hereinafter contained in relation to the court *in banc*. The presence of five judges shall be necessary to transact any business in either of the departments, and the concurrence of four judges shall be necessary to pronounce a judgment. The chief judge shall direct the business of the department, and may in his discretion order any case pending before the court to be heard by the court *in banc*. The order may be made before or after judgment pronounced by a department and where the case has been allotted to one of the departments and a judgment pronounced therein, the order must be made within thirty days after such judgment and concurred in by two associate judges." In that way, Mr. Chairman, we have that harmonious symmetry, I might say, that multiplicity, that divisibility, that subtractiveness which the Court of Appeals in England have, and which any court of final resort should have; because if an appeal has been taken to a division which has appellate jurisdiction, and that division has not been changed in its deliverance, there should be some way whereby the same tribunal, exercising the same high right of final determination, should sit in accord with its associates and determine the law as it should be.

I go on with certain details as to procedure. I give these judges what I think every appellate tribunal should have, the right to issue writs of habeas corpus, or any other writs in favor and in keeping with their high office. I provide that the eight additional judges who shall be elected as Court of Appeals judges, shall by lot, as soon as they have been elected, determine which four of their number shall go out the first seven years, and which four shall remain for the entire term for which they are elected, and that such determination shall be recorded in the proper office.

And, then, Mr. Chairman, I have provided something which I think the Judiciary Committee overlooked. I have seen nothing which pertained to it in their article, and it is something which I think is very necessary. It has been complained of here that the appellate tribunals are inefficient; some have hinted that they are lazy, some that they do not perform their duties, and others that they go junketing around the country, even to Europe, to seek pleasure when they should be here perspiring over the knotty problems of the law. I have provided against that emergency and that

abuse in the following language: "The Legislature shall have no power to grant leave of absence to any judicial officer, and any such officer who shall absent himself from the State for more than sixty consecutive days shall be deemed to have forfeited his office, unless such absence occurs under circumstances over which such officer has no control."

Now, section 10, and that is the last section of my article, and judging from the unanimity with which every other amendment that had any element of scintilla of rationality in it, has been voted down here by this chamber to-night, I have no hope that this article of mine will be accepted by this most wise and deliberate body; I have upon my side no Jeremy-Diddlers, but I have Jeremy Benthams, and I do appeal to posterity, and I tell you that when the next Constitutional Convention, which shall perchance meet, all political differences to the contrary notwithstanding, twenty years hence, and searching around as the Judiciary Committee of this Convention seem to have sought in the darkest recesses of every convenient place for some idea to deliver them from the dilemma that seemed to surround them, that this article will come twinkling like a sunbeam through the cracks and crevices of some prison of Chillon and illuminate their minds so that they may give the people of this State an article that they can appreciate, and can accept and adopt.

"The judges of the Court of Appeals and the justices of the Supreme Court shall hold no other office." That is the usual constitutional provision, and there is no use in my reading it.

But, Mr. Chairman, one of the most worthy teachers of the law who lived in the latter part of the fifteenth century and taught ambitious students who were pursuing the intricate paths of the law how to adjust their footsteps, held a lamp of judicial light, so to speak, to them; I speak of the honorable and ever to be remembered Anestos Putter, of the Unitversity of Leyden, laid it down as a solemn principle in the administration of justice ——

Mr. Root — Mr. Chairman, will the gentleman give way for a moment for a motion regarding the order of business. I move that we extend this session this evening for fifteen minutes. I think we can finish by that time. I think there are no more serious amendments to be proposed, and then we can start with a fresh order of business in the morning. I make that motion.

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

Mr. Towns (resuming) — He laid it down, Mr. Chairman, as a solemn principle in the administration of justice that form should

be observed; that judicial determinations were nothing but forms and that formality should surround the courts of justice, and I do not think that the Committee on Judiciary recognized that principle, because I have seen nothing in their article which adds to the solemnity of judicial procedure. For that reason I think the Constitution should recognize the principle to which I have referred, and in section 11 I have provided that the judges and justices shall be wigged and robed; that there shall be a court crier for the Court of Appeals and for the Supreme Court, who shall be at least six feet and two inches in height, and be costumed as the court or chief justice thereof shall determine. He shall be armed with a sword, a lamp and a Bible, and shall with solemn and stately mien open and close the sitting of the court from day to day in the following language:

Hear ye, hear ye, lawyers and litigants,
Hear ye, hear ye, civilians and militants,
The Honorable Supreme Court of the State of New York,
Is about to begin its most righteous work;
Let every one rise, doff low hats and high hats,
And harken in silence to its judgments and fiats.

And in adjourning shall say:

This solemn court in a solemn way,
Has ground exceeding fine all day.
The grist that came unto its mill
Will now depart. Keep still;
Let all here rise and show respect.
Bow low, low, low to the people's elect.

I think that is the way that the court should be opened and closed. I think that we should have solemnity in the dispensation of justice. One of my colleagues has insinuated here to a gentleman who had something to do with the framing of this article and the rules under which we are working, that in New York city there are two millions of patronage to be dispensed by justices sitting at Special Term. I am glad to know that is not the case. I am glad to know that there is no patronage to be dispensed in a court of justice, but, sir, there is this to be dispensed, the rights of the people. Every judge who goes upon the bench in the morning goes there to determine the rights of some person; to consign some one either to liberty, to fill him with joy, or to plunge him into despair. And he does that by means of sworn testimony, delivered in his presence. I say that we cannot surround our tribunals with too great solemnity. I think, Mr. Chairman, that the interests of the State and the interests

of the people will be conserved in this simple article, so symmetrical in its entirety; not a product, like the one of this committee, of the *infusoria* kind, not injected here by any outside influence, not organized for the purpose of making the people fit the business of the courts, but organized for the purpose of making the courts fit the business of the people. Such an article will meet the approbation of the people of the State of New York, and would insure the success of the party which the majority of this Convention so devoutly worship, next November.

Mr. Griswold — Mr. Chairman, is it in order to strike out the provision on page 8 restricting the right of appeal to the Court of Appeals?

Mr. C. H. Truax — It has been once voted upon.

Mr. Griswold — Mr. Chairman, I am told that that proposition has been passed upon. I have one other amendment; on page 8, line 11, after the words "the Legislature may further," interline the word "enlarge;" so that it shall read "the Legislature may further enlarge and restrict the jurisdiction of the Court of Appeals and the right of appeal thereto," etc.

President Choate here took the chair.

The President — The gentleman from Greene will suspend for a moment.

Mr. Root — Mr. President, I move that the session of the Convention be extended thirty minutes.

Mr. Bowers — Mr. President, I hope that motion will not prevail. It would be a precedent for extending the sessions whenever an important matter shall come up. I do not see that any occasion has yet arisen for extending the time.

The President — The question is on the motion of Mr. Root to extend the session for thirty minutes.

Mr. Speer — Mr. Chairman, I rise to a point of order. The Committee of the Whole has not risen, and by the rules the committee of the Whole was to sit until ten o'clock.

The President — The Chair holds that the House is in Convention, and that the motion is in order.

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

Mr. Acker resumed the chair in Committee of the Whole.

The Chairman — The Convention is in Committee of the Whole, and is still considering general order No. 45. The Chair recognizes the gentleman from Greene (Mr. Griswold).

Mr. Griswold — Mr. Chairman, I say that an iron-bound rule in a Constitution is very dangerous without any power in the Legislature to change it. Now, sir, here is a limitation of appeals to the Court of Appeals. We have no power in any Legislature, no power anywhere, but to call upon this Convention to revise the Constitution in order that we may bring appeals. Here is an iron-bound rule that such and such matters specified may go to the Court of Appeals; and they do not know what they have limited, in my humble judgment, with all respect to this committee, and whom I do sincerely respect, for their reputation and their ability are well known. Now, in reference to this provision, which is in this language: "The Legislature may further restrict the jurisdiction of the Court of Appeals and the right of appeal thereto," mark the further restriction, and there is no power in the Legislature if a case should arise in which they think it is absolutely necessary in the cause of justice that the jurisdiction of the Court of Appeals and the right of appeal thereto should be granted. In my judgment cases must arise that will be very embarrassing to lawyers, and they will occur all over the State. I remember when the provision of the code was substantially as this is, I remember, too, that I could not appeal from a decision on a demurrer to pleadings; and having been in that hole once myself, I don't know whether this Convention of lawyers will ever appreciate it until they get there themselves, and then they will. Here is the provision. You cannot appeal from an interlocutory judgment, and a demurrer is made to one of a man's defenses that he set up to a complaint and a decision against him on that demurrer. It involves perhaps a matter of great importance in that defense; a decision is made in favor of the demurrer as against the plaintiff, and then there is no way to get out of that decision to get to the Court of Appeals, which may involve the whole cause of action, no matter what amount. You cannot appeal from the interlocutory judgment to the Court of Appeals. And then the only other remedy is to go back to the trial court and try that case there with the man's defense barred out, his one defense barred out, and there is no way no matter what the expense is but to go back and try that case and then appeal to the General Term after he is beaten there, and then to appeal again from there to the Court of Appeals, claiming to review the intermediate judgment, and after the judgment is rendered in the Court of Appeals, to come back and try the case over again; thus never getting his pleading settled until he has tried his cause, appealed to the General Term and then to the Court of Appeals.

Now, it seems to me dangerous and even presumptuous on the part of gentlemen, who insist on these limitations, having this cast-iron rule, and who cannot trust to the Legislature. It seems to me that it is too much assumption on the part of this Convention to make that iron rule here and leave no discretion in the Legislature. Therefore, my motion is to insert the words to give the Legislature the right to enlarge the jurisdiction of the right to appeal as well as the right to restrict.

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

The Chairman — I think the Chair should put the motion of the gentleman from Greene, Mr. Griswold.

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

Mr. Root — Mr. Chairman, I move that the committee rise, report this bill and recommend its passage.

The Chairman put the question on the motion of Mr. Root, 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 the proposed constitutional amendment (printed No. 422), to amend article 6, of the Constitution, relating to the judiciary; have gone through with the same; have made some amendments thereto and have instructed the Chairman to report the same to the Convention and recommend its passage.

Mr. Veeder — Mr. President, I call for the ayes and noes.

Mr. Lincoln — Mr. President, I move to recommit the report to the Judiciary Committee, with instructions to amend section 14, by striking out the first paragraph and inserting in place thereof, the paragraph suggested by me in an amendment in the Committee of the Whole, which I will ask the Secretary to read; and that the committee be instructed to report forthwith.

The President — The Chair holds that Mr. Lincoln's motion is in order, superseding the report of the Committee of the Whole.

The Secretary read the proposition of Mr. Lincoln, as follows:

"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 county for the term of six years. The County Courts shall have general original jurisdiction in law and equity in all cases where the defendant resides 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 provisions as shall be made by law for the removal of causes into the Supreme Court. They shall also have such original jurisdiction as shall from time to time be conferred upon them by the Legislature.

Mr. Lincoln — Mr. President, I call for the ayes and noes.

The call of Mr. Lincoln was sustained.

The Secretary proceeded to call the roll upon the motion of Mr. Lincoln, and the motion was determined in the negative. (See Revised Journal, page 490.)

The President — The question recurs on agreeing to the report of the Committee of the Whole.

Mr. Alvord — Mr. President, upon that I move the previous question.

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

The President — The question is on agreeing to the report of the committee, recommending the passage of this amendment.

Mr. Veeder called for the ayes and noes, which call was sustained.

The Secretary proceeded with the call of the roll. (See Revised Journal, pages 490 and 491.)

The report of the committee was agreed to.

The President — The amendment goes to the Committee on Revision, and will be printed.

The Convention adjourned until Friday morning at ten o'clock.

Friday Morning, August 24, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber at the Capitol, Albany, N. Y., Friday morning, August 24, 1894.

President Choate called the Convention to order at 10 A. M.

The Rev. A. Kennedy Duff offered prayer.

On motion, the reading of the Journal of yesterday was dispensed with.

The President — Are there any memorials or petitions? Any notices, motions or resolutions?

Mr. Vedder — Mr. President, I desire to be excused this afternoon and to-morrow upon business connected with the work of the Convention.

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

Mr. Jacobs moved that the preamble and resolution (No. 172) offered on page 493 of the Convention Journal (No. 48, August 15, 1894), relative to the delegates from the sixth district, be referred to the Committee on Privileges and Elections and Contingent Expenses.

Mr. Veeder — Mr. President, I would like to have some little statement about what the point is.

The President — The Secretary will read the resolution.

Mr. Veeder — I would rather have Mr. Jacobs state the substance and purpose of the resolution.

Mr. Jacobs — It is in regard to the compensation of the delegates from the Sixth Senatorial District, and that takes in the Buffalo delegates.

The President — The Secretary will read the resolution:

The Secretary read the resolution as follows:

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 demand upon the proper disbursing officer of this Convention for their mileage and per diem

allowance as provided by law for said period, which demand has been refused; now, therefore, be it

Resolved, That the said delegates from the Sixth Senatorial District are entitled to the mileage provided by law, and to the per diem allowance of ten dollars for every day during the period from May 8, 1894, to and including August 2, 1894, and that the President of this Convention be and hereby is requested to certify the amount thereof to the State Comptroller for payment.

The President — Mr. Jacobs moves that this resolution be taken from the table and referred to the Committee on Privileges and Elections and the Committee on Contingent Expenses jointly.

The President put the question and it was determined in the affirmative.

Mr. Johnson — Mr. President, I move that general order No. 13, the cities article, be put at the head of the calendar for Monday and continued there until disposed of in the Committee of the Whole.

Mr. Hotchkiss — There has already been a general order made a special order for Monday. It is the report of the Forestry Committee.

Mr. Deady — That is for Monday night.

Mr. Hotchkiss — If I am in error in that regard, it is certain that the second report of the Cities Committee has not been put upon our files, unless it is upon our files this morning.

The President — I understand it has come in this morning.

Mr. Hotchkiss — Now, there has been no opportunity upon the part of the members to critically inspect that article and there will scarcely be such an opportunity by Monday. There can be no prejudice to the article or to its ample consideration if it be made a special order for Tuesday, and I know it will be far more to the convenience of many gentlemen who desire to discuss it, if it is made a special order for Tuesday instead of Monday. I would, therefore, move to amend Mr. Johnson's resolution by substituting Tuesday for Monday.

Mr. Jesse Johnson — Mr. President, it is very little to the Cities Committee, perhaps, whether it be made a special order for Monday or for Tuesday. The article is now where it can be reached to-day. The majority of the Cities Committee are ready to debate it when it is reached, and will be ready; but in deference to the minority, who have not as yet filed their report, if they wish a short postponement, it might be quite wise to grant their request.

The President — Mr. Johnson, the forestry matter is a special order for Monday evening. If you want to get your cities article up, you had better do it before that.

Mr. Johnson — If that would interfere with it, and it is deemed an undue postponement, I would not press it beyond that, if there is a special order for Monday.

The President — Those in favor of Mr. Hotchkiss's amendment to Mr. Johnson's motion substituting Tuesday for Monday, will rise and stand until they are counted.

Mr. Veeder — Mr. President, I think before the count is taken some reply should be made to Mr. Johnson. The information that the committee may have on the subject is not in possession generally of the members. We have to educate ourselves.

The President — Mr. Veeder, you are out of order. You are speaking while the vote is being taken.

Mr. Veeder — I did not hear the Chair say that the vote should be taken. I ask that the vote be delayed.

The President — Mr. Hotchkiss's amendment is lost.

The President then put the question on the motion of Mr. Johnson to make the cities article a special order for Monday morning, and it was determined in the affirmative.

Mr. Hotchkiss — Mr. President, I move that general orders Nos. 60 and 68, being the report of the Cities Committee on Franchises and on Debt Limitation, be made special orders to be taken up immediately after the cities article is finished.

Mr. Johnson — Mr. President, I see no need of the Cities Committee attempting to absorb all the time of this Convention for its work, considering the very generous and full leave that is granted us as to one of its articles just now. I oppose the motion.

Mr. Bush — Mr. President, I object as a member of the Committee on Legislative Organization, to taking all the balance of the time of this Convention by making special orders, before we can get the report of the apportionment article in this House. That is one of the most important questions that is to be debated by this Convention. If the Convention gives all of its time to the cities article and the franchise article, I don't see what time is to be left for the discussion of the apportionment article. I do not think that we should put ourselves in a position where we will have limited time for a full consideration of the apportionment question, by putting it at the very end of our session. The President has stated that

it will require a week for the discussion of the apportionment question. I am, therefore, opposed to the motion.

The President — The Convention has it in its hands, by taking up and discussing and disposing of the cities article, to give plenty of time to the apportionment article.

Mr. Bush — Mr. President, I think there is great danger that our time will be very limited for the discussion of this important question, if we continue to set down special orders in addition to the cities article.

Mr. Veeder — Mr. President, my colleague from Ulster need not have any apprehension about the apportionment matter. It will not take very much time. One day will dispose of that.

The President — If Mr. Veeder will undertake to dispose of that there will be no difficulty.

Mr. Veeder — In my judgment, Mr. President, one day will be sufficient.

The President — The question is on making the report of the Cities Committee on franchise a special order immediately after the cities article is disposed of.

Mr. Spencer — Mr. President, I trust that the Convention will vote this motion down. The Cities Committee do not desire to take up that article, as they will have all they can do to dispose of the cities article without taking up any other matter immediately afterwards. I hope the Convention will vote this motion down.

Mr. E. R. Brown — Mr. President, I think for the Convention to take up the time immediately following the cities article ——

Mr. Hotchkiss — Mr. President, I will withdraw the motion. I had supposed the majority of this Convention considered those two subjects of sufficient importance to give them dispatch. I withdraw the motion.

The President — It may very well be that those articles will be reached before Monday.

Mr. McKinstry — Mr. President, I offer the following resolution.

The President — The Secretary will read the resolution.

The Secretary read the resolution as follows:

R. 182.— Resolved, That upon Saturday a session of three hours be held from 9 A. M. until noon and that the Convention then adjourn until Monday morning.

Mr. McKinstry — I ask to have it referred to the Committee on Rules.

The President — It is referred to the Committee on Rules.

Mr. Mereness — Mr. President, is an application to be excused in order now?

The President — Yes, sir.

Mr. Mereness — I regret that a business engagement made several weeks ago, and which cannot be deferred, requires my presence at home to-morrow. Acting upon the suggestion of the President, and to prevent my being in contempt and listed as an absentee, I ask to be excused from the sessions of the Convention to-morrow on condition that the compensation for that day be waived.

The President — By whom is that signed?

Mr. Mereness — Not signed, but it is my application.

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

Mr. M. E. Lewis — Mr. President, I desire leave of absence from the Convention this afternoon and evening, in order to attend to a business matter which demands attention.

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

Mr. Baker — Mr. President, I ask to be excused to-morrow and Monday.

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

Mr. Crosby — Mr. President, I believe that I have been present at every roll-call in this Convention. I now am compelled to be absent on Monday and possibly on Tuesday of next week. I ask to be excused.

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

Mr. Gibney — Imperative business calls me away on Saturday and Monday next, and requires my personal attention. I ask to be excused for those days.

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

The President — I hope that the Convention will bear in mind the condition in which they put themselves last Saturday in granting these applications for excuses.

Mr. Davis — Mr. President, I ask to be excused for Saturday and Monday owing to a previous engagement.

The President — Mr. Davis asks to be excused for Saturday and Monday as he did last week. (Laughter.)

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

Mr. Barhite — Mr. President, I ask that general order No. 63 be made a special order for next Tuesday evening. It is an important matter in which a number of gentlemen in the Convention are interested, and I think we can finish it at that time.

The President — Is that the Niagara matter?

Mr. Barhite — It is.

Mr. Cochran — I ask, Mr. President, that that be a rising vote, as it requires a two-thirds vote. One assignment of a special order has been made already without a two-thirds vote.

Mr. Blake — Mr. President, I would like to know by what rule these matters are set down as a special order?

The President — By a rule requiring a two-thirds vote.

Mr. Blake — Mr. President, I do not wish to delay the discussion of any of these matters, but it seems to me that "sufficient for the day is the evil thereof." I think we should follow the regular calendar. I do not see any reason for departing from it. There are other special orders to be considered. It seems to me that the best way to do is to follow our rules in this Convention, unless by a two-thirds vote or unanimous consent we shall decide to the contrary.

The President — Rule 24 expressly declares that any matter may be made a special order for any particular day by a two-thirds vote or by unanimous consent.

Mr. Blake — I know that. I have the rule directly before me. I say that, unless we have a two-thirds vote we should not depart from the regular order of business.

The President — That is unquestionably so. Those in favor of making the Niagara matter a special order for Tuesday evening will please rise and stand until they are counted.

Mr. McMillan — One moment, Mr. President. I would ask the delegate in charge of this matter to fix a later day. It was only a short time since that this report was made. Several gentlemen from Niagara Falls have been here within the past twenty-four hours, and I would suggest to Mr. Barhite that he make it later in the week.

Mr. Goeller — Mr. President, I ask unanimous consent that the

resolution introduced by Mr. McKinstry in reference to Saturday's session be taken up now.

The President — It cannot be taken up until the report of the Committee on Rules is made. It has been referred to the Committee on Rules.

Mr. Goeller — I understand that it can be done by unanimous consent.

The President — By unanimous consent, yes, sir.

Mr. Dean — I object, Mr. President.

Mr. Goeller — I ask unanimous consent.

The President — Unfortunately, Mr. Dean objects.

Mr. Blake — Mr. President, has Mr. Barhite's motion been disposed of ?

The President — No, sir; it has not.

Mr. Barhite — Mr. President, at the suggestion of the gentleman from Erie (Mr. McMillan), Thursday will be satisfactory to me.

The President — This will require a two-thirds vote.

A rising vote was had, and the President declared the motion obviously carried.

Mr. Blake — Mr. President, I rise to a question of information. Will the Chair please inform the Convention by what vote the Chair decided the cities article was made a special order for Monday morning?

The President — By a two-thirds vote.

Mr. Blake — I did not understand that to be the decision, that the question was decided by a two-thirds vote.

The President — It was so decided.

Mr. Blake — It was by a rising vote. There was no count. I raise that point.

The President — That matter has been decided. Are there any reports of committees this morning? There is a special order for to-day, Mr. Barrow's amendment. There is a communication to be disposed of from the Comptroller's office.

Mr. Gilbert — Mr. President, under the head of reports of committees, I think it proper for me to say that I understood there was some doubt expressed on Monday as to whether the special committee on civil service had completed its work. It is perhaps proper that I should say that the special committee on civil service has completed its work.

The President — The communication from the Comptroller will be read.

The Secretary read the communication as follows (No. 25, in response to resolution No. 115):

August 23, 1894.

To the Constitutional Convention:

In reply to the following resolution of your honorable body, adopted July 20th last,

"Resolved, That the Comptroller be and he is hereby requested to transmit to this Convention a statement of what land other than forest preserves, the canals, the salt springs, and the lands upon which public buildings are erected, are owned by the State of New York, the estimated value of said property, what income is derived from the same, and where situated, and what provision, if any, in his opinion, should be made for disposing of said property,"

I have the honor to transmit herewith the statement requested, which has been prepared under considerable difficulty, arising from want of information on some points, and from the pressure of business incident to this season of the year, but which has been made as full and accurate as the limited time given me would permit.

The list of such lands, so far as the title thereto has been obtained through tax sales and the foreclosure of loan commissioners' mortgages, records of which are on file in this office, is complete. The remainder of the list, which has necessarily been obtained from other departments and sources, has been compiled with care, and is believed to be complete.

The value of most of these lands is unknown to me. The estimate given, where title has been derived through tax sales, is largely based on assessed values; where title has been obtained through mortgage foreclosures, on the appraisal made at the time of the foreclosure sale; and in other cases from inquiry of residents of the town or county in which the lands are located. The estimates made, if not correct, are approximately so.

The income derived from such of the properties as are leased, or used for any purpose, is in accordance with official reports to this department. The sale of such of said lands as are uncultivated, and within ten miles of Clinton prison, is prohibited by chapter 208, Laws of 1894, which law, in my opinion, confers ample and safe powers upon the Commissioners of the Land Office to dispose of these lands. A forced sale at any particular time, like the present, might be prejudicial to the best interests of the State. From such

attention as I have given to the subject, I am convinced that no additional legislation authorizing the sale thereof is required.

Respectfully submitted,

WILLIAM J. MORGAN,

Deputy Comptroller.

The President — What disposition will the Convention make of this communication from the Comptroller?

Mr. Roche — Mr. President, I move that the communication, together with the list accompanying it, be printed and laid upon the tables of the members. I wish to say that the Comptroller's office suggested that this should be done. The information has been obtained after considerable labor in that office, and from other departments, and they desire that they should have it in printed form. It relates to every county in the State. There are forty or fifty pages of it and I do not think it would involve an expense of more than forty or fifty dollars.

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

The President — The special order made was that Mr. Barrow's amendment should follow immediately upon the disposition of the judiciary article.

Mr. Barrow — Mr. President ——

The President — Do you move that now?

Mr. Barrow — I do.

The President — What is the number of it?

Mr. Barrow — Eighty-one, I think.

The Secretary — Introductory No. 81, printed No. 81.

Mr. Barrow — Relating to two-thirds bills. Is that the one?

The President — That is an adverse report of the committee. The Secretary will read the amendment which is the subject of the adverse report.

The Secretary read the amendment.

Mr. Alvord — Mr. President, I desire to say that I trust that Mr. Barrow will consent that this will be laid over until next week, as Mr. Goodelle, who is largely interested in this matter, is unavoidably absent and desires to be present upon the consideration of the proposed amendment.

The President — What does Mr. Barrow say to this application?

Mr. Barrow — I would say that I have postponed the consideration of this special order from week to week for the last six weeks,

and I am very desirous of having a hearing at this time. However, I am perfectly willing to have it postponed to accommodate Mr. Goodelle, because I would like to have him present when the matter is discussed.

Mr. Alvord — I suggest that it be left to Mr. Barrow to name the time.

Mr. Barrow — Can it be made a special order for Monday evening?

The President — The cities article has the track on Monday until finished and the forestry report on Monday evening. It can be made a special order for next Wednesday evening.

Mr. Barrow — With that understanding, that it be made a special order for next Wednesday evening, I consent to postponing it until that time.

The President put the question on making Mr. Barrow's amendment a special order for Wednesday evening, and by a rising vote it was determined in the affirmative.

The President — A communication has been received from the Attorney-General's office.

The Secretary will read it.

The Secretary read the communication as follows (No. 26, in response to resolution No. 153):

STATE OF NEW YORK:

ALBANY, *August* 22, 1894.

To the Secretary of the Constitutional Convention:

In reply to the resolution of your honorable body of August eighth, on motion of Mr. McLaughlin, I have the honor to transmit the following report.

I am, your obedient servant,

T. E. HANCOCK,
Attorney-General.

The President — Mr. McLaughlin, what do you wish to have done with this communication from the Attorney-General? Have it read now?

Mr. C. B. McLaughlin — I would like to have it printed.

The President put the question on the motion of Mr. McLaughlin to print the communication and statement accompanying it from the Attorney-General, in reference to claims against the State, and

it was determined in the affirmative. (See Documents Nos. 44 and 45.)

Mr. Mulqueen — Mr. President, I ask that Mr. Peabody be excused until next Tuesday.

The President — Mr. Peabody has been called home by a fire which has burned part of his premises.

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

Mr. Osborn — Mr. President, one week ago to-day permission was granted to the Committee on Legislative Organization to extend its time to report until to-day. That report is now due. It is not ready. I desire to inquire of the chairman of that committee and obtain on this floor an authoritative statement of when that report will be ready, and have the Convention understand what steps are to be taken upon the subject of apportionment. I desire to say in connection with this request that it is understood that the districting of the city of New York is not yet ready. I desire to state further that the minority members upon that committee have not yet been granted the privilege of examining with care the districting of the city of Brooklyn and the county of Erie and the county of Monroe. The districting of Brooklyn, I believe, appears in the New York Tribune this morning. It is to my mind only fair that the minority of that committee should be consulted before the districting of the great cities of this State should be given to the public, and if, Mr. President, that report is to go over until next week, as now seems inevitable, and if these other matters are to be given the right of way, in preference to the apportionment, I desire to hear some intelligent and some responsible statement upon this floor as to when the subject of apportionment is going to come before this Convention and what amount of time is going to be given the minority in this House for consideration.

The President — Have you asked the chairman before making this application?

Mr. Osborn — Mr. President, I have asked the chairman to bring this matter up. I have stated to the chairman in committee that I was not satisfied with the position in which it now stands. The chairman has asked me not to take any position in the matter, and I find myself unable to reconcile my position as a minority member of that committee with the position that they are now taking. I believe, Mr. President, that this matter will not receive any consideration by this Convention unless it is forced before this Convention immediately.

The President — Do you make any motion, Mr. Osborn?

Mr. Osborn — I do not think, Mr. President, that any motion is necessary, for the reason that the chairman of that committee is now by the resolution of this Convention instructed to report to-day and no report has been presented, and the time for reporting has passed.

The President — The Chair does not understand that the committee will be in default in not presenting their report under the head of reports of committees, as under the order already made they can present their report any time to-day.

Mr. Becker — Mr. President, and gentlemen of the Convention, much that Mr. Osborn says is true. We did expect to have the districts in New York city fully embodied in the report, so as to make the report to-day. All the other districts are ready and are in. The New York city matter has been delayed to a certain extent, because the New York member of this committee, who would be consulted chiefly about it, Mr. Root, has been engaged on the judiciary article and has been unable to prepare his districts and put them in.

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

The President — Does Mr. Becker give way?

Mr. Becker — Yes, sir.

Mr. Bowers — Is Mr. Root now engaged in that work, or is Mr. Reid? (Laughter.)

Mr. Becker — His last work on the judiciary article was completed I believe ——

Mr. Bowers — That hardly answers my question.

The President — The Chair happens to know that Mr. Root was at work on this matter until two o'clock this morning.

Mr. Bowers — I am glad to hear it. But was he alone?

Mr. Becker — Now, the matter stands in this way: the committee has requested its chairman to ask the Convention for an extension of time until Monday evening. The work in reference to New York city and county has been placed in charge of a sub-committee of two members of the committee, with positive instructions, without regard to any New York member, or anybody else, that the sub-committee should be ready with their districts by two o'clock on Monday. There is not the slightest doubt in the world but that this report will be ready to be put in here on Monday: at the latest, by Monday evening. Mr. Osborn and the other minority members of that committee have been assured that there

would be no cutting off of debate whatever. There is no intention on the part of anybody to limit debate, and as far as the Republican members of the committee are concerned, there will be plenty of opportunity afforded the minority members of the committee and no attempt will be made to curtail any reasonable amount of debate and consideration. There is nothing in the bill proposed and now being prepared that will not be, in the minds of the majority, immensely benefited by full and careful consideration.

The President — Mr. Becker moves that the time for the Committee on Legislative Organization to report on the apportionment article be extended until Monday evening.

Mr. Bush — Mr. President, I am glad that the chairman of the Committee on Legislative Organization has made the statement that he did, and I want to call the attention of the Convention to the fact that the members of the minority will have absolutely no opportunity to examine the apportionment of the city of New York in the committee, because it is to be done on Monday before two o'clock, and the report is to be made on Monday evening. So you will see how little time the members of the minority will have to examine it. He says that Brooklyn and Erie and Monroe counties are already in. I deny the fact, because I have never seen them anywhere except in a New York paper. The gentleman from Erie (Mr. Becker) no doubt has the apportionment in his pocket, but that apportionment has never been submitted to the committee. I would like to have an opportunity to see this apportionment before it goes into the Convention. However, I will waive this because I am anxious to see this report come into the Convention so that the debate on this matter will not be curtailed on account of want of time. I desire to have this report come into the Convention as speedily as possible so that we will have sufficient time to consider it, but I want here and now to make our protest so that when this matter comes up and we do not have sufficient time to debate the same, it will not be said that we had full opportunity to examine it.

Mr. Becker — I will cheerfully join, so far as I am concerned, with Mr. Bush and the minority members of this committee in having this matter as soon as reported made a special order for any day, within a reasonable time, that they may desire.

Mr. Osborn — Will you permit me to say one thing more in this connection. The position of the minority members on this matter is based upon this reason: There are a number of new rules in this proposed apportionment which seriously affect the districting

of cities. It is in our view especially desirable that the propriety of those rules should be tested by the actual results of the metropolitan apportionment. It is for that reason that we are especially desirous of insisting that the city districting be put into this apportionment bill before it comes before the Convention for action.

Now, if I understand the chairman of that committee to give an agreement upon his part, that this apportionment, including the city districting, shall be presented to the committee in its final form on Monday not later than two o'clock, and that it shall be reported to this Convention on Monday by the opening of the evening session, and that that is a responsible statement on his part, I am satisfied for my part that the committee should have the additional time which it requests, because I think it is most important, and, in fact, absolutely necessary, that the members of this committee, and the members of this body should be able to consider simultaneously the districts which are made and the rules which apply.

The President — The Committee on Apportionment being of one mind upon this matter, will the Convention give them until Monday evening to make their report?

The President put the question on the motion of Mr. Becker extending the time of the Committee on Legislative Organization in which to report until Monday evening, and it was determined in the affirmative.

Mr. E. R. Brown — Mr. President, at the time that the judiciary article was taken up, or just prior to that time, general order No. 17 was called. A motion was made and carried in the House that it should not lose its preference by reason of giving way to the judiciary article, and I think that general order No. 17 should now be called.

The President — The Secretary states that after that it was called and not moved.

Mr. E. R. Brown — That is an error. If I may be permitted, nothing has been called since the judiciary article was taken up.

The President — The recollection of the Chair agrees with Mr. Brown.

Mr. Cochran — Mr. President, may I inquire how this gets at the head of the calendar. I remember that this amendment was called in its regular order and Mr. Brown was not present. I submit we should proceed with the calendar now.

The President — Can Mr. Brown state when he moved this number?

Mr. E. R. Brown — Why, it was the morning that the judiciary article was taken up; I think last Monday.

The President — It still retains its place on the calendar, Mr. Brown. The Secretary states it never was at the head.

The calendar will be called.

The Secretary proceeded to call the calendar of the day.

General order No. 2, introduced by Mr. Roche, entitled, "Proposed amendment to amend article 3 by the addition of a new section prohibiting the granting of pensions to any civil officers or employes," was called and not moved.

General order No. 4, introduced by Mr. Hill, to amend section 5 of article 2, relating to the manner of elections, was called.

Mr. Hill — Mr. President, I would like to inquire whether the proposed amendment to the rule, as was suggested two days ago, has been recommended by the Committee on Rules, or has been adopted, whereby a general order would lose its place in order, if it was not moved?

The President — That has not been acted upon as yet. The Committee on Rules will have a meeting on it.

Mr. Hill — Well, Mr. President, I am personally ready to go on this morning. Mr. Goodelle, the chairman of the Committee on Suffrage, is necessarily absent to-day, but, as there is a special order for Monday and Tuesday, I think the Convention had better go into Committee of the Whole on this amendment, and I move that the Convention go into Committee of the Whole.

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

The President — Mr. Veeder is in the chair on this amendment.

Mr. Goeller — Mr. President, before we go into Committee of the Whole, I desire to ask leave to introduce the following resolution, a short resolution.

The President — The Secretary will read the resolution.

The Secretary read the resolution as follows:

R. 183.— Resolved, That meetings, as now arranged, of this Convention upon Saturdays be changed and that but one session be held, same to endure five hours, from 9 A. M. until 2 P. M., and that the rule obtain that thereupon the Convention adjourn until ten o'clock the following Monday morning. This to apply to Saturday sessions only.

The President — Referred to the Committee on Rules, and the Committee on Rules will meet at once in the President's room.

Mr. Veeder took the chair and announced that the Convention was in Committee of the Whole on general order No. 4 (introductory No. 183), introduced by Mr. Hill, to amend section 5 of article 2, relating to the manner of elections.

The Secretary will read the amendment.

The Secretary read the amendment.

Mr. Hill — Mr. Chairman, in the absence of the chairman of the Committee on Suffrage, I will state that this amendment now comes back to the Committee of the Whole in the form that it was originally reported by the Committee on Suffrage. I move that the committee do now rise, report this proposed amendment to the Convention and recommend its passage.

Mr. McKinstry — Mr. Chairman, I rise to a point of order. Should not the first question be, are there any amendments to the proposed amendment?

The Chairman — That inquiry has been made. Does Mr. Hill withdraw his motion?

Mr. Hill — I will withdraw the motion, Mr. Chairman.

Mr. McKinstry offered the following amendment:

At the end of the section add these words, "also provided that every voter shall be guaranteed the right to bring to the polls a ballot prepared by himself, and to vote the same when said ballot is prepared in proper form to be prescribed by law."

Mr. McKinstry — Mr. Chairman, we have had such a sad experience with so-called ballot reform that the voters of the district where I reside are very suspicious of any further experiments in that direction. I challenge any delegate to name any other five years in the history of the State marked by so many scandals and outrages upon the rights of voters as we have witnessed during the past five years of so-called ballot reform. Thousands of voters have been disfranchised; the will of the majority has been repeatedly defeated; high public officials have been disgraced; corruption unprecedented has been revealed by investigating committees, and all of it the result of so-called ballot reform. We feel that in adopting that scheme we were sadly deluded, if not swindled, and we are very suspicious of any new scheme presented, purporting to provide more reform. But with all its defects, the present reform law does preserve to the voter the right described in my amendment, and, although it may be called party heresy in some quarters, ardent

Republican as I am, I here publicly thank Governor David B. Hill and Governor R. P. Flower for insisting upon retaining this much of freedom and right for the voter, that he may prepare his own ballot, at his own home, to suit himself, and bring it to the polls and vote it by attaching it to the inside of the regular official ballot.

We had nine of the Myers ballot machines on trial last spring in Chautauqua county, and every town rejected them. I could give you a very interesting history of our experience with ballot machines, but refrain from using the time of the Convention. I consider the liability of such machines to get out of order as fatal to their usefulness. There is another machine invented by Rev. Mr. Olmstead, of Delevan, Cattaraugus county, which is much cheaper and I consider it far better. The Olmstead machine provides for voting with a ballot, and hence can be used under our present Constitution. Of course, we cannot tell what machines may be invented in the future, and hence I may vote for the proposition, but, if I do, it will be with many misgivings. At all events, I do not wish to block the wheels of Brother Hill's car of progress, nor weigh down Col. Dickey's balloon, and I will, therefore, withdraw my amendment.

Mr. Dean — Mr. Chairman, I hope that this Convention will not commit itself to this mechanical reform.

The Chairman — There is no motion before the Convention.

Mr. Dean — Mr. Chairman, I move to strike out the first section. I am entirely opposed to this system of mechanical reform. I am opposed to letting down the bars of the Legislature to make another experiment in ballot reform, either by machine or otherwise. Every time attempts have been made to reform the election laws, elections have been complicated and it has resulted in driving away from the polls the intelligent, high-minded and patriotic citizens of the State, and has thrown it into the hands of the political machines in our large cities to control our elections and debauch the politics of our State. The entire system of ballot reform has been a failure from the beginning. We never had so manly, and honest, and courageous a ballot as the ballot of the olden times, when men went to the polling places and picked out their candidates. Every new-fangled fad that has been introduced into the colonies of England and everywhere else has been tried to compel our people, by compulsion and otherwise, to vote, and now they come down here and introduce a pure piece of mechanism in the politics of our State. Any man who can invent a machine or knows anything about the mechanism of machinery can go into one of these machines or con-

trivances for voting and render it useless in a very few minutes. I am absolutely certain that any machine that has been contrived or that will be contrived can, in the hands of a corrupt man, be made inoperative in less than fifteen minutes. I hope that this Convention will not commit itself to any such policy.

Mr. Spencer — Mr. Chairman, I am not opposed to any reasonable measure of ballot reform, but, in my judgment, this Convention will make a great blunder, if it makes this important change in the provisions of the Constitution upon the single idea of permitting a machine to be used in elections. My objection to the use of machines in elections is based upon a single proposition, and that is that I do not want any machine between the human mind that counts my ballot and the result. I do not want, if there be any fraud or wrong, or mistake, to have that fraud, or wrong, or mistake charged upon any machine as an excuse. I want the human mind to act in regard to this matter, and anything that comes in between the human mind, in its action, in its counting, in its registry, is, in my judgment, a mistake. I think, sir, that in this habit of registering and counting votes, we should hold men responsible and should not put anything between a man, as an officer, and the result of the election. The only change proposed in this amendment is that the Legislature may permit the use of the election machines. I understand that a law was passed last winter permitting their use. It is, therefore, doubtful whether any change is necessary to authorize the Legislature to make use of those machines. I think this Convention should go slowly when it attempts to tamper with the constitutional provisions, with regard to the elections by ballot.

Mr. Schumaker — It is no desire of mine to say anything upon this subject, but I have had quite an extensive experience as a prosecuting officer of criminals charged with the crime of breaking locks and picking locks, and I could name many of those persons to this Convention, but the poor unfortunates would not thank me for it. Some of them are dead and some of them are now in prison. Any of them with an ordinary ice pick, or an old common Barlow knife that we used to have in times gone by, could disarrange any machinery that ever was invented for taking numbers or registering a count or lock for safes. There is a man now in the Albany county jail, Chauncey Johnson, an all-around thief. I saw him the other day. I went in to see the poor unfortunate out of charity. He is an old man over seventy years of age, and he could go into one of those machines and make it sick in fifteen minutes. You could not go on with your election. You would have a halt right there.

There are men with their hand-screws in their hand that can break into any iron window. They can put powder into a safe and they can have an explosion that you cannot hear, and they can manipulate any kind of locks that you can put on a safe and break them all to pieces and make them entirely useless. I remember once I saw a celebrated burglar. He says to me: "You have a farm up the North river?" I said: "Yes." "You have a barn on the place?" I says: "Yes." "Well," he says, "you had better take that lock off the barn" (the lock cost me fifteen dollars). He says: "Take it off. I can go there with an ice pick and with two or three raps I can knock it all to pieces." There was another man on the railroad that could stop the bell on the fare register so that it would not punch. Now, men not only have to ring a bell, but to click something in their pockets. Sometimes they don't click. The registers in the saloons and in the taverns all over the country are beaten by the barkeepers. I remember in Washington when they put in a machine at Schumaker & Hertzog's place (a namesake of mine), the head liquor mixer resigned. He would not stay. But finally, after a while, he came back and said he was going to try it. After a while he was discharged for dishonesty. He found out the machine and the employers found out him and they discharged him.

Mr. Jacobs — Was he ahead or behind?

Mr. Schumaker — He was ahead. It is the common laughing stock among burglars — the attempts to save the liquor dealers from losses and the railroad companies from losses by the use of machines — and in the matter of machinery for election booths, why, they could stop the election in two minutes and a half, almost before the sun rose on election morning. That is my experience. I did not intend to say anything about it, but some people behind me coaxed me to say it.

Mr. Hamlin — Mr. Chairman, in regard to this voting matter, I believe that an intelligent vote should be cast and counted in an intelligent manner, so that every man can see how it is received and recorded and counted in the end. Now, the object of this amendment is, of course, to cover this Myers machine. However, it is broader than that. The objection to all these machines is, as I have before stated when this amendment was under consideration. Beyond that they are all patented machines. They are and will be practically monopolies, and the question is whether this Convention wishes to put into this Constitution something that will be practically for the benefit of machines of that character. And then, these machines must work with unerring precision. If they

ever fail, they will be useless. Now, machines will work at ordinary times and be successful machines, but I wish to say, with regard to this particular machine, that in my own county, in two towns, within a radius of two miles from where I reside, it has failed twice. In one year it defeated a candidate for assessor, and in the other case the doors had to be opened, so that it was known how many voters had voted up to the time the machine failed to record. Now, I am opposed to any plan by which any machine in the future shall be used. If the time shall ever come when there is some device that has been demonstrated after repeated experiments to be successful, it will be ample time for the people of this State to put it in their Constitution.

Mr. Holls — I regret exceedingly to differ from my friend from Ontario (Mr. Hamlin), and my friend from Fulton (Mr. Spencer), but it seems to me that just the reverse is true, with regard to the proper nature of the act which should apply to the counting of ballots, from what they have said. My friend, Mr. Spencer, says that he wants the ballots counted by a human being — by one having intelligence. My answer to that is, that while the voting should be as intelligent as possible, the process of counting is a purely mechanical process. There have been any number of machines invented, calculating, adding, subtracting, multiplying and dividing, very much better than the human brain can do them; and there is no reflection at all upon the fact that the human mind is superseded by a machine for that purpose. It seems to me that what we should strive for is to get rid of every possible temptation or chance for fraud, in connection with elections. Now, I do not know that a machine can be invented, or has been invented, which applies the mechanical principles of the adding machine, or of Babbage's calculating machine, or of others that are well known, to the method of voting. If such a machine could be devised, there would then be no chance for destroying the ballots, no chance for a miscount, either by intention or by negligence; and one great element of uncertainty and fraud in elections would be entirely eliminated. Now, if a machine did nothing else than that, it would be wise for this Convention not to make it impossible to use it. I wish to call the attention of members of the committee to the fact that this amendment is purely permissive; that to defeat it is equivalent to saying that in the next twenty years no advance shall be made in the invention of a machine which may make voting more comfortable and more certain, so far as the count is concerned. That, in my opinion, would be just as absurd as it would have been, if Fulton had been prevented by constitutional prohibition or law

from improving on the first model of the Clermont, when she went up the Hudson river. I have nothing whatever to say, with regard to the failure of some of these machines where they have been tried. I do not believe that any perfect machine has yet been invented. I have nothing to say, with reference to what my friend from Kings (Mr. Schumaker) might be able to do with this machine, if he got a chance. But it does seem to me, too, that the danger of criminal interference is very largely exaggerated. It is not like a bell-punch, or one of those machines that I am told exists behind bars, where liquor is sold; but this is a machine which is to be used but one day in a year, and under the supervision of sworn public officers; and it seems to me that the danger of burglarious criminality (to use his expression) is very small. At present, there is danger of every kind of fraud in elections. I agree with everything that has been said, with reference to the unsatisfactory character of the present ballot law. I believe it is an advance over the old methods, but a very small advance, indeed. Now, it seems to me it would be a step backward for this committee to prohibit the Legislature from permitting any improvement in mechanical science being used in elections. It seems to me that when gentlemen remember what advances have been made in every line of human life in the last twenty years of invention by the use of electricity alone, they would be very slow to put into the Constitution, or permit to remain there, a prohibition against further advance in the making or in the use of devices having reference to such an important matter as elections. I sincerely hope that these amendments will prevail.

Mr. J. I. Green — I move to amend by striking out lines 5 and 6. I heartily agree with the gentleman from Ontario. I believe that anything that is invented by man can be controlled by the same agency. And I do not believe that the people of this State have arrived at that point where they will care to trust their franchises to the regulation of a machine. I believe if the machine were introduced and in operation, the man who invented the machine could, if he saw fit, control the operation and the working of the machine. We have all seen and read of the time-locks, which are used by a great many banks and other institutions throughout the United States; and we know the degree of protection to which that lock has been carried; and yet we know that those locks are locked and unlocked, and I say to you, Mr. Chairman, and delegates assembled, that I see no reason why, if a machine of this kind be in operation, or be used by the people of a city, the same invention and ingenuity which is used to control these time-locks might not

be used to control the machines which we shall have to use to record our franchises. Therefore, I hope these amendments will prevail.

Mr. Hill — Mr. Chairman, I apprehend that the delegates who have spoken on this matter misapprehend the intention and scope of this proposed amendment. I wish to have it understood, Mr. Chairman, here and now that this amendment is not designed to favor or secure the adoption of any particular machine. The language of the amendment is that the election " shall be by ballot, or by such other method as may be prescribed by law, provided that secrecy in voting be preserved." It is not my intention, nor the intention of the Committee on Suffrage, to pave the way for the adoption of any particular machine. But, Mr. Chairman, are we ready at this stage, in the nineteenth century, to say that it is impossible, within the next five or ten years, that any machine may be devised for voting, or any other method may be devised than voting " by ballot? " Is it impossible that any other method may come into use which may be approved by the people of this State? Are we as delegates, prepared to say that we want to shut our eyes to progress, and close the door to all electoral improvements, and to abide by what has been in use during the last 2,000 years, simply because it is old? It seems the height of folly for us to say that we are unwilling that the inventions or devices that may be made or suggested in the next four or five years shall not be adopted. I am surprised at my friend from Chautauqua (Mr. Dean) — that county which is known to be the nursery of great and fully-developed ideas, that county whose praises have been rung in this chamber since we first went into session, should be opposed to a measure which looks towards improvement. And, as to my friend from Kings (Mr. Schumaker), I wish to say that if it be true that machines can be tampered with, how much truer is it that ballot-boxes can be tampered with, as is now done, as has been repeatedly proven during the sessions of this Convention.

The object of this amendment, Mr. Chairman, is to empower the Legislature to provide for elections by some other method than " by ballot," in case such other method be sufficiently approved to warrant its introduction, and that only. I may say that there are at least half a dozen different voting devices in process of construction and perfection. The Myers machine has not yet been sufficiently developed, I imagine, to warrant its use. I want to say, in reply to my friend from Ontario (Mr. Hamlin) that the Myers people are not in favor of this amendment and have not been. This amendment opens the door to all improvements, and there are at least half a dozen different devices that are now being perfected, any one of

which may supersede entirely the so-called Myers machine. There are cabinets, there are methods of voting by envelope, and there are other devices. Some improved methods may be devised which will obviate all the difficulties which have been suggested as incident to the Myers machine, and will supersede the cumbersome and expensive method of voting under the present electoral law.

Let me say, Mr. Chairman, that the gentlemen who come from the rural districts and not from cities can hardly appreciate or realize the difficulties attending elections of municipal officers. The counting of ballots, for instance, where a candidate for mayor is running, will sometimes consume four or five hours, and it not infrequently happens that it takes all night to make a canvass of the ballots cast at a general election in the cities of the State. It is possible, as has been said by the gentleman from Westchester (Mr. Holls), that this work may be done properly, correctly and satisfactorily by some method other than that now in operation.

This amendment comes back from the Committee on Suffrage after a full and fair consideration of all the amendments that were originally proposed to it. It simply preserves the secrecy of the ballot, nothing more than is now observed in elections. It does not add to that secrecy an iota; it does not detract from it an iota. If, under the present law, as is the case, a voter may be permitted to take into the booth with him an assistant in case of disability, he still would be permitted to do so under the phraseology of this proposed amendment. We have left the law as it now is, except to provide that in case the Legislature shall deem it advisable in the future, in view of improvements which may be made, to adopt any one of them, the Legislature will be authorized so to do. No party, nor would the State of New York, be willing to jeopardize an election of any State officer by the intervention or use of a machine under the present constitutional provision. As was said when this matter was before us originally, a voting machine does not fall within the definition of the words "all the elections by the citizens shall be by ballot," and, as it seems to me, the Legislature has gone quite as far as it is justified under the present constitutional provision in going, by enacting the cumbersome and expensive method of voting which now obtains in this State. Secrecy must be preserved. I want to call the attention of delegates to a recent adjudication on this subject in the case of the People ex rel. Nichols v. Board of Canvassers (129 N. Y., 395), in which Judge O'Brien says:

"We know that the principal mischief which the statute was intended to suppress was the bribery of voters at elections, which

had become an intolerable evil, and this was to be accomplished by so framing the law as to enable, if not compel, the voter to exercise privilege in absolute secrecy. The primary aim and object was to enable the voter to cast a ballot for the candidates of his choice, without the possibility of revealing, by the act of voting, the identity or political complexion of the candidate voted for. When it was made impossible for the briber to know how his needy neighbor voted, the law-makers reasoned that bribery would cease."

There is one other thing which has been alluded to, and that is the question of expense. You will find in Document No. 50, which has been prepared with diligence and care by Mr. Rowley, an itemized statement of the cost of printing official ballots for the year 1893. It appears that the cost runs into the thousands, and amounts to over a $100,000 per year.

It appears that in 1893 it cost the State of New York $107,360.25 to do the printing of the official ballots for that year. That is a large amount of money to expend for ballots, which are destroyed immediately after election. If there should be devised a better method than voting " by ballot," such method, if it be by machinery, would not be, in the course of four or five years, any more expensive than the present method, and, perhaps, not as much so. And, more than that, Mr. Chairman, by means of a new method, it is possible that the large number of election officers constituting the boards of inspectors, poll clerks and ballot clerks, might be reduced, and thereby save the State of New York thousands of dollars. There are now upwards of 5,000 election districts in this State, and it is possible that much expense might be saved to these districts, if some such method as has been suggested were to be adopted. In any event, it seems to me highly proper that we should permit the Legislature to adopt such improved method, if such be found warrantable, rather than close the door to all improvements by allowing the Constitution to remain as it now is.

There was something said at the last discussion of this subject in regard to federal elections. The State of New York did not hesitate to change the Code of Practice or the method of procedure in this State in 1848-9. It did not hesitate to make improvements in the method of legal practice. How singular, then, that any such objection should now be raised on the ground that it might be necessary, under the act of Congress, to have separate federal elections. Congress can provide, by an assimilation act (as has been done in reference to practice in the courts), for the adoption of any method decided upon the State. It seems to me there is no reason whatever for that objection.

In any event, New York should take a stand in advance, and, if possible, be in the foreground in this matter, as it has been in other matters; and I am satisfied that the people of the State of New York will approve the action of this Convention, if it so decide. The press and all the political organizations, so far as I know, in our city that have expressed any opinion, with regard to this amendment, are in favor of it.

It has been urged that in the great cities of the State, where there are from 100 to 600 election districts, there should be some relief afforded. It is a difficult matter to get six or eight competent men in each district who are willing to serve on election boards, and who are capable of properly performing the duties incident thereto.

We ask that this be given us, in order that we may obviate many difficulties which now obtain in city elections. We would not have the rural districts unduly burdened. They, of their own choice, have already secured the passage of a law which permits them to use voting machines in their town elections. We do not ask them to assume any additional burdens. They have done that of their own accord, and they are now using machines in many parts of the State, but they cannot use them in general State elections under the present constitutional provision. As was said a few moments ago, no party in the State would be willing to jeopardize an election by their introduction under the present constitutional provision.

I think the amendments which have been proposed by Mr. Green and Mr. Dean to the amendment, as proposed by the committee, ought not to prevail, and that the proposed amendment, as it comes back from the committee, should be adopted. It meets with the favor of all the gentlemen who originally introduced amendments on this subject. It has been considered and reconsidered, and it seems to me that if we are to make any improvement in any line, this is one of the lines on which we are justified in urging your favorable action.

Mr. Meyenborg — Mr. Chairman, it seems to me the principle of this proposed amendment is a special plea for a machine that is already in existence. If the machine to be used has not been invented as yet, then it will be well to leave the Constitution as it now is, that all elections shall be by ballot; and when a machine is perfected to such an extent as to recommend itself, then it will be time enough for the Legislature to propose an amendment, and for the people to adopt it. With all respect, Mr. Chairman, I think that we have already spent too much time upon the subject, and I

now move that the committee rise, report progress, and ask leave to sit again.

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

Mr. Moore — Mr. Chairman, I want to say a few words upon this question. I think gentlemen have mistaken the trend of this amendment. The amendment proposed by Mr. Green goes to the very heart of this proposition. If you adopt that, you kill the amendment. I am in favor of the amendment, as reported by the committee. It is not a question as to whether the people shall be permitted to vote by a machine or by method other than that now prescribed by law, but it is a question whether or not this Convention is willing to give to the Legislature a permission to act on its own judgment as to the method of voting to be pursued by the people. I consider, Mr. Chairman, that this Convention should begin to look forward, not backward. There has been a great deal of conservatism in this Convention, and this is an opportunity for this body to put itself on record as walking side by side with those things which make for progress, for better government, better elections and better laws. I consider this amendment in the line of progress, and, therefore, Mr. Chairman, I am heartily in favor of it as brought in by this committee.

There is another thing to be considered, if you go into the consideration of the matter itself, and, as to the method which the Legislature may propose, and that is that these counting machines will save great expense to the State when the vote comes to be counted. How many of us who have been on election boards remember the time and the expense which it costs to count and canvass votes? Therefore, it seems to me that when you get machines, if they do their work correctly, and the people are willing to vote with them and to buy them, that will surely be an argument in their favor. But that question is not now before us. The whole question on this amendment — and I ask my friends on this side to consider it, and I ask my friends on the other side to consider it equally — is not whether, according to my friend, Mr. Schumaker, of Kings, somebody can take a pick-axe and break the lock or some one, else with burglarious intent, down in Kings county, or in New York county, can pick the lock; but it is whether the Convention will trust the Legislature of the State of New York to pass such legislation, as, in its judgment, may seem best adapted to secure a fair ballot and a fair and honest count. Therefore, Mr. Chairman, I beg that the question may not be clouded by the consideration of this machine, that machine, the other machine, or no machine

at all. The simple question is whether you will give the Legislature permission to act as its best judgment dictates in the interest of honest elections. I shall vote for the amendment as it stands.

Mr. Foote — It seems to me, Mr. Chairman, that the question involved in this proposition may be stated in a few words. At present, the Constitution permits but one method of voting — that which is known as voting by ballot, and which, through long use, has come to be voting by the deposit of pieces of white paper in the ballot-box. Under that system frauds have been perpetrated upon the elective franchise, notably in connection with what is commonly known as "stuffing" the ballot-box, and usually in the room where the ballots are counted and the result ascertained. The system has also been open to objection in that it has required many hours of hard labor at the close of an election to ascertain the result. Now, the inventive genius of some of the citizens of this State has been at work for many years to devise an improved system of voting, which would put up the bar against frauds committed by the stuffing of the ballot-box or committed in ascertaining the results, and at the same time to do away, if possible, with the labor and delay incident to counting the votes after they have been cast. We have in the city of Rochester the inventors of two of these machines, one of which has been in use, and the other of which is claimed to be an improvement and is about to be put upon the market. So that in that locality we have some interest in the question, as well as knowledge of the progress of invention in this line, which may, perhaps, not be possessed by residents of other localities. This proposed amendment simply permits the Legislature to adopt improved methods of voting, when it is satisfied that they are, in fact, improved methods. It seeks the adoption of no special machine; it calls for the payment by the State of no royalties for the use of patents; it simply frees the hand of the Legislature to adopt an improved method of voting, when it is satisfied that the proposed method is an improvement. It has been suggested here that when these inventions shall have been developed to a degree that they are an assured success, an amendment may then be made to the Constitution, through the instrumentality of the Legislature. But I believe, Mr. Chairman, that no amendments to the Constitution are likely to be made through the instrumentality of the Legislature, if the measure pending in this body, in reference to future amendments, shall be adopted. But, at all events, we should free the hand of the Legislature on this matter, so long as it is still required to preserve what the Court of Appeals has declared to be the essential feature of voting by ballot — secrecy in voting.

Mr. Titus — In the early part of this discussion the desk was flooded every day with amendments tending to require the elector to have more intelligence than what the law has heretofore required. Many of those amendment favored this machine, and many of those who have spoken in favor of it fathered those amendments. Now, you are seeking to authorize the use of a machine which makes the elector simply an automaton, a machine with many cranks and springs. The machines that we have to work under now have too many "cranks" already. You may take any machine that depends for its action upon little springs and cranks and by injecting one gill of the extract of sal-ammoniac in there, you can in four hours destroy every crank and every spring. But the great objection is not in the fact that the machine might be destroyed, but in the fact that if such a thing did happen on election morning, we would find the electors disfranchised. I hope this amendment will not prevail.

Mr. Forbes — Mr. Chairman, this constitutional amendment, as it seems to me, is simply permissive, and, as has been said, the objections which are now raised to some sort of a machine are only proper to be made before the Legislature, if the Legislature shall be given permission to adopt some other method of balloting than that now in use.

In regard to electricity (if that is the one thing aimed at by the amendment), I desire to say, and to put myself upon record as saying, that this is the one accurate means now in use for determining, not only votes, but any fact which requires precision. For example, we all know that time is now distributed by the United States government by electricity and that it is done accurately every day. We have improvements coming into use from day to day. We have writing machines, we have machines for transferring our own handwriting, we have printing machines, we have all sorts of domestic arrangements, and through these the people at large are becoming used to electricity. Something else may arise which will be more desirable than electricity, but it seems to me that it would be well to leave the Legislature the arrangement of a method of voting which shall insure ballots being taken secretly and cheaply, because cheapness of elections is an element nearly as important as that of secrecy.

Mr. Dean — One of the fundamental principles in our system of government is the elector. He is absolutely fundamental, and, unless he is honest, our system of government must fail. Objection has been made in opposition to this measure that it is simply permissive. In my judgment that is the fatal defect in this proposition. If there is something which is a good thing, something

which can be demonstrated to be a good thing, something which can be brought before us and shown to be practicable, then it is a proper thing to be introduced into the Constitution of this State. I do object to allowing the Legislature to tamper with the system of elections which may obtain in this State for the next twenty years. It has been doing it for the past ten years under various pretexts and it has been an absolute failure. The system is not as good to-day as it was ten years ago — nowhere near. In the event of the adoption of these balloting machines, crimes against the person would no longer be necessary in the commission of ballot frauds. All that would be necessary would be to go into the several election districts where the majority was against the corrupt element in politics and destroy the machines — which could be done in a very simple manner at any time during the early hours of election day — and in that way completely disfranchise the people of that section. In the little town of Bergen, in the northwestern part of this State, the Myers balloting machine was put on trial last year in the election of supervisors. The result of that election was that the Myers ballot machines registered 100 votes more than the registry of the polling list of that town. And yet we are asked to open the way to all kinds of experiments in that direction. I deny the theory that a ballot must be secret. I believe that an open ballot is conducive to the development of the highest standard of American citizenship, and I am opposed to any system which compels a man to go into the polling place and cast a secret ballot. It is wrong and vicious in theory and pernicious in practice, and I am against it.

I have been told that the Buffalo newspapers have supported this proposition. I am not surprised at that. If there is anything under the domain of the blue heaven that the Buffalo papers have not advocated as a fad, then I would like to know what it is. (Laughter.) They have persistently advocated everything that was mugwumpian; everything that has been tried and discarded by the intelligent people of the State of New York has been advocated by the newpapers of the city of Buffalo — compulsory voting and all. They have advocated ballot reform; they have advocated compulsory voting; they have advocated cumulative voting; they have advocated the referendum — and all the other fads of this era. And, more than that, the Buffalo daily papers are in conspiracy against every man who has the courage of his convictions, unless he belong to a particular little crowd in that city. I say this, not alone of the Republican papers, but of the Democratic papers as well. They are absolutely beneath the contempt of an intelligent

constituency. (Laughter.) I am referring now to the Buffalo newspapers exclusively.

Now, if this Convention wants to resolve itself into an agency for ballot machines, if it wants to go into the patent-right business, then, by all means, let this proposition be adopted by this Convention. Otherwise, if the dignity of this Convention is up to the proper standard of decorum, it should be repudiated right here and now.

Mr. Marshall — If this amendment made it obligatory upon the Legislature to adopt any particular voting machine as the method of registering the will of the people, I would be very strongly against it. I do not believe in requiring the Legislature to adopt any particular method of voting, but I do believe that it is a proper thing for this Convention to enable the Legislature to provide for other methods of voting besides that by ballot, which has been in use for the last half century. Other methods may be devised which will more nearly and more accurately register the wishes of the people than those now in use. I have seen some of these voting machines. They appear to me to be a great improvement upon the present system. I do not, however, advocate that any particular machine which I have seen be adopted, because it may be possible that there are difficulties in the way of its practical use. But this proposed amendment does not advocate any particular method of voting. It merely enables the Legislature to say that the choice shall be expressed by ballot " or by such other method as may be prescribed by law," and the only proviso is that " secrecy in voting shall be preserved." This does away with *viva voce* voting, which certainly should not be adopted as the method of voting. It, however, requires that secrecy shall be preserved. I think, therefore, that all citizens should agree in the adoption of the principle, because it is a protection to the laboring man, it is a protection to the man who is employed by a large manufacturer, it is a protection to every citizen against being improperly questioned as to how he voted, or why he voted in a particular manner. This, therefore, secures independence in voting. And, more than that, I claim that it secures purity of the ballot. It is a protection against those who would corrupt voters more efficacious than any law which punishes bribery at elections. The suggestion is made that if this provision were adopted, the Legislature might then adopt one of these machines which has been spoken of, and that such machine might be manipulated, acid might be used, sal-ammoniac might be put into the machine, the machine might be tampered with by a burglar or by some wrongdoer, or other malefactor, and thus the wishes of the

people might be frustrated. The same argument may be used, with respect to the ballot-box. We all know that ballots have been taken out of the ballot-box by the handsful and destroyed, torn up or burned. We have known of ballot-boxes being stolen and run away with by people at the polls. The case of The People ex rel. Henderson (55 N. Y.) is an example of such an abuse, and it occurred right in the city of Albany, under the eaves of the capitol. Under the present ballot-reform law there have been many frauds perpetrated, and the wishes of the people have, as it is claimed, been frustrated. In the case of The People ex rel. Nichols v. The Board of Canvassers (129 N. Y.), the Court of Appeals decided that 1,200 votes should be thrown out, because they were not properly indorsed; and in other cases the ballots have been thrown out because they were marked. The present system, therefore, is not a satisfactory system, and, therefore, it is not an argument against the use of another method to state that there may be frauds committed, or that some wrong-doer may, in some way or other, frustrate the wishes of those who cast their ballots. I do not care to say any more upon the subject than that by this proposed amendment we merely enable the Legislature to get out of the strait-jacket which is created by the present Constitution, and enable it to adopt new ideas, if, after experiment, they are found to be worthy of trial.

Mr. Barhite — My friend from Chautauqua (Mr. Dean) says that all the newspapers of Buffalo are in favor of this method of voting. If that is so, I will withdraw all that I have ever said against the city of Buffalo and humbly apologize, because I firmly believe that this amendment should pass. It is a step in the right direction. This is an age of improvement and of progress. The inventive genius of man, dissatisfied with the old way of voting, has begun to devise ways and means by which frauds and incorrect methods of voting can be done away with. One of the gentlemen who had the floor a few moments ago referred to the fact that if a gill of a certain liquid substance should enter the mechanism of the machine under discussion, it would be destroyed. I say to him, and I say to the members of this Convention, that there is far less danger of anything of that kind than there is that somebody will inject 500 or 1,000 false ballots into the ballot-box. The advantage of anything of that kind over the ballot-box is that even, if any person is disposed to commit fraud and thwart the will of the people, it must be done before the voting begins, and there is no reason why this machine cannot be tested before the polls are open, and, if the

machine is then found to be out of order or does not work properly, it can be thrown away, while the difficulty in voting by ballot is that the fraud is perpetrated during the hours in which the voting actually takes place.

There has been a tendency on the part of some of the gentlemen who have spoken upon this question to imply that this is a bill in favor of one particular machine. This is not the fact. This is simply a bill to enable the Legislature, in their discretion, to allow other methods of voting than that which has been practiced in the years that are past. They seek to weave this proposed amendment around what is commonly known as the Myers ballot machine. That, perhaps, has arisen from the fact that up to the present time that is the only method which has been devised, or which seems to be practical, other than the old method of using paper ballots. But I understand that there are other machines already in process of manufacture, so that there may be other ways of voting than by the use of this particular machine.

If this were an amendment which would require the people of the State of New York to use any certain machine or any certain method of voting, I would be opposed to it, but it does nothing of the kind. It simply opens the door so that the Legislature may take advantage of the results of inventive genius or the results of any advanced thought of the age.

There is another thing which strongly appeals to me in favor of this proposed method of voting, and that is that it will be a measure in the direction of economy. It now costs the people of the State about $100,000 a year to print the ballots at every general election. All that expense will be saved.

Another advantage in anything of the kind that is proposed by this measure is that it is an enormous saving of time. I have myself known of instances where 400 ballots were cast by this machine, the vote counted, the inspectors of election made their report and left for their homes within seven minutes after the polls closed.

I have not a particle of interest in this machine, and no personal interest, either one way or the other, but I do earnestly hope that this proposed amendment will be adopted by the Convention. I sincerely believe that it is a step in the way of progress and reform, and that it will open the way for the Legislature to do away with many of the frauds that have been connected with out elections in the past.

Mr. Dickey — Mr. Chairman, it is not right that this debate should be left with the record made by my friend, Mr. Schumaker,

from Brooklyn, leaving the inference that he has been in the habit of consorting with burglars, and has frequented liquor saloons in his city and in other places. I want the record distinctly to show that when he said that he did not mean to be taken literally at all. His association is not with that kind of people, and I rise in order to correct the record in that sense and to have it understood that when he was thus talking it was not from any personal knowledge, but entirely in a Pickwickian sense.

After having heard all these arguments again, I must still adhere to the notion that this amendment is a proper one, and should be adopted by this Convention. As to the suggestion made by Mr. Titus that some burglar, by the use of some acid, might destroy the workings of any possible machine, let me ask might not the same bold burglar take the ballot-box away under his arm and carry it off entirely, so that there might be no count of votes? Or, might he not apply a match to the paper ballots and burn them all up? If there is to be rascality, theft and dishonesty, why may it not as well apply to one case as to the other? But I am told that the present provision of the law is that where the machine, by any possibility gets out of order, there is a provision that that will not defeat the election; it may possibly postpone it and retard it. If the machine now in use in some localities gets out of order so that the election cannot go on, there is a provision for postponement of the election so that the will of the voters is not interfered with, but they are given a chance to the full to register their decrees.

The Chairman — The committee will understand that the motion now before the committee is the motion by Mr. Green, of New York, to strike out the two last lines, which will, in effect, restore the provision as it now is in the Constitution.

Mr. Schumaker — The gentleman from Orange (Mr. Dickey) certainly did not misunderstand me when he said that I had been associated with burglars and with saloon-keepers. I very clearly stated that fact. But I was obliged to do so from having been selected to an office to prosecute them. I have had a great deal of experience with those gentlemen — particularly with saloon-keepers — in a business way, and also with burglars, murderers and all sorts of all-around thieves and rascals, and he must not misunderstand me when I say so. It is no disgrace. Some, indeed, are very anxious for the position. I found it so when I was a candidate for the place, and I have no doubt the gentleman has had a like experience in Orange county.

I did not intend to say anything about putting this peculiar provision in the Constitution. I thought that when we had acquired

a good method of voting, otherwise than by ballot, two succeeding Legislatures indorsing it, they could establish it. They need not put it in the Constitution. It might run for twenty years by ballot or otherwise, or it might bring up a *viva voce* vote, as they used to have in old Virginia and various other places.

Mr. Dean — And in this State.

Mr. Schumaker — And in this State, as my colleague says. My friend from Kings (Mr. Meyenborg) struck the nail upon the head when he said that two years were required, and two years only, if a perfect machine could be invented, that then it could be adopted by the people of this State, instead of putting it in the Constitution, to run for — the Lord knows how long. I had the honor of being in the Constitutional Convention of 1867, and it is twenty-seven years since then. Most of my confreres and companions have passed away, but I am here, in the providence of God, to object to any such thing as putting in again, to run for twenty-seven years, a clause to vote by ballot or otherwise. It is said that there are certain people who will cheat in voting. Now, my good friend, the great commoner, knows that people of all kinds, of all nations and everywhere will cheat; they will cheat at anything.

Mr. Alvord — They may in your case.

Mr. Schumaker — Well, your case is like mine, and my case is like yours. There is no doubt of that. There is roguery and dishonesty in all the walks of life. And, as a man said about racing, he would be willing to bet upon the horses, if they had no riders, but he had no confidence in horses run with men upon their backs. There are thousands of ballots put into the ballot-boxes in various ways. They are put in before voting, and they are put in after voting. There is no doubt about that. And putting this clause in the Constitution "vote by ballot or otherwise" will not stop it, will not alter it. Education is the only thing that will make a dishonest man an honest man, or else putting the nippers on him and turning him into a prison or penitentiary for the evils that he has caused.

I protest, and protest in earnest, that there should be no machine put into a ballot-booth for the purpose of registering votes where a wrought nail, an old jack-knife or a thump from a club — a policeman's club, if I may say so — may destroy the machine or drunkenness may destroy it. Why, in some places in the country — and now I am talking about the country where they allow the ballots to be counted in a rum shop — I beg pardon, a tavern — they throw them

out of the second-story window, so they are broken and lying upon the pavement before the polls have been opened for two hours. I do not say that they would do it in our city, but I mentioned the fact to my Republican friend on my right, and he said that they would be on the sidewalk and all broken to pieces before the polls opened in the morning, and that is my belief also.

Let people vote by ballot, as they have done since they stopped voting by the *viva voce* system; let them vote as they did in the old-fashioned times, and, if they cheat, arrest them and punish them for it. But to put this new-fangled doctrine into the Constitution is altogether wrong; and, if this Republican Convention, with its big majority, does it, I will say this — and I wish to be remembered as saying it — we will beat them at the polls next fall for doing it by 100,000 votes.

Mr. Jacobs — Honestly?

Mr. Schumaker — Honestly, and count the votes, too, and without the aid of any machine. And more than that, I tell you that Mr. Roswell Pettibone Flower would carry this State and you cannot stop it. Now, put it in the Constitution if you dare. (Applause.)

Mr. Hill — I am not here to answer the indictment which the gentleman who has just sat down has made against the people of the State of New York; but I think that this debate has proceeded far enough, and that we are ready to trust the people of the State of New York in Legislature assembled to dispose of this matter as they think proper, and as they ought upon the merits dispose of it. I, therefore, move that this committee now rise and report this bill favorably and recommend its passage.

The President — The motion is not in order, because there are two motions pending, although, in fact, united in Mr. Green's proposition to strike out the last two lines.

Mr. Hill — Then I will withdraw the motion.

The Chairman put the question on the motion of Mr. Green to strike out the last two lines of the proposed amendment, and it was determined in the negative.

Mr. Dean — I now renew my motion that the committee rise and recommend to the Convention the rejection of this proposed amendment.

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

Mr. Hill — Mr. Chairman, I now renew my motion that the committee rise, report the bill favorably and recommend its passage.

Mr. Goeller — Mr. Chairman, recent session law books, long enactments every year, contain experimental laws affecting the ballot. We have now in experiment manifold improvements recently made by law, and have finished, having radically upset the former system of performing political work, electing to public office, and so forth. The Session Laws teem with recent enactments upon the subject. I believe in thoroughly applying ourselves for the next twenty years to get the good out of present ballot-reform laws — in other words, to stand by our present law and give the present law a chance. This amendment, I believe, is an over refinement and a new experiment which the people and voters do not require.

Mr. J. I. Green — A count is called for on the amendment which I offered.

Mr. Cochran — I must say that I did not hear whether that amendment was carried or lost.

The Chairman — The motion was lost. The question now is on Mr. Hill's motion that the committee rise, report the bill favorably and recommend its passage.

The Chairman put the question on the motion of Mr. Hill, and, by a standing vote, it was determined in the affirmative — ayes, 70; noes, 48.

The Committee of the Whole then rose, and the President resumed the chair.

Mr. Vedder — Mr. President, the Committee of the Whole have had under consideration proposed constitutional amendment No. 381, entitled, "To amend section 5 of article 2 of the Constitution, relating to the manner of elections," and have gone through the same, but made no amendments thereto, and instruct the chairman to report the same to the Convention and recommend its passage.

The President — The Convention has heard the report of the Committee of the Whole recommending the passage of general order No. 4, a proposed constitutional amendment in respect to voting otherwise than by ballot. The question is on agreeing to that report.

Mr. Blake — And on that I call for the ayes and noes.

The call for the ayes and noes was sustained, and the Secretary proceeded to call the roll.

Mr. Abbott — I am in favor of this proposition for the reason that it recognizes that we live in an age of progress; that it is safe

to trust the people, through their representatives, when the occasion comes — to trust them to offer facilities for voting which may be in advance of present existing conditions. For that reason I vote aye.

Mr. Cassidy — I am opposed to this amendment, because I believe that it will be the means of all kinds of jobbery in legislation. Every winter you will find the halls of this Assembly filled with lobbyists in the interests of voting machines. No sooner will one voting machine be purchased by the voters of this State and put into operation than some other man will get up another voting machine, perhaps, somewhat improved, and then all the voting machines that were adopted the year before will be thrown into the fence corners and new machines will be adopted, and this thing will go on as different machines are invented from time to time. The men who are interested in selling these machines will come here to the Legislature and give stock to the members or induce them in some other way to vote for the adoption of such other machines. I believe it. I do not think we ought to go to the people this fall with so vital a thing as this. The people are not ready for it. Why do we want to hang a mill-stone around the neck of our work? We will do that if we adopt any such amendment as this. I hope it will not be adopted. I vote no.

Mr. C. A. Fuller — I ask to be excused from voting, and will briefly state my reasons. I endeavored to make some remarks upon this matter in Committee of the Whole, but was unable to get the ear of the Chairman. I am in favor of this proposition, with the last clause stricken out —" provided that secrecy in voting be preserved." I think that the Legislature ought to have the right and the power to prescribe the manner and method of voting. Just now the secret ballot is very much the rage. I sometimes think it would be a good thing if every voter were compelled to march up to the ballot-box with his ticket right open to the public gaze, or, perhaps, it would be better still to have him go up and orally declare for whom he was about to vote. I think that the Constitution ought to empower the Legislature to say whether voting shall be by ballot or by machine, and also whether the voting shall be done openly or secretly. I think that the representatives of the people, as they are assembled in the Legislature, ought to have the privilege and power of saying in what method the voters of the State shall come up and register their will. I withdraw my request to be excused, and vote aye.

Mr. J. I. Green — The argument of the supporters of this amendment have convinced me that it ought not to pass. The gentleman

from Orange stated upon the floor of this House that in case one of these voting machines got out of order the election would thereby be postponed. I do not see why the present method of balloting is not the most efficient method — by human agency; and by human agency I mean the person voting being the agent. I, therefore, vote no.

Mr. McKinstry — Mr. President, I feel constrained to vote against this measure by reason of my own experience with counting machines. I have tried them; I have had very expensive ones, and they have always gotten out of order sooner or later and skipped ten or duplicated ten, and that fact will always tend to discredit the result of a count given by a machine. We used this Meyers machine in Pomfret at the last town meeting, and there are candidates to this day, who were beaten by small majorities, that will tell you that they were beaten by that machine. I will not use the adjective they expressed, Mr. President. Our town had gone for prohibition for years, and the result of that machine showed only twenty-two majority for that law. You ask a Prohibitionist there what was the matter and he will tell you it was that pesky machine. He does not use the same adjective that the other gentleman does. That difficulty, I think, is very serious. Now, a noted safe-maker told me once that it was the constant study of the safe-makers, they spending thousands of dollars, to devise new locks that some safe-breaker could not break, and it was a constant race, and that thus far the safe-breaker had always devised a scheme to beat the safe-maker. Now, if that is true, what an easy matter it will be for some — I will say corrupt Republican, in New York city, to defeat the election machines.

Mr. Moore — I desire to say that the Legislature can provide an antidote for any amount of sal-ammoniac that will be injected into one of these ballot machines, if adopted.

Mr. Tekulsky — Mr. Persident, I am opposed to any method of voting except by ballot, and my reason for that is that by adopting these different devices for the next twenty years for voting we will never know where we stand. One of these is the machine, and I had the opportunity of testing one of these machines one day, and it worked charmingly. The next day I attempted to vote on the machine and one of the springs was broken. Now, what would happen to an important election if the machine got out of order? I think that the old-fashioned way of voting, the elector being allowed to fix up his ballot in his own house and going then to the polls and voting as he chooses, is the best, and not, as under the new method which they got up here a few years ago, by the use of

a great big ballot with a paster and one thing and another, which has proven a farce; and it is difficult to get a good, honest election under the new laws, and now they are trying to get something else which will make it worse. I, therefore, Mr. President, am opposed to any new method, and would certainly be in favor of going back to the old style of voting. I vote no.

Mr. Veeder — Mr. President, may I explain my vote? It seems to me that if this proposition is adopted the Legislature may, so long as they preserve secrecy, adopt several methods by which ballots may be taken. You may send your ballot by mail; you may vote by proxy, or you may deliver your ballot to your neighbor to deliver for you, and he may change it on the way. In other words, it opens, certainly, a wide door to endless frauds. As long as secrecy is preserved, any method that the Legislature may devise is permissible under this amendment, such as voting by mail, by proxy, or by delivering the ballot to another, to be by him cast at the election booth or delivered to the election officers.

The report of the Committee of the Whole was then agreed to by the following vote:

Ayes — Messrs. Abbott, Ackerly, Allaben, Alvord, Arnold, Baker, Barhite, Barnum, Becker, Cady, Carter, Chipp, Jr., G. W. Clark, H. A. Clark, Cochran, Coleman, Cookinham, G. A. Davis, Deterling, Dickey, Doty, Durfee, Faber, Floyd, Foote, Forbes, Augustus Frank, Fraser, C. A. Fuller, O. A. Fuller, Galinger, Gibney, Giegerich, Gilbert, A. H. Green, Hecker, Hedges, Hill, Holls, Hottenroth, Jenks, I. Sam Johnson, J. Johnson, Johnston, Lauterbach, Lester, M. E. Lewis, Manley, Mantanye, Marshall, Maybee, McDonough, C. B. McLaughlin, McMillan, Moore, Nichols, Nicoll, Nostrand, O'Brien, Osborn, Parkhurst, Pashley, Phipps, Platzek, Porter, Powell, Pratt, Putnam, Redman, Roche, Root, Springweiler, A. B. Steele, W. H. Steele, Storm, T. A. Sullivan, Tibbetts, Towns, Turner, Veeder, Vogt, Wellington, Wiggins — 84.

Noes — Messrs. Acker, Banks, Bigelow, Blake, Bowers, E. R. Brown, Campbell, Cassidy, Church, Crosby, Danforth, Deady, Dean, Devo, Durnin, Emmet, Farrell, Fields, Andrew Frank, Gilleran, Goeller, J. I. Green, Griswold, Hamlin, Hirschberg, Holcomb, Jacobs, Kimmey, Kinkel, C. H. Lewis, Lincoln, Lyon, Marks, McCurdy, McKinstry, J. W. McLaughlin, Mereness, Meyenborg, Morton, Mulqueen, Ohmeis, Parmenter, Peck, Rogers, Schumaker, Smith, Speer, Spencer, W. Sullivan, Tekulsky, Titus, C. S. Truax, Tucker, Vedder, Whitmyer, Williams, Woodward, President — 58.

The Secretary called general order No. 5 (printed No. 421), introduced by special committee, relative to the transfer of land titles.

Not moved.

The Secretary called general order No. 7 (printed No. 316), by Mr. Holls.

Not moved.

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 Committee of the Whole on this general order, 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. The Secretary will read the proposed amendment.

The Secretary read the proposed amendment.

Mr. McDonough— Mr. Chairman, I desire to offer an amendment. It seems that this section which it is proposed to amend has been amended by another committee, and the proposed amendment which is before us can better be added to another section of the Constitution. It really belongs in section 1 of article 3 instead of section 15, and so I move to amend by striking out section 15 and inserting section 1, and by striking out lines 3, 4, 5, 6 and 7 down to the word "the." That would leave the proposed amendment just as it is except that it will be added to section 1 of article 3, which reads as follows: "The legislative powers of the State shall be vested in a Senate and Assembly." Now, I add to that this proposed amendment, that the Legislature may submit to a vote of the people, etc.

The Secretary read the amendment as proposed by Mr. McDonough, in the language following:

"Section 1 of article 3 of the Constitution is hereby amended so as to read as follows: 'Sec. 1. The legislative power of this State shall be vested in the Assembly and Senate. The Legislature may submit to a vote of the electors,'" etc.

Mr. McDonough — This question was discussed very fully last Saturday, and I said then all I had to say upon it, and would now be pleased to hear any one else speak on the subject that desires.

The Chairman put the question on the adoption of the amend-

ment offered by Mr. McDonough, and it was determined in the negative.

Mr. C. B. McLaughlin — Mr. Chairman, I move that the committee rise and report this matter adversely.

The Chairman put the question on the motion of Mr. McLaughlin, and it was determined in the affirmative; whereupon the committee rose, and President Choate resumed the chair.

Mr. E. R. Brown — Mr. President, the Committee of the Whole have had under consideration the proposed constitutional amendment No. 396, entitled "To amend article 3, relating to the passage of laws," have made some progress in the same and have instructed the chairman to report adversely thereto.

The President — The question is on agreeing to the report of the Committee of the Whole.

Mr. McDonough called for the ayes and noes, and the call was sustained.

The Secretary proceeded to call the roll.

Mr. McKinstry — Mr. President, we have imported our ballot reform from Australia, our civil service reform from China, and now propose to have our legislative reform come from Switzerland. I think the next step should be to import our executive department from South Africa and our judicial department from Patagonia. I will simply say that the people of my district are weary of these imported plans of government, and think it is time the American people should run our government upon American ideas. I vote aye.

Mr. Powell — Mr. President, as one of the exceedingly small minority, I hoped that some step of the kind proposed in this amendment might be adopted in our Constitution. I have taken no part in the debate upon this proposed amendment, because I was confident that the ultra-conservative character of this Convention, revealed on numerous occasions, would vote it down. What I expected is about to be realized. This proposed change in our constitutional law has been asked for by two classes of people; first, by the laboring classes, with wonderful unanimity; and secondly, by that class of people who are in favor of reform methods of government, whether they be obtained from China or from Australia, from Japan or from Kamschatka, or anywhere else. We care not where the improved method comes from as long as it can be an improvement, and particularly has it been desired by that class of people who are anxious that we should have in some form what is

known as home rule. This merely provides for a phase of home rule. These classes have come here asking for something, and in this proposed amendment it is proposed to give them that which they ask for in an exceedingly homeopathic dose. I think we might have given it to them without any danger.

There have been only two arguments against this amendment on the floor of the Convention. One is that corrupt legislators will use it as a means to dodge their duty, and the second is that we should only be governed by American ideas. I have been startled by the proposition that we must take only American ideas in this country, and if we are to follow that suggestion we must go back to the aboriginal savages for our ideas, and base the government of our country upon those ideas relative to government which are found among the remnants of the North American Indians; for all of our other governmental ideas in substance have been imported from other lands, either directly or indirectly. I vote no.

Mr. Smith — Mr. President, I desire to explain my vote.

The President — Does the gentleman desire to be excused?

Mr. Smith — I understand I can do it without asking to be excused. I am in favor of this amendment. I favor it because I believe it to be in exact accordance with the spirit of our institutions. This is a people's government. This amendment is designed to submit to the voice of the people the making of a law affecting them in their subdivision of the State. It is precisely upon the principle of this Constitutional Convention which will submit its proposals to the people for their enactment of them into law, or their rejection of them. It is feeling, so to speak, the pulse of the people of this State. It is the exact principle upon which all governments by the people have been conducted; even in a state of nature among the Indian tribes; every chief and every buck and every Indian of any importance are consulted. The amendment is inspired with the principle of pure democracy. I vote no.

Mr. Hottenroth — Mr. President, this provision, as I understand it, provides that when a question is submitted to the people, which the Legislature has the right to do now, for a determination of the question by the people, it becomes final and is enacted into a statute. Now, the difference as I believe between the proposition and the existing state of affairs is this; that under the existing law, while the Legislature might submit a proposition if the people support it, the Legislature subsequently can indorse or reject it, and thereby subvert the will of the people. Now, it seems to me, that if the Legislature considers a proposition worthy of submission that

it ought to have some effect, and that if it is finally submitted to the people, the result should be regarded as the law of the land. Their will is the highest will. I, therefore, vote no.

The report of the Committee of the Whole was agreed to — ayes, 83; noes, 33.

Mr. Foote — Mr. President, my colleague, Mr. M. E. Lewis, received a telegram announcing the death of a relative and he was obliged to leave on the one o'clock train to attend the funeral to-morrow.

The President put the question on excusing Mr. Lewis from attendance this afternoon and evening, and to-morrow, and he was so excused.

Mr. Hamlin — Mr. President, if it is in order, I would like to move to reconsider the proposition to print the report of the Comptroller, which was voted upon this morning. I have it here in my hand. It consists of a list of real estate belonging to the State, exclusive of the salt works, etc. It is practically a list of the lands bid in by the State for taxes, with the amount of the taxes and a description of the land. I cannot see that it will be of any particular information to the members of this Convention, and it will at least cost a very large sum of money, probably from two to four hundred dollars. I move to appeal from this Convention, ill-informed as to what they were doing, to the Convention better informed, to reconsider this motion, and vote down the proposition to print this mass of writing.

The President put the question on the motion of Mr. Hamlin, that the vote be reconsidered, and it was determined in the affirmative.

Then the President put the question as to whether the report shall be printed, and it was determined in the negative.

The Convention thereupon took a recess until three o'clock.

AFTERNOON SESSION.

Friday Afternoon, August 24, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, at the Capitol, Albany, N. Y., August 24, 1894, at 3 P. M.

President Choate called the Convention to order.

The President — The Secretary will proceed to call the general calendar.

Mr. Marks — Mr. President, Mr. J. I. Green received a telegram calling him to New York on important business, and asks to be excused for to-morrow and Monday.

The President put the question on the request to excuse Mr. J. I. Green from attendance, and he was so excused.

Mr. Banks — Mr. President, I desire to be excused for to-morrow.

The President put the question on Mr. Banks's request to be excused from attendance, and he was so excused.

Mr. Kimmey — Mr. President, I desire to be excused from this evening's session.

The President put the question on Mr. Kimmey's request to be excused from attendance, and he was so excused.

The Secretary called general order No. 8.

Mr. Lauterbach — Mr. President, I move that general order ——

The President put the question on going into Committee of the Whole on general order No. 8, and it was determined in the affirmative.

The Convention resolved itself into Committee of the Whole, and Mr. C. H. Truax took the chair.

The Chairman — The Convention now is in Committee of the Whole on general order No. 8, introduced by Mr. Lauterbach, to amend article 2 of the Constitution, relative to suffrage. The Secretary will read.

The Secretary read the proposed amendment as follows:

Article 2 of the Constitution is hereby amended by adding thereto a new section, to read as follows:

"Sec. —. Boards of election officers shall be elected or appointed as the Legislature by law may direct, provided that each class of such officers shall consist of an even number, one-half of which shall belong to and represent the political party which at the last preceding gubernatorial election cast the greatest number of votes for Governor in the State, and one-half shall belong to and represent the political party which, at such election, cast the next greatest number of votes for Governor of the State."

Mr. Lauterbach — Mr. Chairman, it seems to be generally conceded that to secure purity of elections, which is, of course, the desire of both political parties, bi-partisan boards of election should be provided for, and the four officers connected with the arrangement of the machinery of elections should represent the parties that

control the majority, and next to the majority of the votes of the State. In obedience to that sentiment, the amendment which was unanimously favorably reported by the Committee on Suffrage, is now before you for consideration. You will have observed that the consideration of the proposed amendment might have been made for three or four weeks past, the amendment having been on the order of general orders for some time. The occasion of the delay in its consideration arose from the fact that the Committee on Cities were preparing an amendment which should make a similar provision in respect to the conduct of elections in cities, and it was thought wise by the Committee on Suffrage to await the result of the deliberations of the Committee on Cities before pressing the amendment for consideration, because in some respects the two schemes might have clashed. The original report of the Committee on Cities has been referred back to the committee provided for the scheme which is set forth in this amendment. The Committee on Cities has conceded that it would be wiser to leave to the Legislature the regulation of the necessary methods of carrying out the principle which is sought to be embodied in the Constitution. Hence, their proposed amendment, if it were now submitted, would be of a more simple character, and very much in the line of that which is intended to affect the whole State, which is now to be considered. By an understanding with the chairman of the Cities Committee the matter was held back until this juncture, and now a substituted amendment for that which is in print has been by a sort of general consensus agreed upon, and I will read it and ask that it be substituted for the pending proposition. I will defer its reading for a moment until I have made a further statement. As the law now stands, there is no absolute occasion for the adoption of an amendment of this character. It has taken many years to arrive at the result, but the result has at last been arrived at, when the whole of the Empire State, without distinction as to any civil division, is controlled by a code of election laws satisfactory to the members of every political party in the State, which insures absolute partiality as far as it can be insured in the regulation of registration, of the receipt of votes and of the counting of votes, and of all the other details incident upon election. If the law of 1894 could be secured in perpetuity to the people of the State without a constitutional amendment, no such amendment would be necessary, and the practical effect of the adoption of the amendment in question would be simply to say that the law which finally matured in the enactment of the act of 1894, which provided that in town and city elections such machinery should be adopted as would give to

both political parties equal representation in the management of elections, is more than would be necessary to adopt, and this proposed amendment provides in the first instance that all such existing laws shall remain upon the statute book until repealed or modified, but that any repeal or modification shall not go to the extent of depriving, for the benefit of all the voters of the Empire State, the security which the present act of 1894 affords.

Mr. Veeder — Mr. Chairman, will the gentleman allow me to ask a question? I came in late, and would like to know if there is any amendment offered.

Mr. Lauterbach — I shall offer it directly. It does not change it in substance at all; it is just in phraseology to conform to the suggestions of the Cities Committee. It is intended, if the present existing law is repealed in any manner, that the principle which is embodied in that law shall always prevail, that both parties shall have equal representation in the officers who supervise the election machinery. The law, as it now stands, affects generally the towns throughout the State, the city of New York, and acts passed prior to 1894 cover the city of Buffalo and the city of Brooklyn in a manner satisfactory to the citizens of both sides, irrespective of party; and it is that status which we have been so many years endeavoring to arrive at, which is sought to be maintained. I will now read the amendment and send it up to the desk. This is a substitute, and I think I am justified in saying that it in no respect changes the principle of the printed amendment: "All laws creating, regulating or affecting boards or officers charged with the duty of registering voters, or of distributing ballots, or of receiving, recording or counting votes, at elections, shall secure equal representation of the two political parties, which at the general election preceding that for which such boards or officers are to serve, cast the highest and next highest number of votes. All such boards and officers shall be appointed or elected in such manner and upon the nomination of such representatives of said parties respectively as the Legislature may direct. The existing laws on this subject shall continue until the Legislature shall otherwise provide."

Mr. Veeder — Will the gentleman allow me to suggest, "except as permitted by this provision." Otherwise the Legislature might disregard this entirely. Or, "subject to the terms of this provision, the Legislature may provide."

Mr. Lauterbach — I think the phraseology covers that idea. It says that all laws to be enacted shall contain that principle. Exist-

ing laws shall remain and all laws that may at any time be enacted thereafter shall contain the principle of bi-partisan representation.

Mr. Dickey — I should like to ask the permission of the gentleman from New York to ask him a question.

Mr. Lauterbach — With great pleasure.

Mr. Dickey — May I ask whether the principle of this amendment may not be broad enough to include town meetings, in which the justices of the peace are the electing board, who are made up sometimes of one party.

Mr. Lauterbach — It is intended to cover only the officers who are connected with the elections themselves.

Mr. Dickey — Mr. Chairman, they are the election officers at the spring town meetings.

Mr. Lauterbach — Then it would cover that case.

Mr. Dickey — I would like to ask the gentleman, then, Mr. Chairman, the following question: How can it, when the officers who are designated already by law to perform that duty are made up of the election justices of the peace of the town, respectively four in number?

Mr. Lauterbach — This is the general election, Mr. Dickey. I do not think it is calculated to affect town meetings.

Mr. Dickey — Mr. Chairman, I did not note the language, but I think it ought to clearly exclude town meetings.

Mr. Lauterbach — I will read it again and you can see if it applies to the case you speak of: "All laws creating, regulating or affecting boards or officers charged with the duty of registering voters or of distributing ballots, recording or counting votes at election." I do not know what laws, if any, exist in respect to town elections you refer to. Whatever they are they shall remain unaltered if the subject of bi-partisan election inspectors is in any way involved. If there is any alteration in the existing law, and there is any application of the law to officers who are covered by town elections, then this act applies; if not, it would not affect it, as I understand it. "All laws creating, regulating or affecting boards or officers charged with the duty of registering voters." Do they do that?

Mr. Dickey — Yes.

Mr. Lauterbach — "Or of distributing ballots or of receiving, recording or counting votes at an election, shall secure equal repre-

sentation of the two political parties which at the general election preceding that," etc. I do not think that that has application to a town meeting.

Mr. E. R. Brown — It does.

Mr. Lauterbach — Well, is there any objection to its so doing?

Mr. Cochran — Will the gentleman from New York allow me to ask him a question? The radical change which I notice in this substitute is not merely that those election officers shall be chosen from the two parties casting the highest number of votes, but that they shall be nominated by certain officials to be designated by the Legislature. May I ask what the intention is? With reference to this nomination of election officials, that is a new provision, and something not considered by the Suffrage Committee, and comes up in this substitute for the first time. You provide not merely that the election officials shall be chosen from the parties casting the highest number of votes, but that the Legislature shall provide how they shall be nominated. Not only shall they be elected or appointed, but it must be on the nomination of some representative of the party. It is something new in the proposed law.

Mr. Lauterbach — Mr. Cochran, I think it would carry with it the idea that the Legislature should provide, not that bi-partisan election boards should be appointed by any officer of either party, but that either party should have its own right of nominating and electing the officers who are to control the election. It changes the policy from that which has sometimes prevailed, of permitting an incumbent of an office, a mayor or a Governor of an adverse party, and is intended to provide that the parties themselves shall designate those who shall represent them as election officers.

Mr. Cochran — Then, as I understand it, that practically allows the party to select their own election officials. Is that not so, Mr. Lauterbach?

The Chairman — Mr. Lauterbach has the floor and must proceed.

Mr. Lauterbach — I think it proper, in view of the questions that have been asked, and especially the questions asked by Mr. Dickey, with which I confess I am rather unfamiliar, that the proposed amendment should be printed, and that the discussion of the subject should go over until the members of the Convention have had an opportunity of examining it.

The Chairman — Do you move that the committee now rise?

Mr. J. Johnson — Mr. Chairman, I want to say on behalf of myself, and I believe the entire committee ——

Mr. Veeder — I rise to a point of order. Mr. Lauterbach has the floor, and has moved that the committee rise and report progress.

The Chairman — He has not yet so moved.

Mr. Veeder — I understood he was about to make that motion when he was interrupted by others.

Mr. J. Johnson — Mr. Chairman, am I in order?

Mr. Lauterbach — I yield the floor.

Mr. Alvord — Mr. Chairman, it is evident that it is desirable that this matter should be spread before the committee so that they understand it, and for the purpose of having the necessary motion made to have it come into the House, I move that the committee now rise, report progress and ask leave to sit again.

The Chairman — The gentleman from Kings (Mr. J. Johnson) has the floor.

Mr. J. Johnson — Mr. Chairman, I wish to say on behalf of myself, and I believe the entire Committee on Cities, with whom I have been able to confer ——

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

Mr. J. Johnson — I had the floor and was recognized when you made the motion.

Mr. Alvord — I ask the Chair whether or not he did not recognize my motion.

The Chairman — I had recognized Mr. Johnson first.

Mr. Alvord — My motion is in order at any time.

Mr. J. Johnson — I submit, Mr. Chairman, that while I had the floor that no motion was in order.

The Chairman — The motion is out of order while Mr. Johnson is addressing the Chair.

Mr. J. Johnson — I will now commence for a third time. I desire to say, sir, that it is with the utmost pleasure in behalf of myself and the entire Committee on Cities, so far as I have been able to confer with them, that the principle of equality in representation is to be extended throughout the State. It is a movement whereon, I believe, this Convention can be congratulated in acting harmoniously for the higher good of the State and a better dignity of citizenship. I think, however, that the motion made by the gentleman from Onondaga (Mr. Alvord) is entirely in the line of progress in this matter. It is not altogether a simple matter, although the ends that we strive to attain are simple, clear and well defined. Therefore, sir, I hope this resolution may be renewed.

The Chairman — Does the gentleman from Onondaga (Mr. Alvord) renew the motion?

Mr. Veeder — Mr. Chairman, I make the motion that the committee now rise, report progress and ask leave to sit again, in order that we may get it in the Convention and have it printed and the matter retain its place on general orders.

The Chairman — The gentleman from Kings (Mr. Veeder) moves that the Committee of the Whole now rise, report progress and ask leave to sit again, and that the general order retain its place.

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

Whereupon the committee rose, and President Choate resumed the chair.

Chairman Truax — Mr. President, the Committee of the Whole have had under consideration proposed constitutional amendment (printed No. 317), entitled "Proposed constitutional amendment, to amend article 2 of the Constitution, relative to suffrage," 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.

Mr. Bowers — Mr. President, I move that this matter be made a special order for to-morrow morning. It ought to be considered and disposed of before the Cities Committee's report, which is to be made on Monday, and I hope that members will consent to considering this in the morning; and we can then have the amendment printed and disposed of.

Mr. Lauterbach — Will the gentleman add to that motion that it be printed?

Mr. Bowers — I accept the amendment, that the substitute be printed.

Mr. Jesse Johnson — I have nothing to say on that motion except this, that so far as the Cities Committee is concerned, if their matter comes up on Monday, their cognate provision will not be pressed, but will be allowed to remain, with the assurance that the whole matter will be solved by this amendment, as to that amendment of the cities article.

The President put the question on the motion of Mr. Bowers, and it was determined in the affirmative by a two-thirds vote.

The President — The Secretary will proceed with the call of the general orders.

The Secretary called general order No. 12 (printed No. 436), introduced by the Committee on Future Amendments, to amend article 13, relating to future amendments.

Mr. Marshall — Mr. President, this general order, as amended, has only appeared upon the files since this morning, and various members of the Convention have not had an opportunity to read it carefully. I ask that it be passed for the present, but that it retain its place on general orders.

The Secretary called general order No. 17 (printed No. 384), introduced by Mr. E. R. Brown, to amend article 1, against public officers riding on passes.

Mr. E. R. Brown — Mr. President, I move that.

The President put the question on going into Committee of the Whole on general order No. 17, and it was determined in the affirmative.

The President — Will Mr. Williams please take the chair?

Mr. Tekulsky — Mr. President, Mr. Williams is engaged in the Canal Committee.

The President — Will Mr. Bowers please take the chair on this amendment?

Mr. Bowers took the chair.

The Chairman — The Convention is in Committee of the Whole on general order No. 17. The Secretary will read the proposed amendment.

The Secretary read the proposed amendment.

Mr. E. R. Brown — Mr. Chairman, this amendment reported by the committee is directed at an evil which has not heretofore been reached by any constitutional or statutory provision. It is directed toward a custom which has arisen within the last thirty or forty years, growing during that period from inconsiderable to very considerable proportions; and the custom is now, as is a matter of common report, and, I think, of common information, for the members of the Legislature not only to receive passes for their own transportation to and from the Legislature, but also to receive on an average from $500 to $5,000 worth of passes annually for distribution in the places where they will do the most good. I believe, Mr. Chairman, that this is a great evil; that it tends to destroy the confidence of the constituents in the representatives whom they have here in Albany, and that it also tends directly to lower the

moral standard and action of the members themselves. Break down the first barrier and you have no other barriers left against moral degradation. Such is the tendency, if not the fact, in every case. There is no doubt, Mr. Chairman, that members of the Legislature receiving from $500 to $5,000 worth of free transportation from corporations are at least silenced when the interests of those corporations are at stake. They cannot raise their voices against their benefactors, as they could if they were independent. I know, Mr. Chairman, that not all of those who have given passes, nor by any means all of those who have received passes for their own free transportation, have been guilty of a moral offense. It has come to be the custom, and I have no doubt that in accordance with the custom hundreds of members of the Legislature have received the passes and have not given any return therefor in direct service. But many have given something in return therefor; and as to those who have not given anything in return, there has been distrust on the part of the people concerning their fairness and impartiality in the performance of their duty. This is an unhealthy state of public sentiment. Not only have Legislatures been in the habit of indulging in this pernicious habit, but the judges of the highest courts in the land. The judges of the Supreme Court of the United States, against whom this is not directed, as appears by the letter on file here as a document, received from the vice-president of the Pennsylvania railroad, are in the habit of indulging in it; and if there is any one thing that is essential to the integrity and the maintenance of our judicial system, it is that the people should have confidence in it. When a man goes into court and tries a case before a judge against a corporation, and finds out afterwards, when the decision is rendered against him, that the judge is in the habit of riding on passes of that railroad, it tends to destroy the confidence of the litigant, and the confidence of the public is impaired in the judiciary. Not only that, but this practice has gone so far that the assessors in many sections of the State uniformly have passes and the rate of assessment is controlled by this means. Municipal officers in the section of the country from which I come, without exception, members of the common council, the mayor, the city attorney, and every officer having any power which might bring him into conflict with the railroads, ride on passes. Now, Mr. Chairman, I understand, too, that this custom is often made use of by designing men, who happen to be in positions where they have to do with the interest of corporations, to demand and to receive large gratuities of this kind on the "stand and deliver" policy. In this way a great wrong is done to the corporations; and this provision, if enacted

into law, will tend to protect them from such robbery. I do not desire to do more than give the House a succinct statement of what I understand to be the chief reasons for the incorporation of this provision in the Constitution.

Mr. Veeder — Mr. Chairman, will the gentleman allow me to ask him a question?

The Chairman — Will Mr. Brown allow Mr. Veeder to ask him a question?

Mr. Brown — Certainly.

Mr. Veeder — I want to ask the gentleman if he knows what the theory of the New York Central railroad is on this subject?

Mr. Brown — I have not inquired of any railroad or of any corporation ——

Mr. Veeder — I am informed that they desire this legislation.

Mr. Brown — That could not affect my position on the subject. This question has not now received attention for the first time on the part of the Legislature or of the country.

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

The Chairman — Will the gentleman allow Mr. Moore to ask a question?

Mr. Moore — Does the gentleman know what the position of the Delaware and Hudson Canal Company is on this subject?

Mr. Brown — I will make the same reply to the gentleman from Clinton ——

Mr. Moore — I know; they want and ask for this legislation.

The Chairman — The Chair will state to the gentleman from Clinton that permission to ask a question does not justify the making of a speech on the part of the person to whom the privilege is granted.

Mr. Brown — If that is so, I have no doubt that the gentleman who has just spoken, as the representative of that corporation, will favor this measure. (Laughter.)

Now, Mr. Chairman, like provisions have been enacted into the fundamental law of Alabama, of Arkansas, of California, of Florida, of Kentucky, of Mississippi, of Missouri, of Pennsylvania and of the State of Washington, so that it it is by no means an unprecedented measure.

But, aside from the mere fact that it has been adopted as a part of the fundamental law of any State, as a matter of saving virtue, this Convention ought to adopt this provision. We are accustomed

to boast of the advance of our civilization, but there are many things, Mr. Chairman, in which the older countries have surpassed us in the refinements and the proprieties of life; and one of these matters is the subject of the free transportation of public officers, notably in the countries of Europe. I have taken pains to inquire upon this subject of the United States representatives abroad, as to the custom in those countries, and desire to call the attention of the Convention, very briefly, to some of the communications which I have received in reply.

The reply from a consul in England is that he finds upon inquiry from railroad officials that no passes are issued to any officials, of any grade. The Queen pays her way, as do members of Parliament and officers of cities and towns, and the members of all other public bodies. There is no specific law forbidding it. The whole matter is effected by common sentiment, which would not countenance the policy pursued in the United States, and by the railway companies, whose managers do not combine such a practice with their traffic.

In the letter from Italy I find that the deputies of Italy, elected by the people to represent them in Parliament, are accustomed to ride on the railroads on passes procured by the government and paid for by government at semi-annual settlements; and the officer of the United States in that country whom I addressed adds: "But one class of passes is occasionally in use. That is when tramps, vagabonds and paupers are to be shipped to the place they call their respective domiciles. In that case the police take the happy possessor of a pass to the depot. On the train he is carefully locked up in a not too comfortable compartment until he reaches his destination, where again the police release him." As to Germany, the reply is that no one rides on passes in that country except Prince Bismarck, and he by special act.

Now, Mr. Chairman, not only has this matter received indorsement and action in States of the Union, not only is it maintained by the best opinion of the older countries of the world, but in addition to that, our own constitutional commission sitting in 1890 in the State of New York enacted it into the proposed reorganization of the judiciary that no judge should receive or accept a pass; and upon that point I am very heartily in accord with the recommendation of that commission. It may be suggested that this is legislation and not fundamental law; but I feel that we have so far discussed the question of what is proper to be put into the Constitution that we have now arrived at the conclusion that we must not only put the fundamental law into the Constitution, but we must also embody in the Constitution those matters partaking of the quality of legis-

lation which touch so near the foundations of the State that without them the State cannot well and successfully proceed in its career, and which experience has shown we cannot get from the Legislature. And upon this point the reason why we cannot get it has always existed, and I believe always will exist, unless relief is granted by a Constitutional Convention.

Mr. Floyd — Mr. Chairman, there are several views which may be taken of this subject. One certainly is the view which the State itself shall take, on whether or not as a matter of public policy any corporation shall be allowed to distribute its largesses at its own will among those to whom is confided the protection of the interests of the State against, among others, these very corporations. I ask the indulgence of the Convention for a few minutes, not to exceed ten, that I may state what seems to me to be a cogent and not very occult reason why this practice may properly be termed a pernicious practice. It would seem that in the acceptance of railroad free passes by gentlemen in official life the minor present advantage overshadows, shuts out from sight, the larger evil that follows it, like a shadow. If by the grace of the N. Y. C. & H. R. R. I receive a pass that entitles me to travel from Albany to New York, which is my line of travel, once a week, I receive $6.20. If I travel semi-weekly, I get $12.40. If, besides, I thriftly hire out my pass to some friend, at, say, half-rates, I get $3.10 more, and so on. It makes no difference to me that it is a pass. It is equivalent to money in hand; it is, in fact, spot cash. Nor does it make any difference that I receive it as a pass from a railroad corporation. It might just as well be Mr. Depew's personal check; it might just as well be an order from the Standard Oil Company for so many barrels of oil, or Mr. Rockefeller's check, or any other thing from any other official, so long as it was equal in amount, equally good and as easily converted into cash. Nor does it make any difference in estimating the quality of this transaction, that what I get, I get by the week; $6.20 a week, or $62 for ten weeks; or $12.40 a week, or $124 for ten weeks. It makes no differece, not an atom, in the amount that I receive. It is the same. And so it happens; perhaps I should say it has happened — it is pleasanter to speak of these things as past — it has no doubt happened that many a worthy legislator, whose righteous soul would have turned itself inside out with indignation if he had received from a corporation a $200 check, with a note asking his services so far as they could be consistently given in the next Legislature, has nevertheless received a pass from the corporation, with all that it implies, and traveled on it $200 worth without the slightest quiver. I do not know how this happens. It may be

that a man when brought face to face with an unexpected opportunity of replenishing the exchequer, about which there may be some slight tinge of doubt as to its propriety, and casting about for some reason why he should secure this benefit, which would otherwise not fall to his lot, may find one in the contemplation of the natural goodness or greatness which perhaps every man is dimly conscious of, and which has never before been revealed; and he may find support for that opinion in the fact that at one time it was the custom to accord passes to clergymen — a custom, I would say in passing, that perhaps found its origin in the practice of the late lamented Captain Kidd, who devoted a certain portion of his yearly business to the church. But, if a man is fair-minded, if he does not close his eyes voluntarily, he will be compelled to see, first, that it is not the method of corporations to spend their time in searching for the good and the great, or their money in rewarding them after they are found. In the next place, he will be compelled to see that the greatness which he has attained did not antedate his official life, and will not exist after his official life closes; and finally he will be compelled to the conclusion that if he does get a pass he will do with it as the other gentlemen do; he will not wear it on his hat, nor on the lapel of his coat, but in his inside pocket, and will not make it a subject of conversation to any very great extent, which would not be the case if it were the Victoria cross, or the Grand Army button, or the cross of the Legion of Honor, or any other honorable distinction. This pass comes to him with his official life, and it closes with his official life. It is unmistakably connected with it. It is the office which brings to its tenant this substantial, tangible, material recognition, which in all other transactions of life is the equivalent for value received or the equivalent for value promised. In the first place, it is an office always in which the interests of the corporations that so rapidly supply the pass, will surely be called in question. But is that all? If public office is a trust committed to him by his friends and neighbors, under the implied obligation that he will honorably fulfill it, it is a trust, among other things, to protect their interests against all assailants. Now, by common understanding, the interests of his constituency and the interests of the public and the interests of the corporation which supply him with the pass are not identical, but in almost all instances diametrically opposed. Having then received from his constituency a trust, and from his friend, the corporation, the money, when the time comes for him to act on a question in which these interests conflict, how does he find himself equipped to meet the situation? Simply thus. He has accepted for and from one side a trust which the other side has paid

him not to fulfill. Upon such a situation as this no words need be wasted. No, gentlemen, in the eyes of the plain people of our country this practice of the giving to and accepting by public officials of free passes is thoroughly odious. I do not state it too strongly when I say it is an offense to their moral sense. They do not believe that any one placed where, as judge, or arbitrator, or referee, or legislator, he is called upon to decide between conflicting interests can, or does, maintain the absolute impartiality which they rightfully demand, if at the same time he has the money of one side in his pocket; and they do not recognize railroad passes as compliments, as gratuitous favors, as tributes to goodness or greatness, or as anything but money. Now, the extinction, the annihilation of this practice is assured if gentlemen will but apply to this case those intuitions of propriety and impropriety, of honor and dishonor, of right and wrong, which every man applies without difficulty to the case of every man but himself. Meantime, to strengthen the feeble knees and to place the standard of official conduct where it ought to be, I hope this Convention will stamp its hearty approval upon this proposed amendment.

Mr. C. A. Fuller — Mr. Chairman, I am most heartily in favor of this proposed amendment. There is only one thing that prevented me from introducing it, and that is that Mr. Brown anticipated my movements. For myself, I have for a great many years regarded it as exceedingly bad for the State that this practice should prevail; that it should be understood that the members of the Legislature, as soon as they were elected to their office, should be the recipients of this kind of favor from the great transportation companies of the State. Of course, it may be asserted that no one takes a pass with any corrupt intentions. Members of the Legislature may say that it will not in any way influence their action when it comes to dealing with matters connected with railroad interests; and, perhaps, the railroad corporations themselves might say that they never gave a pass to a legislative officer or a judicial officer with any intent, in any respect, to influence his action. But, sir, to paraphrase what a New York newspaper has been asking of a certain great city statesman for weeks, I will say, "Why do you give them?" Is it because these individuals, as soon as they are elected to office, are more precious, or more handsome, have any quality that would make it more proper for them to receive these gratuities than before? These gratuities cease when the office ceases. Now, not only do members of the Legislature receive these passes, but also, if not every judge in the State, the great mass of the judges receive them; and, I think, that a suitor, a defendant or a plaintiff in a litigation in

which a railroad company is interested, may feel not entirely comfortable when he knows for a fact that the judge upon the bench has in his pocket a pass from the railroad company that is defending or prosecuting the suit. I am entirely certain that this vicious system has gone to the extent that at least some judges take these passes, not because they believe in them, not because they want them, but because if they should decline the pass they would seemingly sit in condemnation on their judicial brethren who have the passes in their pockets. Any one who has had any experience as Assembyman or Senator in the Legislature of this State knows what the practice is. Not only does he have a pass for himself to travel upon, but when his family want to go to New York, or to Buffalo, or to any city, to see the sights, a pass is granted to every member of the family. Not only that, but this Assemblyman, this Senator, who is looking out for his future interests, who is putting up his fences for the next campaign, sends out or communicates with the heelers all over his county, wanting to know whether they do not want to go down and see the show; and so anywhere from two to four, from eight to ten passes a week are issued broadcast over the member's county, and the heelers and retainers go down upon this present that he has procured; and then is an excellent time to caucus for the next campaign.

As Mr. Brown suggested in his reply to the objection that this is legislation and not a proper constitutional revision measure, I would say that if this relief is to be granted to the people of the State, if politics are to be purified to this extent, it must be done by this Constitutional Convention. I have no manner of doubt that it is utterly idle to say, "Go to the Legislature and ask that this be done." Why, pretty nearly every member in the Senate and the Assembly has his pocket-book full of passes. No, sir; if this scandal is to be blotted out, it must be done by this Convention; and, sir, some provisions have been introduced into this body to correct this evil of having gratuities presented to office holders by these transportation companies, by enacting that they shall be compelled to give these passes. Well, I would prefer that very greatly to the present situation. I think that if passes are to be granted they should be granted upon compulsion, and not as gratuity and as a present. But I am opposed to that. I believe in corporations and in railroads. I think our country could now ill-afford to get along without them. They buy their land; they buy their rolling stock; they pay their help, and why should they be compelled to give away transportation to State officers? It seems to me that it is exceedingly impudent and cheeky to prefer any such proposition as that;

and I hope that the better relief, the more thorough and manly relief, may be granted by this Convention, and that in its supreme dignity it will say that these corporations not only may not, but must not, give these inducements, these bribes, these means of corruption, to the officers of this State. I shall myself feel exceedingly sorry if this most wholesome proposition does not meet with the most hearty accord on the part of the members of this body.

Mr. Spencer — Mr. Chairman, I have an amendment to propose.

The Secretary read the amendment offered by Mr. Spencer, in the language following: "In line 6, strike out the word 'company,' and insert the word, 'person.'"

Mr. Spencer — Mr. Chairman, I do not believe that it is necessary for any one to make any extended remarks in regard to this amendment proposed by Mr. Brown, as I think every member of the Convention is fully posted upon the matter, and will act according as he sees fit; but I propose this amendment to the amendment for the purpose of making the section thorough. If we are to deal with this subject at all, it seems to me that we should word the section in such a way that it will not be readily evaded; and, to my mind, the word "company," in this section, has no particular meaning. I, therefore, move to substitute the word "person" in place thereof; because any one can see that a railroad corporation might sell passes to an individual, to a person, and he might dispose of them to the public officers.

Mr. Nicoll — Mr. Chairman, I have an amendment to propose.

The Secretary read the amendment offered by Mr. Nicoll, in the language following:

"No person elected or appointed to a public office under the laws of this State shall directly or indirectly ask, demand, accept, receive, or consent to receive, for his own use and benefit, or for the use and benefit of another, any free pass, free transportation, franking privilege or discrimination in passenger, telegraph or telephone rates from any company or corporation, or shall make use of the same by himself or in conjunction with another. Any person who violates any provision of this section shall be deemed guilty of a misdemeanor, and shall forfeit his office at the suit of the Attorney-General.

Mr. Nicoll — Mr. Chairman, I desire to say a word in favor of the principle contained in Mr. Brown's proposition, and which I have expressed in more drastic language in the amendment just read. As a general rule, Mr. Chairman, I am opposed to incorporating in the Constitution of this State legislative provisions, furnish-

ing a rule of conduct for public officers. My conception of the Constitution is that it should contain only succinct and elastic propositions under which the legislative direction may be exercised for the guidance of public officers and for the welfare of the public. But, while that is true as a general proposition, there are some offenses against public morals, some abuses so notorious, so flagrant, so hopeless of correction by the Legislature of this State, that it becomes the duty of this sovereign Convention to provide a remedy for them and to put upon them the seal of its disapproval. Such an abuse, such an offense against public morals, is the one which we are now considering. I will not trespass upon the time of this Convention by rehearsing the present condition of public affairs in relation to the *quasi* partnership between corporations and public officers now going on in this State. I know no more upon this subject than any man who sits within the sound of my voice. We have all an equal knowledge that it is and has been for the past twenty years a disgrace to the State of New York, and that it ought to be now and forever irremediably stamped out by this Convention. And, for the purpose of stamping it out, I have proposed the amendment just read by the Secretary. I am not one of those, Mr. Chairman, who believes that because a man rides on a pass, even a man in public office, that he lacks public virtue, of necessity. The practice has become so general and universal that a man who does not ride on a pass affords an exception to the general rule; and I know many good and virtuous men, in public office, who have accepted these gratuities from corporations. But, whether that be true or not, the fact is obnoxious to public morals, is an offense upon public decency, and ought to be suppressed. The proposition which I have submitted undertakes to repress it by providing for every possible aspect of the case. Every public officer, either elected or appointed, is forbidden to accept, to either ask, demand, accept, receive or consent to receive, any free pass, free transportation or discrimination from a corporation. He is forbidden to accept it for himself, to ask or accept it for himself or another. He is forbidden to use it by himself or in conjunction with another. In addition to that I have provided that a consequence of a violation of the statute shall be a forfeiture of the office and a misdemeanor. It is idle, Mr. Chairman, to fill this Constitution full of high-sounding phrases, unless in addition to those we add appropriate remedies. There is no purpose here in putting in a general prohibition, which hereafter will be more honored in the breach than in the observance. There is no reason why the State of New York should repeat the experience of the State of Pennsylvania, where they have a similar pro-

vision, and where every public officer rides on passes, notwithstanding. If we are going to do anything on the subject, let us do it so that it shall be forever effective. Nor should we be diverted from our purpose, Mr. Chairman, by the suggestion of members of this Convention, who undertake to insinuate that this is a measure proposed for the benefit of corporations. This is not to be turned aside by any suggestion that it is in corporate interest. So far as corporations are concerned, who receive their charities from the State and pay their taxes to the State, they are entitled to be paid out of the pockets of public officers for riding upon their railways or enjoying their privileges.

Mr. Holcomb — Mr. Chairman, may I ask the gentleman a question? I would like to ask you, Mr. Nicoll, why you did not include an inhibition against discrimination in freight rates as well as discrimination in passenger rates?

Mr. Nicoll — I withdrew that at the suggestion of the chairman and Mr. Hotchkiss, who are mainly responsible for the amendment. I had it originally in mind, but they thought it not necessary to put it in.

Mr. Holcomb — Do you consider that this absolutely does not leave open the possibility that there may be a discrimination in that respect?

Mr. Nicoll — I think there is hiatus in it, but I do not think the evil really is an evil in making a discrimination through freight rates; I think the evil is an evil that is addressed mostly to discrimination in passenger and other rates; but, of course, if the Convention should desire, I, myself, am in favor of making it as broad as possible.

Now, that is all I have to say upon the subject, Mr. Chairman. I sincerely hope that this proposition in the form which we have finally agreed upon, because I have submitted my amendment to the gentlemen who have this proposition most at heart, will be accepted and adopted by the Convention.

Mr. Griswold — Mr. Chairman, I offer a substitute for the proposition.

The Chairman — A substitute is not now in order, there being one amendment and one substitute before the Committee of the Whole.

Mr. Holls — I ask that the substitute be read.

Mr. Nicoll — I wish to accept in my amendment that of Mr. Spencer's.

Mr. Spencer — I withdraw my amendment.

Mr. Nicoll — Then you withdraw yours, and I will incorporate the word in my amendment.

The Chairman — The gentleman from New York (Mr. Nicoll) will address the Chair.

Mr. Nicoll — The Chair will accept my apology.

The Chairman — If it does not happen again, I will.

Mr. Hotchkiss — Mr. Chairman, the inquiry has been made as to why there has not been a prohibition incorporated into this proposed amendment against any discrimination in freight rates. I am surprised that the inquiry should have come from the source it did, because the gentleman who made it was present when the subject was discussed before the Railroad Committee, from which this amendment emanated. The answer to his inquiry is this: Very many men ——

Mr. Holcomb — May I ask the gentleman a question? Do I understand that this substitute of Mr. Nicoll's originated with Mr. Hotchkiss? Do I understand Mr. Hotchkiss is responsible for it?

Mr. Nicoll — No; I am responsible for it, and prepared it, but I submitted it to Mr. Hotchkiss and to Mr. Brown, of the committee.

The Chairman — The gentleman from New York (Mr. Nicoll) will recollect that he once apologized to the Chair.

Mr. Nicoll — Accept my second apology.

Mr. Hotchkiss — I have said nothing, Mr. Chairman, which could lead any reasonable-minded man to suppose that I claimed a right of authorship, either in the proposed amendment or the substitute. I simply said that the amendment, as it was introduced, came from the Railroad Committee, and at the last meeting, when the amendment was reported, the distinction between discrimination in freight rates and discrimination in passenger rates was discussed, and the discrimination in freight rates was omitted, and omitted for this reason: The evil which this amendment strikes at is the evil of passenger service, the acceptance of free transportation by individuals. That is an evil which is of immense proportions. It is undoubtedly true that some persons in the service of the State are also shippers of merchandise over the lines of the public carriers of the State, but their number is infinitesimal beside those who have occasion to ride upon the railroads and accept for themselves the personal accommodations of common carriers. If a man is a public officer, if he be at the same time a manufacturer and a shipper, perhaps, of hundreds of thousands of tons of merchandise per year, there is no good reason to my mind why he should not be permitted to accept from a common carrier the same discrimination in freight rates which

that common carrier makes to other shippers of like character. That is not the evil that the amendment is directed against. It is no evil of any considerable proportions, if it be an evil at all. On the contrary, I think that a man has a right to accept a discrimination in freight rates based upon the extent to which he makes use of the railroad or the carrier.

Mr. Osborn — Mr. Chairman, there are two matters bearing upon this topic which I might mention. There seems to be a certain inquiry among a class of men for fear this should be desired by the corporations. I will say to gentlemen of that class that there is an amendment coming into this body from the Committee on Industrial Interests, prepared by Mr. Springweiler, and for which I propose to vote, which will enable such men to gratify any such feeling of opposition that they may have towards railroad corporations. On the other hand, and in addition, there is a certain feeling that it is unfair to deprive the legislators and other officials of the State of the transportation to which they are now accustomed. To those gentlemen I would say, by permission of the chairman of the Committee on Legislative Organization, that that committee has introduced and agreed upon an amendment providing for the expenses of legislators in their necessary transportation. It seems to me that with a clear understanding of the fact that those two amendments are to come before this body, there is no reason why the amendment proposed by Mr. Nicoll should not prevail.

Mr. O'Brien — Mr. Chairman and gentlemen, I have only a single suggestion to make. As I have urged this measure among the delegates from time to time, I have been met with the suggestion that a pass was in no sense a bribe, that any public officer might take a pass if he chose, and that he might still perform his duties with the same conscientious fidelity as if he had not received it. While that may be true with some men, we all know as to other men, and as to a very large class of men, it is not true. I was talking recently with an official in one of the cities of this State. He told me he had had for some time pending proceedings against a great railroad of this State, and that in order to further those proceedings it was necessary that action be taken in the common council. From time to time some member of the common council would bring that matter up, but for some reason unknown to the official, he would find that it was dropped. It had not proceeded very long before a representative of the company came to him and offered him a pass. He then began to inquire into it, and it took but little inquiry to find out that every one of these council men had, as he had raised this ques-

tion, received a pass from that railroad company. Now, in those cases, and in every one of those cases, the offer of the pass was sufficient. It did not require anything more. The pass was all that was necessary to stop those officers in the performance of their duties. Now, if we say that legislators or other people will not take these as bribes, will still perform their duties, notwithstanding the fact that they received them, I deny that as matter of experience, of a common, ordinary experience of life. If some gentlemen are able to rise to the exalted plane where they may take a pass and still perform their public duties, there are others, hundreds of others, to whom free transportation at will over a great railroad is a bribe which their virtue is not proof against.

Mr. Maybee — I desire to ask the gentleman one question. Does it prevent a public officer from purchasing a thousand mile ticket at reduced rates?

Mr. E. R. Brown — I do not understand it to prevent that. I think that will be a very unreasonable construction.

Mr. Holcomb — I would like to ask Mr. Brown whether the pending proposition has been accepted so that it is a substitute to his proposition?

Mr. E. R. Brown — I regard the substitute offered by Mr. Nicoll as an improvement upon the amendment.

Mr. Holcomb — That is not an answer to my question.

Mr. E. R. Brown — I do accept it.

Mr. Holcomb — Then it becomes a substitute; not an amendment, but a substitute.

The Chairman — The gentleman from New York will address the Chair.

Mr. Holcomb — I thought I did. I would like to ask whether the pending proposition before the House is a substitute?

The Chairman — The Chair treats it as a substitute.

Mr. Holcomb — I do not know what led the gentleman from New York (Mr. Hotchkiss), who is substantially a colleague of mine, to make the uncalled-for, and, as I consider it, very ungentlemanly remark, when he began his speech and brought my name into it. What took place in the committee is something that belongs to the committee, and has no reference at all to any proceedings upon this floor. So far as the principle involved in this matter is concerned, we are all of one mind, I think. But whether the proposition should go so far as to cover the whole evil, or whether, in accordance with a suggestion made by the gentleman from New York, an evil be an

evil if it be great, and not an evil if it be small, is something I think that might have consideration, but perhaps not. In reference to the substitute offered by Mr. Nicoll, it meets my entire approval, and I do not use the word "my" in quite so absolute a manner as my colleague from New York is accustomed to use it. I do not think that a proposition of this sort, involving, it may be, the morals, the moral conduct of men charged with, in part, the government of the State of New York, is to be treated from any point of personal vanity whatever, however overweaning that vanity may be, or whether one individual in this Convention may consider when he turned the great light of his intellect upon one proposition, that thereby the best thought of this Convention should have been turned upon it, is a matter of very slight consequence to me, very slight, indeed. I am quite content with the proposition offered by Mr. Nicoll, because I do believe, while I do not concur in the suggestion that any gentleman who is fit to be honored by the people of the State with any position under the State government, whether as a member of the Legislature, or a member of one of our boards of aldermen, or a Senator of the State, or to be placed upon the bench of one of our courts, is open to a suggestion even of bribery growing out of such a courtesy as this, if you call it a courtesy, or call it by any name you like, ugly or pleasant, or whatever name you please to put upon it. I do not consider that there is any such thing as that the public servants of the State of New York — and I, for one, standing here as a representative of the people, will resent the suggestion, that they are open to bribery or that these things are bribes. I am content that we should put this into the Constitution or into any statute, and I shall give my voice for the substitute offered by the gentleman from New York (Mr. Nicoll).

Mr. Griswold — Mr. Chairman, I wish to offer an amendment, which is designed to accomplish the same thing as the other propositions that have been made. I should like to have the Convention understand what it is.

The Chairman — Will the gentleman send his amendment to the desk that it may be read?

Mr. Mantanye — Is an amendment in order?

The Chairman — An amendment to the substitute would be in order; nothing else.

Mr. Mantanye — I cannot make an amendment to the substitute without knowing what it is.

Mr. Griswold — The amendment which I propose is one to accomplish the same thing, and I believe, if the Convention under-

stand it, it will be entirely effectual, while the main proposition here will not be, and can be evaded. The proposition is this: "Strike out all after line 1, and insert as follows: 'each corporation or company running or operating a railroad within this State for the carrying of persons and passengers, shall carry and transport upon the line of its road, upon any of its regular trains, without compensation, and free of charge, each of the judges of the Court of Appeals and of the Supreme Court, and each member of the Legislature of the State, when traveling upon or over the line of its road from his residence to his place of destination, in or for the purpose of the performance of the duties of his office as such, and in returning therefrom to his place of residence.'"

The Chairman — The Chair is obliged to inform the gentleman from Greene (Mr. Griswold), that there is a substitute already before the House, which must be disposed of before another substitute can be received. Therefore, at the present moment, the substitute is out of order, but it will be received as soon as the other substitute is adopted or rejected. The question is upon the original substitute offered by the gentleman from New York (Mr. Nicoll).

Mr. Choate — Mr. Chairman, I do not entirely approve either of the amendments offered, or the amendment to it, which Mr. Nicoll has proposed, upon the ground that, in my judgment, they do not go quite far enough. I never enjoyed, myself, the privilege of a pass, and do not know the sensation of traveling on one; and from the general outburst of public indignation which has been manifested here, I am satisfied that that is true of all the members of the Convention. (Laughter.) But it seems to me that there are two sides to this picture, and that the public officers are not the only parties at fault, or the only ones who ought to be restrained. If it is to be a misdemeanor for a public officer to receive a pass, it appears to me that it should also be a misdemeanor for the officer of the company who signs a pass with intent to violate this article, and that he should also be subject to the same restrictions and liable to the same penalty. I do not think that you reach the whole evil when you prohibit one side to the transaction, but that the other also must be reached. I confess that the letter, that was written to use here by the vice-president of the Pennsylvania Railroad Company, opened my eyes to the magnitude of this evil which has been so justly denounced by many of my fellow-delegates. I shall not add to their withering words in that respect. I have made some inquiries since the receipt of that letter, and have reason to believe that a similar state of things exists in the State of New York as was depicted as existing in the State of Pennsylvania, and that there are rail-

road companies in this State which do not even wait to be asked for passes by public officials, but that when a court has been constituted or a Constitutional Convention made up, or a Legislature is about to convene, I am told that it is not unusual for these companies to prepare in advance of being asked packages of passes for the members of those public bodies. It is said, Mr. Chairman, that the Lord loveth a cheerful giver. (Laughter.) If so, these railroad companies must be very dear to Him (laughter), as they are manifestly to the Legislature and the people of this State. (Laughter.) Now, I would like to see an amendment; I have not that skill in framing these penal statutes and provisions that my associate and fellow-delegate (Mr. Nicoll) has. He cannot only draw them, but enforce them, and, therefore, I would like if he could apply his skill to the drawing of an addition which would make the officer who signs the pass, intending it to be issued in violation of this article, also guilty of a misdemeanor. (Applause.)

The Chairman — The question is on the adoption of the substitute offered by the gentleman from New York, Mr. Nicoll.

Mr. Towns — Mr. Chairman, I have an amendment which I think would meet the suggestion of the President. I ask the Secretary to read it.

Mr. Towns's amendment was read by the Secretary, as follows:

Or of any citizen of this State, and the person who is successful in such suit shall succeed to the office forfeited in consequence of such suit. (Laughter.)

Mr. Towns — Now, Mr. Chairman, I generally have but to hear the voice of our President to be convinced of the truth of his assertions, but I cannot agree with him in the position that he takes, namely, of suggesting punishment to the giver as well as the receiver. To my mind that would nullify the virtue of this entire proposition, because if the giver was to be punished, he would assist the receiver in concealing the gift. I think that this meets the queston fairly and squarely, and that it will inspire our citizens with that spirit of virtue and that feeling of animosity against the receivers of passes to such an extent that the court will be full of those virtuous prosecutions. Now, if we wish to enforce this law, we ought to provide such measures as will guarantee its enforcement, and if we put in the hand of every informer and every spy the power to enforce these provisions, there will not be a man in the State who will dare to take this bribe from the corporations. If every gentleman in this Convention votes for this measure who to-day has a pass of the railroad company in his pocket, I have no doubt it will be passed

with an unanimity that has not signalized any measure that has come before this Convention. I am against any legislation which intends or suggests the infusion of morals into individuals which they naturally do not possess whether it be by legislation by Constitutional Convention or whether it be by legislation by the Legislature of the State. But if we are going to experiment in the injection and infusion of morals and morality into the people of the State of New York, let us begin our experiment by efficient means, and let us create in this State a corps of spies and informers that will protect the railroads from the raids that have been made upon them by the Assemblymen and public officers, and in that way, perhaps, we may be successful; and I think that will meet with the suggestions of the President, and be more effectual in the successful prosecution than if we punish the bribe-giver as well as the bribe-taker.

Mr. Mantanye — Mr. Chairman, I wish to offer an amendment to the substitute.

The Secretary read Mr. Mantanye's amendment, as follows:

Mr. Mantanye offers the following amendment to general order No. 17, and to the substitute therefor: After the word, "corporation," insert the following words, "except that the incorporated common carriers of the State, as one of the burdens incident to their franchises, shall issue to every State officer, including judges of the Court of Appeals and justices of the Supreme Court, and members of the Legislature, free transportation between the place of residence of such officer and the place where his official duties are to be performed, by the usual traveled routes, for the personal use of such officer only; such transportation to be furnished on the certificate of the Secretary of State."

The Chairman — This amendment being to the original proposition, the original proposed amendment, cannot now be entertained.

Mr. Mantanye — It is an amendment to the substitute.

The Chairman — Then it may be received and considered.

Mr. Tekulsky — Mr. Chairman, I am very glad to see that a spasm of virtue has struck this Convention at last. Since Ollie Teall has become a resident of the second district in New York to reform the people down there, and he is one of my constituents, I would, therefore, suggest that an amendment to this proposition will be right and proper at this time.

The Chairman — The Chair informs the gentleman from New York (Mr. Tekulsky) that no further amendments can be received for this substitute at this time.

Mr. Tekulsky — I'm not offering an amendment; I'm just offering a suggestion that it might be right and proper at this time to inject into this proposition the anti-treating clause. (Applause and laughter.) Our friend, Mr. Teall, was a former resident of Syracuse, and that happens to be the place where I came from, and it strikes me forcibly as being a very good amendment to this proposition, because I really believe that they are both of them farces. You cannot stop good fellowship amongst men, neither can you stop good fellowship among railroad corporations, especially when it is going to benefit the corporation. Now, Mr. Chairman, I cannot see why there is so much time wasted upon a subject of this kind, unless it is in the interest of lawyers. It says here, "any person who violates the provision of this section shall forfeit his office at the suit of the Attorney-General." I suppose we have now one Attorney-General and quite a few deputies, but we would want just about five hundred more of them to prosecute, and all that would be in the interests of the lawyers. I, not being a lawyer, am positively opposed to this proposition, as I cannot have any opportunity to defend these cases. I consider this whole matter as a farce.

Mr. E. R. Brown — Mr. Chairman, where such a material contribution is made to the subject as that just furnished by the President of the Convention, I regret very much not to be able to accept his suggestion in its full length and breadth, but, it seems to me, that when the State has provided that its public officers shall not violate this proper sense of propriety, we have gone far enough, and that when we take the other step and provide that those who give the passes are likewise guilty of a misdemeanor, we have put ourselves in the same situation in reference to this offense that the people of the State have found themselves in regard to bribery at elections. There is a crime at one end met by a crime at the other end, and it results in a copartnership in crime, and neither of the parties is brought to book. I am aware that the President of this Convention is not given to criminal practice, otherwise I would not dare to differ with him on this point, for I have already experienced the force of his opposition, and I should be unwilling to antagonize him, although I should be very happy to persuade him.

Mr. Choate — After conferring with Mr. Nicoll, I am satisfied that half a loaf is better than no bread, and will vote for his amendment.

Mr. Towns — Mr. Nicoll, will you not accept my amendment? I ask the Chair if he will not accept my amendment; if he does not think it will be more conducive to the end desired?

Mr. Nicoll — I am sorry not to agree with the gentleman from Kings, but I think the amendment is effective without the addition proposed.

Mr. Towns — Do you think the Attorney-General, without having the matter drawn to his attention, will have time to find out who has violated these provisions?

Mr. Nicoll — I think the attorney will.

Mr. Lauterbach — As I put my hand in my pocket before voting, I would like to ask whether this amendment can have any retroactive or *ex post facto* action? (Laughter.)

The Chairman — The question is on the amendment offered by Mr. Mantanye.

Mr. Veeder — Mr. Chairman, is it in order at this time to offer a substitute to the whole matter?

The Chairman — It is not; not until this amendment is disposed of. The question is on the amendment of Mr. Mantanye.

Mr. Forbes — Mr. Chairman, I will state to the committee that I have not a pass, and have not used a pass during this Convention, and I think that having made that statement, I can with propriety say that this whole matter is beneath not only the dignity, but also beneath the privilege of this Convention to consider, for the reason that we are either going to impose upon corporations some new duty which was not imposed in their charter, or else we are going to consider an evil which should be considered by those who are elected for that purpose, that is, the Legislatures of the State. If we are going to take up all of the evils that are pressing us on every side of the State, our Constitution, when made, will be a volume of criminal statutes, and not a Constitution of the usual and necessary form. For those reasons, I think, Mr. Chairman, that both of these propositions, not only the original amendment, but the substitute, should be voted down.

The Chairman put the question on the adoption of the amendment offered by Mr. Mantanye, and it was determined in the negative.

Mr. H. A. Clark — May I ask the gentleman from New York (Mr. Nicoll) a question? I am entirely in sympathy with this amendment, but wish it to be as perfect as can be when it is passed. I wish to ask him if it is wise to insert in our Constitution anythng referring to a misdemeanor, so long as a misdemeanor is not defined by the Constitution?

Mr. Nicoll — We have already in the Constitution the word "felony," in the fifteenth article, relating to bribery. I had originally

intended to use the word "felony" here. I thought that, perhaps, was a little too severe. The word "misdemeanor" is in the judicial article.

Mr. H. A. Clark — As I have said, I am entirely in sympathy with the provisions of this article. I think the article should be passed, as offered by Mr. Nicoll. There are many officers in the State who would not accept a money bribe, who would feel indignant if such a thing were offered to them. There are very few officers in the State of New York who will not accept a pass over a railroad and feel they have a right to accept it. They receive it as a matter of privilege, and feel that there is no harm done to them or to the State by receiving it. At the same time, after receiving this pass, many of them will feel under obligations to the company or to the person who delivered it to them. The question has been asked here whether or not the railroads desired this amendment. I feel that it makes no difference whether the railroads or other corporations desire it or not, or whether the public officers of the State desire it or not. It is a protection alike to both. It is a protection to the railroad companies against evil, and it is a protection to the officers of the State against scandal.

The Chairman put the question on the adoption of Mr. Towns's amendment, and it was determined in the negative.

The Chairman put the question on the adoption of the substitute offered by Mr. Nicoll, and it was determined in the affirmative.

The Chairman — The substitute offered by the gentleman from Greene (Mr. Griswold) will now be considered.

Mr. Griswold — I thank you, Mr. Chairman, that I have succeeded, after all the difficulties, in getting a hearing.

The Chairman — The gentleman is informed that he has been heard as quickly as it was possible to hear him.

Mr. Griswold — I have no doubt of it, Mr. Chairman. Now, I have a suggestion to make to the Convention in reference to this substitute.

Mr. Dean — I rise to a point of order, that the substitute offered by Mr. Nicoll having been passed upon by this Convention, that a substitute is no longer in order.

The Chairman — The Chair rules the point of order not well taken.

Mr. Griswold — I can tell the Convention in a very few words what this substitute is that I propose. When you attempt to get a measure through here it ought to be one that will be effectual and

that will accomplish what you design. The Convention seems to be almost unanimous upon the subject of this grievance and scandal. I do not believe that officers, judges of the court, are bribed. It does not make one particle of difference, but I wish to do what I can to remove that scandal. That is what other gentlemen of the Convention desire. How do we propose to do it? I propose that instead of the proposition as offered, that this proposition be made in the place of it. It is to the effect that each railroad corporation of this State shall furnish free passes to each of the judges of the Court of Appeals, of the Supreme Court and to the members of the Legislature. Those are the only officers in reference to whom there is any suspicion.

Mr. O'Brien — I rise to a point of order, that this is an equivalent proposition to that of Mr. Mantanye, which has been voted down.

The Secretary read Mr. Griswold's amendment as follows:

Strike out all after line 1, and insert as follows: "Each corporation or company running or operating a railroad within this State, for the carrying of persons and passengers, shall carry and transport upon the line of its road, upon any of its regular trains, without compensation and free of charge, each of the judges of the Court of Appeals and of the Supreme Court, and each member of the Legislature of the State, when traveling upon or over the line of its road, from his residence to his place of destination, in or for the purpose of the performance of the duties of his office as such, and in returning therefrom to his place of residence."

The Chairman — The Chair rules the propositions are equivalent, and the amendment is not in order.

Mr. Cochran — If I may be allowed, I will say the Chair does not ——

The Chairman — If the gentleman from Kings (Mr. Cochran) wishes to appeal from the decision of the Chair he may do so. The Chair desires no assistance.

Mr. Doty — Mr. Chairman, I move the committee now rise, report this proposed amendment to the Convention, and recommend its adoption.

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

The committee thereupon rose, and President Choate resumed the chair.

Mr. Bowers — Mr. President, the Convention has been in Committee of the Whole on proposed amendment No. 384, entitled,

"To amend article 1 of the Constitution against public officers riding on passes," has gone through with the same, has made some amendments thereto, and instructed the chairman to report the same to the Convention, and recommend its passage.

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 amendment goes to the Committee on Revision to be printed and go on the order of third reading. The hour of five o'clock having arrived, the Convention takes a recess until eight o'clock this evening.

EVENING SESSION.

Friday Evening, August 24, 1894.

The Convention resumed its session at eight o'clock.

President Choate in the chair.

Mr. Acker — Mr. President, I desire to be excused from attending the sessions of the Convention to-morrow.

The President — Mr. Acker asks to be excused for to-morrow, and the Chair is well advised that his absence is necessary.

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

Mr. Pratt — (R. 184.) Mr. President, I move that the Committee on Rules be instructed to frame and report to this Convention a rule providing for one session of this Convention on Saturday, beginning at nine o'clock and ending at twelve, and that, at five minutes to twelve on each Saturday, all other business be suspended and the roll of the Convention be called; that every member of the Convention not answering to his name on that call, and not excused from attendance by the Convention, be fined the sum of twenty dollars, to be deducted from his next week's pay.

Now, Mr. President, I quite agree with the President of this Convention, that if any member absents himself therefrom for the purpose of attending to his private business, taking the time which the State has paid for, he should sacrifice a portion of the compensation which the State proposes to give him. But, Mr. President, many, if not most, of the members of this Convention have "given hostages to fortune," and have families that require at least a portion of their time and attention, and I call the attention of the Convention to the fact that the very Legislature which enacted the law

under which this Convention has convened, established Saturday as a half-holiday, and, therefore, all servants of the State can consider themselves as exempt from duty to the State on that day.

Mr. Powell — Mr. President, I ask unanimous consent to introduce a resolution, and think that after it is read the Convention will accept the proposition contained therein.

Mr. Cookinham — I object, Mr. President.

The President — Mr. Pratt's resolution is referred to the Committee on Rules.

Mr. Towns — Has Mr. Pratt's resolution been read?

The President — It has been stated by him.

Mr. Towns — I would like to have it read, Mr. President.

The President — Mr. Pratt will put his resolution in writing, and it will be sent to the Committee on Rules.

Mr. Powell presents a resolution, and it will be read.

Mr. Cookinham — I object, Mr. President.

The President — Is there any objection to the reading?

Mr. Cookinham — I object, Mr. President.

The President — It can be read for the information of the Convention.

The Secretary read the resolution, as follows:

R. 185.— Resolved, That any member of this Convention who shall hereafter ride upon or use a free pass or ticket from any railroad, steamboat or street car line, shall not receive his per diem allowance during the remainder of this session.

The President — Does any gentleman wish to debate this resolution?

Mr. Cookinham — I move that it lie on the table, Mr. President.

The President put the question on the motion of Mr. Cookinham, to lay Mr. Powell's resolution on the table, and it was determined in the affirmative.

Mr. Deterling — Mr. President, I ask to be excused for to-morrow.

The President — Mr. Deterling, after ten days' service in the Convention, asks to be excused. The question is on excusing Mr. Deterling after his brief term of service.

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

Mr. Cochran — Mr. President, may I ask the chairman of the Judiciary Committee for information?

The President — He is not here.

Mr. Cochran — I would like to have it appear on the record, so that it can be referred to. What I would like to ask is, what was done with the resolution offered by Mr. Bigelow and referred to the Judiciary Committee, as to the latest day to which this Convention could be prolonged, consistent with the submission of the results of our labors to the people?

Mr. Cookinham — Mr. President, I think I can answer the gentleman. It has not been taken up in the committee for the reason that the committee was engaged in other matters, and we had no time.

Mr. Cassidy — Mr President, I ask to be excused for to-morrow and Monday.

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

Mr. Deterling — Mr. President, I desire to renew my request to be excused. It is very important that I be excused for to-morrow.

The President — You cannot renew the motion, unless you move to reconsider the vote by which leave was refused.

Mr. Deterling — Well, then, Mr. President, I move to reconsider the vote.

The President put the question on reconsidering the vote by which leave of absence was refused to Mr. Deterling, and it was determined in the affirmative.

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

The President — The Secretary will proceed with the call of the general orders.

General order No. 19 (introductory No. 116, printed No. 386), introduced by Mr. Roche, to amend section 18 of article 3, relating to special or local laws, was called, but not moved.

General order No. 21 (introductory No. 212, printed No. 388), introduced by Mr. J. Johnson, relating to the title of bills, was called.

Mr. J. Johnson — Mr. President, I can explain the bill, and, with the consent of the Convention, I will be glad to have it brought up.

The President — Do you move to go into Committee of the Whole on that amendment?

Mr. Johnson — I do, sir.

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

The Convention resolved itself into Committee of the Whole.

Mr. Cookinham in the chair.

The Chairman — The Convention is now in Committee of the Whole on general order No. 21, introduced by Mr. Johnson, relating to the title of bills.

The Secretary will read the amendment.

The Secretary read the amendment.

Mr. J. Johnson — Mr. Chairman, with the consent of the committee, I will state briefly the purposes of this bill. As is familiar, I suppose, to you all, the present Constitution requires that the subject of all local bills shall be expressed in their titles, in addition to requiring that there shall be but one subject. The point is that the subject of which local bills treat must be expressed in their title. Now, there is no such provision whatever as to general bills; no provision that the subject must be expressed in their titles. This amendment does not propose to put any such amendment into the Constitution. It does not propose that as to general bills the subject must be stated in the title. In other words, the amendment would leave it so that a bill might be entitled: "An amendment to the Revised Statutes," which would leave, I presume, all possible subjects of legislation open. This amendment, I apprehend, would leave it that a bill might be entitled: "An act for the benefit of the people of the State of New York," and this would not interfere with that. But what this does do is this, and on this I ask the attention of the committee, that if a general bill undertakes to state its subject in the title, if it undertakes to set out in the title that of which it treats, having so undertaken, it cannot go beyond what has been put upon its forefront as the subject of the bill. The reason that suggested this amendment to me may be found in the case of Ferguson against Ross, reported about two years ago in the Court of Appeals, which I should have had here and would have had here, had I supposed this matter would be up to-night, wherein the title of a bill limited it to a particular subject — to a particular line of operation. It was conceded, in discussing the validity of that bill, that it treated matters outside of the title. It was a bill in relation to the harbor of New York. The Court of Appeals said that you would be right, were this a local bill, while

your claim that this is not within the title is correct, nevertheless, this is a general bill, and, therefore, there is no limitation but what the subject-matter may go far beyond the title. They said, in effect, that the title of a general bill was not a part of the bill and there was no necessity for a title. Therefore, Mr. Chairman and gentlemen of the committee, this amendment is suggested, not at all providing but that there may be many subjects in the same bill, if they are general. The same bill may relate to railroads, to electric-light companies, to insurance, to any number of subjects, as now, if they say it relates to those subjects and has no subject at all, or simply say it is a bill for the welfare of the people of the State of New York. If the bill says it is a bill in relation to railroads, under this amendment it cannot touch insurance or banking, and, if it is an act in relation to banking, it cannot touch insurance or railroads. I think, sir, the bill, as reported by the committee, is very carefully drawn, and the letter expressed in the italics is the voucher and recommendation for the measure.

Mr. Cassidy — Mr. Chairman, I move to amend by striking out of this amendment the words "private and local" in line 1, and striking out all that portion in italics commencing in line 5 and including line 6. That merely strikes out the words in the present Constitution, "private and local," and then it will read: "No bill which shall be passed by the Legislature shall embrace more than one subject and that shall be expressed in the title." If we are to make this amendment at all, it seems to me that my amendment would make it much simpler.

Mr. Johnson — The effect of that would be that no bill could embrace more than one subject.

Mr. Jacobs — Mr. Chairman, may I ask the mover of this amendment one or two questions through you? Suppose a bill should be passed, entitled "An act to amend the act entitled an act to consolidate the laws affecting the city of New York (or Brooklyn)," and stop right there, and should proceed then to reorganize the police, fire and water departments of New York city or Brooklyn — would you consider them three subjects or one subject?

Mr. Johnson — I will answer the gentleman. In the first place, that is a local bill, and is affected by the portion now in the Constitution and is not affected by the amendment. The next answer would be that under the well-recognized decisions it is but a single subject. The government of the city of New York or the city of Brooklyn is but a single subject. And, were it a general subject, they could put in as many matters as they choose. Though there

were 100 subjects, if they did not indicate that the bill was confined to one, and so set up a false beacon, so that a man glancing at the title would be mislead.

Mr. Jacobs — Mr. Chairman, I did not ask the question for the purpose of antagonizing the bill, but to get some information upon the subject. After hearing the answer of the gentleman I am satisfied that the doubt is cleared away, but, if he should be mistaken, it would be a very embarrassing situation, because, if such a bill should be passed, entitled the way I said, and should treat of these varied topics, whether they be called subjects or not, and the courts should hold that they were three different subjects, we might be very much embarrassed, and I think before the Convention passes upon this subject it ought to give Mr. Johnson an opportunity to inform himself and this Convention upon the subject more fully.

Mr. Johnson — The amendment is only in italics. The other portion is in the Constitution.

Mr. Alvord — Mr. Chairman, we have on our hands about 135 lawyers in this Convention. I believe honestly and without any doubt that 134 out of the 135 cannot understand this proposition. Only one man knows anything about it. I propose an amendment to the proposition that the gentleman from Kings (Mr. Johnson) be instructed to call in a Philadelphia lawyer and make him a part of this Convention so that we can get through with it. (Laughter.) Mr. Chairman, I move to strike out the enacting clause of this amendment.

Mr. C. B. McLaughlin — Mr. Chairman, I hope this motion will not prevail. It seems to me that there should not be any great cause for disagreement over this amendment. The provision provides in the first place, that no private or local bill that may be passed by the Legislature shall embrace more than one subject and that shall be expressed in the title. That is the present Constitution, and that is followed by the amendment. If any one thinks that is not plain, I would like to have him get up on the floor and say so.

Mr. Schumaker — May I ask the gentleman a question? The word " subjects " is what I object to in the amendment. The word " subject " is in the original Constitution, but this says " subjects." Now there is no decision of the Court of Appeals that takes that in.

Mr. McLaughlin — I was about to explain that it seems to me very clear what this means. The present Constitution provides as to private or local bills. Now that is clear. It is followed by Mr. Johnson's provision, which takes in every bill.

Mr. Veeder — Mr. Chairman, will the gentleman allow me to ask

him a question? My point is that this proposition here speaks of "no other bill." It doesn't say "all other bills." What kind of a bill is "no other bill?" I would like to know if this is the bill it ought to be. (Laughter.)

Mr. McLaughlin — This proposition cannot be laughed out of this body. I started a moment ago, when I was interrupted, to say that the present Constitution provides as to private and local bills. Now it would seem to be pretty clear, even to the gentleman from Kings (Mr. Veeder), that when it provides "no other bill," it means all other bills that are passed by the Legislature. Now, this is a proposition which has in it some merit, and it seems to me ought to receive at the hands of this Convention serious consideration. It is a good measure. It prevents the kind of legislation which this State has been subject to in years past. It is an effort to prevent it. If not, I would like to have some one in this Convention get up here and tell us where the trouble is.

Mr. Towns — Mr. Chairman, this most intricate subject which seems to trouble all of the legal talent in this chamber, it seems to me, came up for discussion in a most unpropitious moment. The mind of the introducer of this measure is so pregnant with the cities article that he is unable to do justice to this subject, and when Mr. Alvord, the patriarch of the House and a veteran legislator, cannot explain it, we certainly cannot. I move that the consideration of this proposition be postponed until after the cities article is disposed of.

Mr. Barhite — Mr. Chairman, I believe that this proposed amendment is a good one and seeks to avoid something which has been a serious evil in legislation before this time. Now there seems to be some difficulty in some of the delegates understanding what this bill is intended to do. As I understand it, bills may be properly divided into two classes: private and local bills, and those which are not private and local, and, I think, that answers the question of the gentleman from Brooklyn (Mr. Veeder), when he asks what is meant by "no other bill." Now, nothing except that portion of the proposed amendment which is in italics is an amendment to the Constitution as it stands. The present Constitution reads: "No private or local bill which may be passed by the Legislature shall embrace more than one subject, and that shall be expressed in the title." That is the present Constitution of the State of New York, and is not interfered with by this proposed amendment. The amendment is in these words: "And no other bill, the title of

which indicates its subject or subjects, shall embrace any other subject."

Mr. Veeder — Will the gentleman allow me to ask him a question?

Mr. Barhite — With pleasure.

The Chairman — The Chair will hold that the gentleman cannot be interrupted until he has completed what he has to say. When he has, I will recognize the gentleman.

Mr. Veeder — I understood the gentleman to say that he was willing. Will the Chair hold that he is unwilling?

The Chairman — The Chair will hold that he is not willing.

Mr. Barhite — We know it is a common thing in what are commonly called general bills, at times to include one or more different subjects. Under the Constitution, as it stands at the present time, we can have a bill, the title of which indicates that it relates exclusively to banking, but it is within the power of the Legislature not only to enact laws with regard to banking, but under the same title it can enact laws with regard to insurance, and a man who might be interested in the insurance law would go to this statute, and seeing from its title that it referred to banking, would pass it over and thereby possibly miss the very thing he was looking for.

Now, my attention has been called to an instance which illustrates the point I have in mind, and I think that my distinguished friend, the gentleman from Onondaga (Mr. Alvord), will tell me whether the facts are as I state them. I understand that a number of years ago there was a certain enactment made with regard to the city of Syracuse. It was supposed that that enactment had been made, or some time after it was passed it was found out that there was such a statute somewhere, and it took them four or five years to find out where in the statutes it was, and when some man did find it, it was in the annual appropriation or supply bill.

Now, it is that kind of legislation that this proposed amendment seeks to avoid. If there is anything that is obscure in its language it ought to be changed. I don't think there is, but, perhaps, as it came from the committee, of which I am a member, and I heard the expressions there *pro* and *con*, my mind may be more clear on the subject, but it seems to me, in its present form, it intends to express what the author means to provide against.

Mr. Veeder — Mr. Chairman, I was going to inquire of the gentleman, if he will explain to me, in the event there was a bill in the Legislature to amend the Code of Civil Procedure or the Penal Code, how would you manage to express the subject in the title?

The Chairman — The Chair is now willing that the gentleman should answer the question.

Mr. Barhite — My opinion is that it would be to amend section so and so of the Penal Code, and then any man would know or could find out what that section was, and he would not be in anywise misled by the proposed amendment.

Mr. Hawley — Mr. Chairman, I move to amend by striking out the word "indicates" in the last line of the amendment and insert the word "expresses," so that the phraseology of the amendment shall correspond with the preceding part of the section as it now stands in the present Constitution. That being done, it seems to me that this provision is an entirely proper, intelligent and desirable provision to be inserted in the Constitution; that it does give to the public in the title of a bill some information as to the subjects that may be treated of in the bill. The provision as to private or local bills is already taken care of, and has received abundant construction, and I believe it has been entirely well settled now that a bill to amend the charter of the city of New York, under whatever charter that may now exist, will authorize an amendment of any part of it; that the whole charter is but one section. But as has been well illustrated in the discussion already, it is quite possible now to entitle a bill an act in relation to banks and to incorporate in that bill provisions in relation to railroads. Now this amendment authorizes the leaving out of any words expressive of the particular subject which is embraced in the bill, and in that event the public is put upon its guard and may look at the bill, but if any subject is mentioned in its title, then the amendment requires that all the subjects which are treated of in the bill shall be mentioned in its title. So that if a bill in regard to banking and insurance should be passed under the title of an act relating to banks, it would be invalid. It involves the necessity of saying in the title of the bill that it is an act in relation to banks and insurance, and that I understand to be the whole force and purport of this amendment. It seems to me that it is quite clear in expression, conveys exactly the proper idea and that it would be wise to adopt it.

Mr. Veeder — Just a moment, Mr. Chairman. This is confined as I understand its language, only to bills where you want to express in the title the contents of the bill. But if you don't want to make any expression in the title, you can put anything in the bill you please. Where a bill indicates certain subjects in its title, no other subjects shall be in the bill. If you don't indicate it in the title there is no restriction. That is the language as it stands there.

Mr. Johnson — This amendment does not cause that. It simply leaves it where it is in regard to that.

Mr. Doty — Mr. Chairman, I offer the following amendment.

The Chairman — There are two amendments pending already, and another one cannot be entertained at present.

Mr. Doty — I offer it as a substitute.

The Chairman — For the whole amendment?

Mr. Doty — For the matter in italics.

The Chairman — The Secretary will read the proposed substitute.

The Secretary read the proposed substitute as follows:

Instead of the part in italics, insert "and no other bill shall embrace any subject not expressed in its title."

Mr. Spencer — Mr. Chairman ——

The Chairman — The Chair holds that the proposed substitute is an amendment and cannot be entertained until the other amendments are disposed of.

Mr. Spencer — Mr. Chairman, as I understand it, the purport of this measure was clearly stated by the gentleman from Kings (Mr. Veeder), and it was not the intention of the author of this proposed amendment to go so far as proposed by the amendment which has just been read by the clerk. I will give an illustration that I came upon a few weeks since. It was a general bill in relation to highways. It did not have anything in its title indicating that it contained any other subject, but in a part of the bill there was a provision in relation to the incorporation of medical societies. Now, I ask what lawyer would ever expect to examine a law, the title of which expressed a subject as relating to highways, to find out whether it applied to medical societies or not. It is an evil of that character and that only, that this bill is intended to remedy.

Mr. Schumaker — Mr. Chairman, I supposed that Mr. Johnson's amendment was for a single-headed bill; that you could state in the heading of the bill what the bill contained in relation to one subject. The word "subjects" is what I complain of. A bill which can be passed, containing, as a gentleman on my right says, reference to highways and medical societies and corporate institutions and a lot of other things, I do not think this Convention ought to be bothered with. I do not think this Convention ought to put into the Constitution any such provision, that there can be a bill passed with a dozen headings relating to a dozen different subjects. That is my objection. I object to the word "subjects." It contains a sort of omnibus into which you can chuck everything at the end

of the session. It is a great evil. I am in favor of a bill that contains only a single subject and relates only to that subject. I object to any amendment that permits an omnibus bill at the close of the session of the Legislature. It is a dangerous proposition.

Mr. Griswold — Mr. Chairman, I don't see but one objection to the proposed amendment. Now, as I understand it, if it is a general bill then you must state, if you state any subject at all, you must state them all. That is the effect of it. Now it is not requisite that in a general bill the subject should be stated at all. I suppose the reason of that is that if it is a general bill it might require so extensive a statement, that it is not requisite. So that you must either in the title of the bill state all the subjects, or there is none at all, for safety to make it correct. Now, if you don't want to state all the subjects, if you are fearful of doing that, why then you would leave your bill without any heading at all. You don't know what your bill is. That is the only objection that I can see to it. I don't want to antagonize the measure, but it seems to me that is the objection; that the bill will have no heading.

Mr. H. A. Clark — Mr. Chairman, I have not spent a great deal of time in examining this proposed amendment of Mr. Johnson but I am in favor of the amendment. As has been said, the first part of this amendment in relation to private and local bills is in the Constitution at the present time. The amendment relates only to general bills; that if a general bill attempts to express its subject or subjects in the title, then the bill shall contain no legislation except on the subjects expressed in the heading. Now, Mr. Chairman, as I understand the Constitution, in a general bill there is no need of a heading now. In general legislation a bill may commence with the enacting clause and then with section one without giving any subject at the head of it. In that I think I am right. This amendment does not interfere with that being done. You may pass any general legislation without any heading to it at all excepting the enacting clause; but if the Legislature does put a subject at the head and say that that bill is in relation to water rates or in relation to insurance or in relation to banking, then you shall not smuggle something into the act in relation to a railroad company. With this amendment in the Constitution, I do not see why you cannot include in one act just as many subjects as a person sees fit, or as the Legislature sees fit, but you must not, if this becomes a part of the Constitution, put in the heading of a bill one subject and then include in the bill two or three other subjects. The amendment does not say that every subject must be at the head of a bill, but if the bill indicates its subject or subjects, then

it shall embrace no other subject or subjects. It seems to me on examining it carefully and studying it that its language is perfectly clear.

Mr. Moore — Mr. Chairman, there are some dangerous features in this bill, for all it looks so innocent, and it seems as if it would do a certain amount of good. The main good that it will do, Mr. Chairman, is that if this Convention adopts it and the people adopt it, it will make those who draw bills more careful to study what is contained in those bills. Every lawyer knows in hunting laws upon subjects which he is obliged to hunt for, the difficulty oftentimes of finding the exact statute to which he wishes to refer and although I did not feel extremely friendly in the committee in which this amendment was considered, and of which I am a member, I voted for it on the ground that of two evils this was the least, and, therefore, I will vote for it here as reported by the committee.

Mr. Cochran — May I ask the gentleman from Kings (Mr. Johnson) a question as to this bill. The proposed amendment now reads, "the title of which indicates its subjects." Well, if it indicates the subjects there will be no trouble. Would it not be well to insert "pretends to indicate the subject."

Mr. Johnson — Mr. Chairman, it seems to me that this is hypercritical. Here are railroads, banks and insurance. You get passed an act in relation to them or saying an act in relation to railroad companies and insurance. You get passed an act in relation to corporations and have all three in. You could have an act for the better government of the city of New York and have them all in, because it is all within the title. But if you say banks and leave it there, don't say corporations. If you use specific words then your bill must follow. The word "subjects" is a word that has had prodigious amplification and is known to be a word of large meaning as construed in the preceding phrase.

Mr. Bigelow — Mr. Chairman, the first question that we should ask ourselves in considering this measure is what is the object of placing this restriction upon the Legislature? If I understand what that object is, and I think I am not mistaken, it is that all persons interested in the bill that is to be introduced shall know what it is and that it is to be introduced. If we can give the parties interested notice that a bill is to be introduced of a particular character in any way, I care not how, it is a matter of no importance how it is described in the title or whether it has any title at all. Now, it strikes me that this is rather better suited for a rule of the Legislature than for a constitutional provision. It is not in the power of

this Convention to prescribe a rule in regard to the definition of the contents of a bill sufficiently to prevent litigation, and I will go further and say that it is not practicable to describe it sufficiently not to provoke litigation. Every bill when that clause has been adopted, should it be adopted, and I certainly hope it will not, will as long as this Constitution lasts be subject to attack on the ground that it was not sufficiently defined. You never can fix a time when any man can consider that a bill passed under that act will not be open to assault by litigants. As the object, and the only object of this provision is, to give notice to the parties, I marvel that the committee did not follow the example of all other parliamentary governments in the world that I know anything about, and provide so far as private and local bills are particularly concerned, that they should be published, that they should be advertised a certain period of time before they are introduced, in order that all parties interested might know what their contents were, and that if then occasion for amendments should arise, they could give notice to the parties, and that amendment, if accepted, should also be advertised. Then when it comes into the Legislature the parties interested have an opportunity of being heard. But this is not enough. I would like to ask the gentleman who introduced it, in case a bill should pass, by whom, how and when is the constitutionality of that bill to be tested?

Mr. Johnson — In answering the gentleman from New York, I will say that it is to be tested by the court at any time that it is desired, precisely as are private or local bills which are under the limitation of the earlier section, the section already in the Constitution, and in the same way.

Mr. Bigelow — Mr. Chairman, there is nothing in this provision that provides for any forfeiture or penalty in case the bill is not in conformity to it, and, therefore, it is liable, as I said before, to be attacked at all times while this Constitution is in force, and long after parties supposed their titles quiet and the thing as settled, they will be liable to have this thing assailed. Now, in the oldest parliamentary government in the world — the English government — no private or local bill is ever permitted to come into the parliament house until it has not only been advertised repeatedly, but reported on by an official examiner, whose duty it is to examine and certify that it has been advertised, and that the rules of parliament have been complied with in all respects, so that when it does come into the house, the house is prepared to act upon it. That notice is what we ought to have. I introduced into the Convention an amendment looking to such a result. The committee did not see fit to entertan it, to my regret, and though it might not have been

the wisest course, we would have secured a notice to parties interested, which is precisely what I suppose the gentleman from Kings desires to procure, but which he does not accomplish by his present provision.

Mr. Choate — Mr. Chairman, I fully agree with what Mr. Bigelow says about this amendment, and I hope that unless some very radical change can be made in its structure that it will be voted down. My first objection to it is that it is utterly unintelligible, and every citizen would have to be provided, at the public expense, with Johnson's dictionary in order to realize what it does. (Laughter.) If the mover of this intends to put general bills on the same footing with private and local bills, why doesn't he say so? The amendment proposed by Mr. Cassidy meets that objection. It puts public bills on the same footing as private and local bills; that they shall embrace but one subject, and that that subject shall be expressed in the title. Now, I submit that that would be a very dangerous innovation to introduce in regard to public and general bills. To require that public and general bills shall express in the title every specific subject contained in them is a new departure in legislation, and one that, it seems to me, ought not to find a place in our fundamental law. It would be extremely dangerous on the ground that Mr. Bigelow has set forth; that if upon careful scrutiny it was found to express something that was not in the title, the law would be declared void, and, further, ought to be declared void. If, on the other hand, as it seems to me to be intimated by this very peculiarly drawn amendment, that a bill may be enacted without a title, I protest against it. A title is an absolute necessity, and it ought not to be applied to general bills that they shall be void, because it is that he means, if anything, unless everything expressed in the bill is expressed in the title. I hope this amendment, unless it is very radically changed, will be voted down.

Mr. Doty — 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. Doty, and it was determined in the negative.

Mr. Johnson — Mr. Chairman, I very much regret that this subject is not understood. There is no suggestion here that a general bill may not embrace a hundred subjects. There is no suggestion here that the subjects must be indicated in the title. That is not the law to-day, and not the Constitution. The single and only suggestion is this, that if the bill undertakes to tell in its title what

it is about, it shall not go outside and include any other subject. Now, the statement is made that, if a bill has anything outside its title, it is utterly void. It is not so, Mr. Chairman, because a general bill that exceeds its title is in precisely the same predicament, if it have a subject as a local bill, and it has been decided a hundred, a thousand times that a local bill that goes beyond its title is valid, except so far as it goes beyond its title. Now, the reason that the words were used here that are used, is because they are words that have been construed very often. The word "subject" has been construed, amply construed. I think, sir, however, that if an amendment were made of this kind, "the title purports to indicate the subject or subjects," it would meet the objection that seems to be made. Now, let us start off with this: There is no requirement now that a general bill shall state its subject. This does not intend to make any such requirement. There is no requirement now that a bill may not have a hundred subjects. This bill does not intend to say so. It only says that if it does make a subject of specific import, then it shall not go outside, and leaves the consequences to the well-settled rule of law, that in so far as it contravenes the Constitution it is void.

Mr. Jacobs — Mr. Chairman, then practically, in order to save and avoid any question and to preserve great interests the only thing that could be done when the Legislature passes a general law is, that it shall pass it without any title whatever, and that is the practical end to which we will be drifting if we adopt the present language, and that will be a very fine exhibition for the Legislature of this State to make, that it cannot express the subject in the title. I hope that we will not make any such exhibition of ourselves to the people of this State.

Mr. Woodward — Mr. Chairman, it seems to me that a bill that expresses general subjects, a general bill, should at least have some title to it, and I would ask that this proposition that a general bill should state the topics treated of in the bill, so that we may have something when we read the title of the bill of what is embraced in the bill. It should mention the topics. It need not describe the subjects, but if it embraces a number of different subjects, it should state the topics in a very few words, and that will give whoever looks at the bill some idea of what is embraced in the bill. Now, no general bill should be passed without a heading of what is expressed in the bill. The lawyers will all make mistakes in running through the session laws, if they find no headings to show what is embraced in the bill. There may be a hundred things embraced in

the bill, but if there is no mention of the topics whatever that are embraced in the bill there will be no telling what is in the bill.

Mr. Veeder — Mr. Chairman, I move that the committee do now rise, report this proposition to the Convention, and recommend that it be rejected.

The Chairman — The Chair holds the motion out of order, as there are two amendments pending. The first question will be on Mr. Hawley's amendment. Mr. Hawley moves to strike out the word "indicates" in the last line, and insert in place of it the word "expresses."

The amendment of Mr. Hawley was lost.

The Chairman — The question now is on the amendment of Mr. Cassidy.

Mr. Cassidy — I withdraw my amendment.

Mr. Veeder — I move that the committee now rise and report this proposition to the Convention and recommend that it be rejected.

Mr. Mantanye — Mr. Chairman, it seems to me that this proposed amendment ought to pass and that the objections that have been urged here against it are entirely groundless. Now, if it had been put into this proposition that every general law must state its object in the title, it would have been objected to upon the ground that it was a radical change in the Constitution. General laws in all States, and always in this State, have been permitted without stating all of their objects in the title. When they did not state it in the title, the object of them, that is a notice to everybody that they should look at the bill that is proposed, but when an act states in its caption and in its title that it is for a certain purpose, as they very often are and may be, that is a notice to whoever sees the bill proposed to become a law. It is for that purpose, and the object of this amendment is to prevent bills being made in that way, having at their head a title stating that it is for a certain object, and then have something else carried through under that false banner. The words here are very clear. First, that no private or local bill which may be passed shall embrace more than one subject, and then this other provision in regard to other laws which do indicate or express the subject, shall not embrace in them any other subject. Now, there is nothing about that that any one can take an exception to, and is a very proper thing to provide against. There have been abuses that have been carried through under just that kind of titles which this provision is intended to meet. I am surprised that when a proposition for an amendment contains such

plain words as this does, that somebody should imagine there was something hidden in it that was wrong. If the proposition had been to provide fifteen or twenty justices to the Supreme Court that had never been elected to that office, or add to the number of judges in the Court of Appeals of this State, it would have been voted for without question; but because it has a plain meaning, there is a supposition that there must be something wrong about it by everybody who has not been taken into the confidence of the mover of the proposition. Now this proposition was fully considered in the committee, and we reported it unanimously, believing that it was a good proposition, and I hope it will not be adversely reported to the Conventon by the Committee of the Whole.

Mr. Abbott — Mr. Chairman, I desire to offer a substitute for the amendment proposed by Mr. Johnson, and if it is in order I will send it to the Secretary's desk. If it is not, I hope Mr. Veeder's motion will be voted down in order to enable me to offer a substitute.

The Chairman — The Chair holds that the pending question is on the motion that the committee rise and report against the amendment.

Mr. Abbott — Mr. Chairman, I hope that motion will be voted down to enable me to offer the substitute which I will read: "To strike out the italics and insert, 'and every bill shall indicate in its title every subject embraced in said bill.'"

The Chairman put the question on the motion of Mr. Veeder, that the committee now rise and report the amendment adversely, and it was determined in the affirmative, whereupon the Committee of the Whole rose, and President Choate resumed the chair.

Mr. Cookinham — Mr. President, the Committee of the Whole has had under consideration proposed constitutional amendment, printed No. 388, entitled "To amend the Constitution in relation to the title of bills," have made some progress in the same, and have instructed the chairman to report adversely thereto.

Mr. J. Johnson — Mr. President, I move that that lie on the table.

The President put the question on the motion of Mr. Johnson, and it was determined in the affirmative by a rising vote.

The Secretary called general order No. 22 (printed No. 389, introductory No. 120), introduced by Mr. Barhite, to amend section 6, article 1, of the Constitution, giving the Legislature power to pass certain laws.

Mr. Barhite — Mr. President, I move you, sir, that the Committee of the Whole be discharged from further consideration of

general order No. 22, and that the proposed amendment be rejected. I desire to briefly explain my reasons for that motion. This was a proposed amendment introduced by myself, providing that the Legislature shall have power to pass laws authorizing either party to a criminal action or proceeding, except in capital cases, to have process for obtaining evidence without the State. When I introduced that measure I had assumed, and several lawyers with whom I had talked about the matter had assumed, that that provision in the United States Constitution and in the statutory bill of rights of the State, which provides that every defendant in a criminal action shall be confronted by the witnesses against him, meant that he should be confronted by such witnesses upon the trial of his case. An examination of the matter shows that not only the General Term of the First Department, but the Court of Appeals have distinctly held that that provision simply means that once during the course of the judicial proceedings the defendants shall have an opportunity of being confronted by the witnesses against him, and to have the opportunity to cross-examine them. Now I certainly never intended to prevent the defendant in any criminal action from having the opportunity, at least once in the proceeding, of examining the witnesses who might appear against him, and, therefore, in my mind, there is no doubt that the Legislature has full power at the present time to pass just the laws which I intended to assist them in passing by this amendment, and I do not desire to take up two or three or four hours of the time of this Convention in discussing a matter which is not necessary.

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

The President — Is the acting chairman of the Committee on Rules ready to report upon the matters referred to it?

Mr. Root — Mr. President, the Committee on Rules have instructed me to report upon the resolution introduced by Mr. I. Sam Johnson (R. No. 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 following amendment: 'In rule 21, in line 6, strike out the words 'lose its precedence for the day,' and insert instead 'go to the foot of the calendar of general orders.'"

The President — What action will the Convention take upon this amendment, offered by the Committee on Rules, to rule 21?

Mr. Veeder — Mr. President, that will not apply to what has occurred in reference to the call of the general orders, will it?

The President — No. As I understand it, the Committee on Rules proposes that when the calendar of general orders is called and any general order is not moved, it shall go to the foot of the calendar.

Mr. Veeder — That is, hereafter?

The President — After some day to be fixed by the Convention.

Mr. Bowers — Mr. President, I move that that rule do not go into effect until Tuesday morning.

Mr. Root — Mr. President, I should think that that would be fair. There are a number of gentlemen who have been excused from attendance on Monday, and a number on Saturday, and some of them, doubtless, for sufficient cause. It would be rather hard that any one should go away, relying upon the rules as they exist, and find upon his return that although he had been excused by the Convention, the rule had been so changed that a measure in which he was interested had gone to the foot of the calendar.

Mr. Marks — Mr. President, I think that Saturday ought to be excluded from that rule. We have a very light attendance upon Saturday.

The President — Has the gentleman ever been here on Saturday?

Mr. Marks — Yes, sir; I have been here every Saturday that the Convention has been in session, and I think the attendance has been so slight that a general order should not be moved upon that day.

Mr. E. R. Brown — Mr. President, it seems to me that to postpone the effect of this rule until next Tuesday would put a premium on absence from this Convention. The gentlemen who remain here on Saturday have a right to have the business of the Convention proceed the same as on any other day in the week. If this Convention is to hold sessions on Saturday, let the members attend on that day. I am not willing to have this postponed, as is suggested. It seems to me it ought to take effect at once.

The President — This does not prevent the call of general orders on Saturday.

Mr. Brown — No, Mr. President, but it is a notice to any gentleman who neglects to be here and attend at that time that he will not suffer thereby.

Mr. Bowers — Mr. President, the difficulty with the situation is this: We have excused a great many gentlemen who have gone

away knowing that the rules were in a certain condition. If this is adopted they might come back here and find matters in which they are interested at the foot of the calendar. It seems to me that the position taken by the gentleman from Watertown (Mr. Brown) would be in effect to say that on a moment's notice we deprive you of a privilege which you supposed you had when you went away, and we would be justly charged with some measure of unfairness. I cannot see that there is the slightest justification for our proceeding without giving all an opportunity of being heard on the roll-call. If Tuesday is not long enough I am quite willing to make it Wednesday, but I supposed we would be here on some general orders on Monday.

The President — Monday has been assigned for a special order, the report of the Committee on Cities, which will undoubtedly take all that day. To-morrow, when general orders are moved, any order not moved will lose its precedence for the day.

Mr. Alvord — Mr. President, I desire to say that we have passed by the time of fairness or unfairness. It is our duty, as the fifteenth of September is approaching and near at hand, to do our work. I trust this will go into effect to-morrow morning, as it ought to do. Gentlemen who have absented themselves here for various reasons have absented themselves for their own pleasure and convenience. They have left us here working each and every day, to act in regard to these matters according to our ideas and our pleasure. I trust the amendment to the rule will prevail, and will prevail so as to take effect to-morrow morning.

Mr. Bowers — Mr. President, in view of the declaration of one of the oldest members of this Convention that the days of fairness have passed and those of unfairness have commenced, which we are quite willing to accept as a declaration in reference to things that are soon to take place, I will leave it with the majority to say what course they will pursue, and withdraw my motion.

Mr. Alvord — That is right.

Mr. C. B. McLaughlin — Mr. President, referring to the discussion which has occurred here as to fairness and unfairness, I will say that it hardly seems fair to some of us who have to remain here over Sunday that we should have to reserve these different bills simply at the mere whim or convenience of delegates who happen to be absent. It does not seem as if it was treating those who remain here with fairness. As I understand it, we have already a rule by which any member of this Convention can move any proposed amendment whether the mover moves it or not, and, therefore, it is

not an element of unfairness that the mover of a proposition is not present or does not know of this rule, because when he absents himself he does so with the full knowledge of the fact that any member of the Convention may move the bill in which he in interested whenever it is reached. I hope this amendment will take effect to-morrow morning, and upon that, Mr. President, I move the previous question.

Mr. Dickey — Mr. President, I move the amendment that was proposed by Mr. Bowers that it take effect on Tuesday.

Mr. I. S. Johnson — Mr. President, this resolution was offered the forepart of the week, and as I understand it, it was the duty of the committee to report within three days. Every one knew that the resolution had been offered ——

The President — Did I understand Mr. McLaughlin to move the previous question?

Mr. McLaughlin — I did, Mr. President.

The President — Then the gentleman from Wyoming is out of order.

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

The President — The question is on the adoption of the amendment to rule 21, offered by the Committee on Rules. Mr. Dickey moves an amendment. The Chair is of the opinion that the amendment comes too late, after the previous question had been moved.

Mr. Dickey — Then the only way I can be heard, Mr. President, is by voting down this resolution.

The President — Did Mr. Dickey offer his amendment before the previous question was moved?

Mr. Dickey — I did, Mr. President; or I intended to.

The President put the question on the adoption of the amendment offered by Mr. Dickey, and it was determined in the affirmative.

The President — The question is now on the adoption of the amendment as amended, the effect of which will be that on and after Tuesday next a number called and not moved shall go to the foot of the calendar.

The President put the question as stated, and it was determined in the affirmative.

The President — Have the Committee on Rules anything further to report?

Mr. Root — Mr. President, several resolutions relating to a

change of the rule as to Saturday sessions were referred to the committee to be considered by them, and the committee reports adversely upon them.

The President — That seems to require no action. The Secretary will proceed with the call of general orders.

Mr. Holls — Mr. President, I move to make general order No. 61, which is the article in regard to education, a special order for Monday next and succeeding days, after the disposal of the report of the Committee on Cities, if it should be possible.

Mr. E. R. Brown — Mr. President, I regard the setting down of these matters reported to the Convention so far in advance, particularly where they are of a nature that they will take up so much of the time of the Convention, as a very pernicious practice just at this time. The Committee on Legislative Organization is about to report a plan for the reapportionment of the State. Much criticism has been made upon the course of that committee by the minority of this Convention, because the report has been delayed until this time, and the more recent criticisms have been that other important matters are likely to crowd this important matter out from its due consideration before the Convention. I hope that if any resolution in relation to special orders is to be adopted by this Convention it will be with an amendment attached thereto that it shall not prevent the prior consideration of the subject of apportionment, if the Convention is ready to consider it. I, therefore, move to amend the resolution so as to provide that it shall not interfere with the consideration of the report of the Committee on Legislative Organization, if the Convention shall be ready to consider it.

The President — The Chair holds that the motion is not germane to Mr. Holls's motion, which is to set down for a particular day. The Convention will do it or not, as it pleases.

Mr. Root — Mr. President, I hope the Convention will do it. The question of considering and acting upon the report of the Committee on Education is one that we must dispose of. There are many things before the Convention which may be very good measures or very bad ones, but it is not necessary that we should pass upon them. This is a thing that we cannot go back to the people without acting upon. It is here ready for us to act upon, and I hope we will arrange to act upon it as soon as possible. Let us attend to matters that we must pass upon, which are before us, at the earliest possible day, and do our duty in regard to them. I hope the Convention will comply with the request of the chairman.

Mr. Hottenroth — Mr. President, if I recollect rightly, the

Foresty Committee report is made a special order for Monday evening. I would like to know whether that is the fact or not?

The President — That is the fact. The question is on Mr. Holls's motion, that the report of the Committee on Education be made a special order for Monday and succeeding days, after the report of the Cities Committee has been disposed of, and this requires a two-thirds vote.

The President put the question as stated, and it was determined, by a rising vote, in the affirmative.

The President — The Chair is overruled by the Secretary and his assistants, who say that the report of the Committee on Rules, which has been referred to, adverse to these various resolutions, must be agreed to by the House, or disagreed to. The question is now on agreeing to the report of the Committee on Rules, adverse to Mr. Pratt's resolution in respect to Saturday sessions.

Mr. McKinstry — Mr. Chairman, I do not propose to antagonize the report of the Committee on Rules, but I would like to make some little statement that, perhaps, has not been thought of by the delegates or the committee. The first train that leaves in the afternoon for the west is at one o'clock. By that train I can reach my home, three hundred and fifty miles away, a little before ten o'clock. It accommodates not only me but all the members in western New York. The next train, at two o'clock goes east and south, and is very convenient for members going in that direction. At three o'clock there is a train on the Delaware and Hudson road, which takes members in that direction; and it does seem a little hard that we should be kept here simply long enough to miss all those trains. We would have been glad to meet earlier Saturday morning, or to sit more hours on Friday. We want to do our duty to the State as much as any other members here; but we live a great distance away, and we do feel that we ought to be allowed to go home occasionally. We are not able to keep our families here, and we ought to give our business some little attention. It seems to me that an arrangement of this kind might be made that would accommodate us, and still take care of the work of the State. I have supported the President and the committee in all their reports and resolutions. I sat here Saturday afternoon and witnessed the most unseemly, I would almost say disgraceful, scene that has occurred in this Convention since it began. I shall be here to-morrow at my post of duty, and I hope those scenes will not be repeated; but I anticipate that the attendance will not be large. Supposing we barely have a

quorum. There is no man here with a good measure who wants to move it before a bare quorum, and to give a carefully prepared address before a lot of empty benches. It seems to me that the amount really to be gained by this Saturday afternoon session is more imaginary than real. My idea would be to refuse excuses for Saturday morning, and have a good, strong business session of three hours, from nine to twelve, letting those who desire to leave go at that time. I simply say it would be an immense accommodation to a great many of us who live at a distance, and I hope the Committee on Rules will find it in their hearts to accommodate us.

The President — The business of the Convention cannot be done in Chautauqua county.

Mr. Pratt — Mr. President, I think the experience of the last two weeks has shown conclusively that we cannot do any business here on Saturday afternoon. The only excuse for attempting to have sessions in the afternion is to secure an effective session in the morning, and it is my opinion that the amendment that I propose to the rule will secure a full working session in the morning; and, as I say, that is all that can be accomplished by attempting to have sessions in the afternoon of Saturday.

The President — If the gentlemen stay here there is no difficulty in conducting the business of the Convention.

Mr. Dean — Mr. President, I think I shall have the sympathy of the Convention in moving the previous question.

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

The President put the question on agreeing to the report of the Committee on Rules, reporting adversely upon the resolution offered by Mr. Pratt, and it was determined, by a rising vote, in the affirmative.

Mr. Marks — Mr. President, I should like to inquire what became of the resolution introduced by Mr. Goeller this morning, which was referred to the Committee on Rules, providing for one session?

The President — They have not yet reported upon that.

The Secretary called general order No. 23 (introductory No. 146, printed No. 390), introduced by Mr. Roche, to amend section 13 of article 3, as to the passage of bills by the Legislature.

General order No. 23 was not moved.

The Secretary called general order No. 24 (introductory No. 215, printed No. 391), introduced by Mr. Becker, relating to grants.

General order No. 24 was not moved.

Mr. Dean — Mr. President, I believe it is very evident that no one will move anything to-night. I, therefore, move that the Convention adjourn until to-morrow morning.

Mr. Davies — Mr. President, I ask the gentleman to withdraw his motion for a moment.

The motion of Mr. Dean was withdrawn.

Mr. Davies — Mr. President, there is a convention in my Assembly district to-morrow, in which I am interested. A friend of mine is a candidate, and I want to go home and help nominate him. I desire to be excused for that reason.

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

Mr. McDonough — Mr. President, I move general order No. 25, introduced by myself, to amend article 3, relating to the employment of prisoners.

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

The Convention thereupon resolved itself into Committee of the Whole, and Mr. Dean took the chair.

The Chairman — The Convention is in Committee of the Whole on general order No. 25 (printed No. 392), introduced by Mr. McDonough, "To amend article 3, relating to the employment of prisoners." The Secretary will read the amendment.

The Secretary read the amendment as follows:

Proposed constitutional amendment to amend article three of the Constitution by adding a section to provide for the occupation and employment of prisoners in the State prisons, penitentiaries, jails and reformatories in the State.

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

Article three of the Constitution is hereby amended by adding another section, as follows:

"Sec. 26. The Legislature shall by law provide for the occupation and employment of prisoners sentenced to the several State prisons, penitentiaries, jails and reformatories in the State; but no person in such prisons, penitentiaries, jails or reformatories shall be required

or allowed to work while under sentence thereto, at any trade, industry or occupation, wherein or whereby his work or the product or profit of his work shall be farmed out, contracted, given, or sold to any person or persons whomsoever."

Mr. McDonough — Mr. Chairman, the question of prison labor has been a very serious one in this State for many years. It is a question that has caused a great deal of trouble and a great deal of agitation, and has prompted the Legislature to pass many laws regarding it. The object of this amendment is to try to settle those very troublesome questions and settle them for good.

The first sentence provides that the prisoners shall work; that they shall be occupied and employed as they ought to be. The second clause provides that after January 1, 1897, the products of their labor and their labor itself shall not be farmed out or sold to outside parties. The object is to prevent the selling of the goods manufactured by these prisoners or to sell their labor. The next provision is that they shall work for the benefit of the State or any political division in the State; in other words, it provides that they may do any kind of work that is necessary for the State or for any of the institutions in the State that are owned and controlled by the State, or any public division of the State. The evil complained of by many people, by manufacturers, by storekeepers, by tradesmen and by workingmen, is that this competition of prison labor is most injurious to them. The State of New York has gone into the business of manufacturing. The State of New York has gone into the business of manufacturing in competition with its own citizens and not without great injury to those citizens. There are nearly thirty-five hundred prisoners in our State prisons. There are probably seven thousand prisoners in the penitentiaries. They have all gone into the business of manufacturing and selling goods.

Now, it is claimed by honest people, by industrious people, by free people, that it is unfair to put them into competition with felons. In 1882, one of the great parties of this State pledged itself in its platform, to do away with contract labor in the prisons of this State. That party carried this State by over one hundred and ninety thousand majority, and when it came to the Legislature, it had not the courage to keep its promise. It tried to adopt the referendum. It sent back to the people for an expression of their views upon that question as to whether they wanted the contract system of prison labor abolished or not, and the answer came by an overwhelming vote in favor of abolishing the contract system. There were 405,882 votes in favor of abolishing and only 266,966 against it. So, that it was carried by a majority of 138,916.

But the people that voted to abolish the contract system did not send the party back who failed to do its duty in 1893. They sent another party to the Legislature, and that party did abolish the contract system in words but not in fact. They said that the State and the penitentiaries of the State should not contract for the prisoners. They should not let them out for so much a day, and they adopted, in its place, two systems, one called the public account system and the other called the piece-price system. Now, the public account system was the contract system in another manner. Instead of letting the prisoners out at twenty-five or thirty cents a day to work on shoes, they can now make shoes at so much a pair. Under the public account system, the State buys the material, manufactures it, and sells the manufactured goods. Under the piece-price system, the prisoners are let out to work at so much per piece. They may cut granite as they are cutting it, at so much a foot, if you please, for the stone. They may manufacture shirts at so much a dozen, and that is the piece-price plan.

Now, when the people of this State voted against this contract system, they did not vote to bring into use something worse, but that was the effect of the change. The contract system is not nearly as injurious as the State account plans or the piece-price plan, and for this reason, that, under the contract system, the contractor took all the risks of the employment. If property was injured, he bore the loss. If there were no profits in the business, he lost. The State takes all the risk now. If no money is made by the sale of the manufactured article, the State suffers the loss. The State suffers the loss of all the wear and tear. Under the old system the contractor suffered the loss. Nay, more, under the old system the contractor tried to get the largest price he could get in the market. It was for his interest to make as much money as he could out of the business, and hence he sought the largest price. To-day it does not make any difference whether the State makes any money or not. You are all behind it; the taxpayers of the State are behind it, and the loss may be made up by them. So, that the competition in price is greater than it ever was, and I tell you, gentlemen, that the prison price fixes the market price. I heard an old gentleman from one of the broom factories in the Mohawk valley say to the committee here that the price of brooms fixed at Auburn prison is the market price, and that if they sold in Auburn brooms at two shillings a dozen less than the manufacturers at Amsterdam sold them, that was the market price and they had to come down.

We had petitions from all over the State in favor of this proposition. One hundred labor organizations, with a membership of forty

thousand petitioned for this proposed amendment. Not only that, Mr. President, but I have bundles of letters from manufacturers all through the State.

The Convention here adjourned until Saturday morning at ten o'clock.

Saturday Morning, August 25, 1894.

The Constitutional Convention of the State of New York met at the Assembly Chamber, at the Capitol, Albany, N. Y., August 25, 1894.

President Choate called the Convention to order at 10 A. M.

The Rev. A. Kennedy Duff offered prayer.

On motion, the reading of the Journal was dispensed with.

Mr. Goeller — Mr. President, I received a telegram this morning informing me that my wife is ill, and for the purpose of putting myself above suspicion, in view of the fact that I yesterday made a motion for adjournment, I would like to state to the Convention that I had my family living here at Albany, and my wife became unwell. I removed her to Orange county, and she has been quite unwell since. I received a telegram this morning, also, asking me to wire by which train I would reach there. If I could leave an hour before adjournment, or an hour and a half, I could very well make it.

The President — At what hour?

Mr. Goeller — If I could leave on the 2.40 train it would enable me to connect.

The President then put the question on excusing Mr. Goeller, as requested, and he was so excused.

Mr. McKinstry — Mr. President, it is quite necessary that I should go home to-night, and owing to the long distance it is almost impossible to get back here by Monday. I can say that practically it is impossible. I have been here at every session continuously for two weeks, and I shall be here this afternoon. I simply ask to be excused for next Monday.

The President put the question on excusing Mr. McKinstry, as requested, and he was so excused.

Mr. Giegerich — Mr. President, I desire to be excused from attendance at this afternoon's session.

The President put the question on excusing Mr. Giegerich, as requested, and he was so excused.

Mr. G. W. Clark — Mr. President, I ask to be excused for Monday.

The President put the question on excusing Mr. Clark, as requested, and he was so excused.

Mr. Forbes — Mr. President, I desire to be excused for this afternoon's session. My reason is this. I waived my excuse last Monday and remained here. I have three children who are ill. I want to see them. I can only see them by leaving at two o'clock.

The President put the question on excusing Mr. Forbes, as requested, and he was so excused.

Mr. Galinger — Mr. President, I have been unwell during the whole of this week. I went away last Saturday afternoon and asked my colleague, Mr. Johnson, to present my excuse to the Convention, but I understand that he was not permitted to do so. I would like to be excused this afternoon.

The President put the question on excusing Mr. Galinger, as requested, and he was so excused.

Mr. Foote — Mr. President on account of business which I am obliged to attend to, I ask to be excused on Monday.

The President put the question on excusing Mr. Foote, as requested, and he was so excused.

Mr. E. R. Brown — Mr. President, Mr. Nicoll informed me late last evening that he had received a very urgent telegram, calling him to New York, and asked to be excused this morning.

The President put the question on excusing Mr. Nicoll for the day, and he was so excused.

Mr. Cochran — Mr. President, was there not a special order for this morning?

The President — I suppose this is a morning on which regular business can be disposed of. If there are any memorials, petitions, resolutions or motions, they are in order. If not, Mr. Dean will please resume the chair.

Mr. Dean in the chair.

Mr. Dean — The Convention is in Committee of the Whole on general order No. 25. Mr. McDonough has the floor.

Mr. McDonough — Mr. Chairman, when we adjourned last evening, I had just concluded explaining the different modes of employment of the prisoners in this State. I tried to draw the distinction between the contract system, the public accounts system and the piece-price system, and endeavored to show the various

interests and industries that are being carried on in the prisons now. I read from the report of the Superintendent of Prisons for 1894, so that you may see how numerous and how varied are these industries:

In Sing Sing prison there are 100 men employed in the shoe industry, 152 in the rag industry. In making overalls and clothing there are 313 employed; in the stone industry, that is, cutting granite by the piece-price, there are 84. In the brush fibre industry, 98, and in miscellaneous industries, 275. That is a total of 1,022. In the Auburn prison, according to the last report, which was made a month ago, there were engaged in the broom industry, 10; in the collar industry, 60; woodworking industry, 12; marble industry, 35; furniture and cabinet industry, 134; hollow-ware industry, 100; iron casting industry, 100; machinery and tools industry, 23; brass industry, 94; stone shed, 50; canning industry, 29; horn industry, 28; pearl industry, 60, making a total of 735. In road building, there were 41 engaged, and in constructing buildings, 102. At the Clinton prison in the industry of making boys' waists and ladies' waists, 55 persons were employed; in making wrappers and skirts, 117; in the scoop shop, 5; in the chair industry, 93; in the pressing department, 41; in the tin toy industry, 151; making public roads, 85, a total of 457. This makes the total number employed 2,214. I have not the number employed in the penitentiaries in the various industries carried on there, but it may safely be estimated at several thousand more in somewhat similar industries.

Mr. Osborn — Mr. Chairman, will the gentleman permit a question?

The Chairman — The Chair will hold that no questions are in order until the gentleman has finished speaking.

Mr. Osborn — The gentleman from Albany is giving some statistics, and I desire to ask a question in connection with those particular statistics. It will be forgotten, perhaps, later.

The Chairman — Will the gentleman give way for a question?

Mr. Osborn — I desire to ask whether you have any figures showing the number of men employed in those industries in free labor throughout the State?

Mr. McDonough — I have not.

Mr. Osborn — So that you are not able to say what percentage of the labor of the State is represented by the people that you name as being employed in those capacities?

Mr. McDonough — No; I only know that the labor bureau has recently investigated that subject, and has reported to the Governor

that more than the percentage allowed by law is employed in the prisons in certain industries, for instance, the broom industry. The Governor, in his goodness of heart, he having direction of this, has ordered them to discontinue to a certain extent, and he has also directed that marble cutting be done away with as soon as possible. And this brings me to another proposition, which is this: This question was not settled when the anti-contract law of 1894 was passed. The agitation went on. It was found that the doing away with the contract system, as I stated last night, was of no benefit at all, practically speaking; and accordingly a commission was appointed in 1885 to investigate. That commission went through the State and came in with a report. That report was not satisfactory, or at least it was not adopted. The agitation went on and the dissatisfaction went on until finally, in the year 1888, the subject was considered of so great importance that the Governor of this State called a special session of the Legislature, in August of that year, for the purpose of settling it. Our political party had the executive, and the other party had the Legislature. When they got here they found that it was an important political year, and that had its effect on both parties. They were determined to settle the question, and to settle it to the satisfaction of the people of the State. So they passed an act at that special session, which I will read to you, and upon which my proposition is based. The first section of that act is this (chapter 586 of the Laws of 1888):

"No motive power machinery for manufacturing purposes shall be placed or used in any of the penal institutions of the State." I do not go as far as that. If these prisoners are to be engaged in industries, if they are to make roads and make shoes for the inmates of the institutions of the State, and make clothing for the institutions of the State, they ought to be allowed to use machinery to do it with. But this went further; this provided that no motive-power machinery should be used in any of the penal institutions of the State. It went further, viz.:

"And no person in such institutions shall be required or allowed to work, while under sentence thereto, at any trade or industry where his labor, or the production or profit of his labor, is farmed out, contracted, given or sold to any person or persons whomsoever." That is my amendment substantially, except that instead of using the words "penal institutions of the State" I use the words that are found in all the statutes, "prisons, penitentiaries, reformatories," and so forth, and I purposely avoided using the words "penal institutions of the State" because a judge of the Supreme Court of this district took out the good that was in it by construc-

tion, and that is the usual result with about every labor measure that is passed by the Legislature. Some judge construes it to mean nothing. Let me tell you how he construed it. He said "penal institutions of the State" meant penal institutions owned by the State, the property of the State, and the penitentiaries are not owned by the State — they are the property of the counties. Think of this interpretation of a remedial statute, intended to do away with the mischief of prison competition, receiving so narrow a construction. Think of the mischief in every prison, the mischief in every penitentiary of the State, and the mischief that would be done away with by that statute throughout all these institutions, for there are three times as many prisoners in the penitentiaries as in the State prisons; but this learned judge said that it did not apply to the penitentiaries of the State at all. Now, that law if it had been properly construed and carried out, would not have settled the question for the State. I objected to that law. I met the leader of one of the partes on the stairs here and said: "What are your prisoners going to do?" He said: "Let them pull grass." I said: "That is no answer, sir. The working people of this State do not want these prisoners to remain idle." We had hearing after hearing before our Prison Committee on this proposed amendment. We filled this room. We had the representatives of about every labor organization in the State here. The State Trades Assembly held a special session in this city, and this was one of the most important matters they considered, and they voted unanimously against maintaining the prisoners in idleness. Some gentleman asked, "Will you be satisfied, no matter what other employment they may be put at?" "Anything, but do not sell the products of their labor." Why, these gentlemen, I am told, would be satisfied if you put them at improving the Champlain canal, which has never been finished. Now, they have gone as far as that; they simply say, "Do not sell the goods outside." The act of 1888 was a mere political makeshift. I am sorry to say that the party that gained the most by it, and the party that carried the State in 1888 forgot their pledges in 1889. In 1889, we had enacted what is called the Fassett act, a revision of the prison laws of this State, and it went right back to the State account system and to the piece-price system, with some little flourishes thrown in about corrigibles and incorrigibles that amounted to nothing and that unsettled the matter again. The outside people were not satisfied. Hence the people engaged in the manufacture of fur hats and wool hats came to the Legislature, and because they had votes behind them, the Legislature passed an act providing that there should be no more hats manufactured in the prisons, and

that cut off that industry, and it is cut off to-day. Pretty soon the molders found that in Sing Sing Prison the prisoners were making sixty thousand stoves a year, and the molders came here. They were organized throughout the State; they had votes, and the Legislature passed an act providing that there should not be to exceed one hundred men engaged in molding in all the prisons and the penitentiaries of the State, and in all the reformatories of the State. They did not say this time, "penal institutions of the State;" and so that industry was cut off. A little while afterwards the shoemakers found that there were being manufactured in the prisons one-eighth of all the shoes made in the State of New York; and while they were making these shoes they did not make the shoes used in supplying the prisoners themselves. In the Albany Penitentiary, at a time when they were making twenty-five hundred pairs of shoes a day for the market, they did not make the shoes for their own use. They bought them from other parties. When they were making fine shoes here, the New York Shoe Company had a contract under which they employed these men at about thirty cents a day making the finest shoes, using the most improved machinery, working every minute of the day. Do you think that a manufacturer here in Albany, paying $1.50 or $1.75 a day to his workmen, could compete with these goods that were made here in prison when they were paying thirty cents a day to their men? It was ruinous to the Albany manufacturer and every other manufacturer, because, as I say, the prisons put one-eighth of the product of the State of New York upon the market, and that made the market price; and that is the mischief about this. And so the shoemakers and the shoe manufacturers organized throughout the State, and they came up here and secured legislation so that to-day only one hundred men are permitted to work in the shoe industry in all the prisons and all the penitentiaries and all the reformatories of the State. A little while ago our friends down at Sing Sing made a contract for printing. They put in a printer's plant. This time it was not the working people alone that were concerned. The great firm of Weed, Parsons & Company, which had fought the unions all through, joined hands with them, and other employing printers joined hands with them and came here and said: "No printing in the prisons." And there were votes behind them, and so the Legislature did away with the printing plant. Now, I see they have struck something that there are no votes behind, and now I appeal to you men who are so gallant that you say you will take care of the women when they have no votes, to the men of this Convention who have pledged yourselves always to take care of them. I find from

this report that there are six hundred convicts at work in the State prisons alone making women's wrappers and skirts, making boys' waists and making overalls. They have attacked the women now, and there are no votes. None at all. Well, it may be, and I believe it is, a fact that the men who spoke here on the suffrage question and said they would take care of the women, will do it; and now is your opportunity. So, one industry after another has been driven out; and now come the prison superintendents, who say: "We cannot make any money now." Well, when we cannot make any money by manufacturing in the prisons, it is about time to stop and see what we can do with these men. This remedy proposes that these men shall work; that they shall work for the State, work for the county, or the city, the town, the village, the public institutions, any public institution. You may do work in a State prison for an almshouse in Chautauqua, if you like. The Committee on Charities have brought in a report showing that there are eighty thousand people in the charity departments of this State depending on the State for support. They must be clothed; you must have shoes for them; you must have bedding for them; you must have beds for them. Put your prisoners at making all of these things. I was surprised, I was agreeably surprised, on a visit to the penitentiary in New York city, when the Charity Committee went there, to find that one of the most experienced prison men in the United States was superintendent of that prison — Mr. Pillsbury. He had eight hundred able-bodied men there at work. I saw them working. I said: "Mr. Pillsbury, do you sell any of the products of this prison?" "Not a dollar's worth." "How can you occupy your men here?" "I keep them busy working for all the departments of the city, and keep them busy every day and every hour of the day during which they are required to work." I said: "Could you, if you were superintendent of the prisons of this State" — and he was once, I think; he certainly was in the Albany Penitentiary — "could you find employment for these prisoners without selling the product of their labor?" "I could." I know he could, and I know that any able, honest man could do it if he tried. We find every year the prison influence on this Legislature. Why are these men so anxious? There is no proposition here to take their salaries away from them. No one proposes to cut down their pay at all. Why are they so anxious as to what the State of New York shall do with its prisoners so long as they are kept busy? I know it will be said that when this act of 1888 was passed, men went insane for want of employment. The clamor did go out from Sing Sing that they were going insane for want of work. It did not

come from any other prison. But I see now that there are six hundred idle men down there. Why does not the clamor go out that the present system makes men insane? Have you heard about the six hundred men there becoming insane? We had a practical, level-headed man in the Albany Penitentiary when this law of 1888 was passed. His men did not become insane. He sent them out filling up the hollows and leveling off the hills on the grounds, and he found plenty for them to do, and he so improved those grounds that they would sell to day for fifty per cent more than they would have sold before those improvements were made. I am told that about that time they established a military drill at the Elmira Reformatory, simply to keep the men exercised. They marched them up and down, and I am told that that worked so well that they have retained it to this day. I have heard of many men going insane through worry and excitement, and from hunger, but it is very seldom that a man goes insane who is well housed, well fed, well clothed, who has a physician any time he wants to call him, who has his religious exercises every week, who has his library at his hand every idle hour. But here is an opportunity to keep these men employed, and we give the State two years to make the necessary changes; we give the State until 1897. Two Legislatures will have convened in the meantime, so that there is ample time allowed before we make this change. Now, it is said that we should teach these inmates trades so that they may work at them outside. The warden of one of the most important prisons in the State stated to us that about ten per cent of all the prisoners in the prisons reformed; not above that, and that between fifty and sixty per cent came back again. The trades they get amount to very little. One man may learn to make the heel of a shoe, another the sole, and another the upper, and when they get out of it is a question whether they have a trade at all. If it is desired to teach them shoemaking, let them sit down and learn the trade as the fellows did in old times, make them by hand, if you please, and learn the whole trade so that they may become cobblers when they come out. But these trades they are being taught now, making wrappers or corset waists, how many men will work at them when they come out? Making women's skirts, how many able-bodied men will work at that trade when they get out? Making children's waists, how many men will work at that trade? Making overalls, why very few will work at this trade when they get out. They have established at Clinton prison a toy factory to make tin toys, and they have established that industry because they say there is nothing like it elsewhere in the State of New York. Very well; when the prisoners get out after

having learned that trade where will they find employment? Nowhere. That is a mere pretext. We talk about our being a popular government. I found when we were considering the referendum that it was anything but popular. Why, do you know, gentlemen, that the wage-workers obtain more consideration from the English parliament than from our legislative bodies? I forgot to mention the other day when speaking of the referendum, that Lord Salisbury had come out in favor of it, and if we had known that my lord was for it, I know that we should have had many more votes in its favor here. (Laughter.) Now, New York State is the Empire State, and, as in everything else, it is the Empire State in the production of convict-made goods. I have here a report from the Bureau of Labor at Washington, a recent work, prepared carefully by the present Commissioner of Labor and Statistics, Carroll D. Wright, and from it I find that New York manufactured in a single year goods of the value of $6,236,320.96. She leads all the rest. Now, I am not afraid of a good thing merely because its "English you know." I differ therein from Governor Hill. In the debate on the income tax he said that he did not want it, because it was "English, you know." Well, if those Englishmen pay £13,000,000 a year for the support of the government, they receive protection in return, and it may not be a bad thing. Under the French system no prison goods are sold outside. I read from this report, at page 424: "The articles made by the convicts are the property of the government, and are never sold. In these prisons, the convicts work exclusively for the prison department, not even for any other public department. In one of them, for instance, a rather important number of male and female convicts is employed in making clothes for the penitentiary population. In the large central prison at Melun there is a printing office, which is operated only for the prison department's use, printing of official reports and administrative papers. In the agricultural penal settlements and in the reformatories for juveniles, convict labor is exclusively employed in providing for the wants of the establishment or of other penitentiary establishments. Consequently, the prison department receives no orders for any products."

Now as to the English system, the report says: "A sentence to penal servitude of male convicts consists of three parts: First, a period of strict confinement; second, a period on public works, and third, a period on license, if a remission of any portion of the sentence has been earned." That is what they call ticket-of-leave. "The first period of the sentence, in all cases, lasts for nine months, during which each convict works, sleeps and eats in his own cell.

The men are employed in tailoring, hammock and bagmaking, shoemaking and matmaking, weaving, oakum picking, threading fire lighters, and basket making. The women during this period are mostly employed in needlework and knitting.

"At first, a considerable quantity of the products thus made was sold; but opposition to this on the part of the public was after a while aroused. The prison labor reform association requested the commissioners, who were appointed in 1878, to inquire into and report on the working of the penal servitude acts, the nature, extent and value of the labor performed in the convict prisons, and also the manner in which manufactured articles were sold, and the prices obtained, and this was done. It was sought to lessen opposition to the system by employing the convicts, as far as possible, in the manufacture of articles designed for the use of the government departments. The tailors, for example, were employed in making garments for the convicts; others, in making bags for the post-office, coal sacks, and hammocks and bags for seamen. Competition with outside makers was thus speedily reduced to small dimensions.

"Among other employments was that of matmaking. After complaints arose, the product was confined, as far as possible, to such amount as was needed for public use. The prices were fixed at a certain sum per foot, but considerably less to the government than to outside buyers, the prison department having no object in making a profit from the government. Private dealers have always been eager to buy all that could be had, on account of the superior quality of the goods, and not because of their cheapness. During the investigation mentioned one of the witnesses, being questioned, on this point, declared that the prison prices never varied, and that therein lay the great inducement to the trade. On account of the strong opposition, however, the manufacture of these mats for outside sale was discontinued in England. And this is also true with respect to nearly everything made in the prisons."

Now, we see that this system has been found successful in England, successful in France. I want to call your attention to Massachusetts. Massachusetts is a State which is pretty well advanced on all the questions of the day, and Massachusetts has tried the contract system; Massachusetts has tried the public accounts system, and Massachusetts has tried the piece-price system, and they were all a failure. I hold in my hand the report of 1894, of the general superintendent of prisons of Massachusetts and in reference to this subject he urges the Legislature to come to the system proposed here. He says: "It is well known that the State, through its penal, corrective and eleemosynary institutions is a very large consumer

of manufactured products. Most of these products are such as could be quite easily manufactured by prison labor, the State being the purchaser and the consumer of its own productions. The irritation of free labor by competition with prison labor would be absolutely avoided, and the manufacturer would cease his complaints as to the injustice of meeting prison-made goods in the open market. There would be a constant, growing demand for these prison-made products, thus ensuring steady employment and a stability in the establishment of industries that would be of vast benefit to the discipline and welfare of the prison. A sure outlet would thus be made for the goods manufactured, without the expense, trouble and annoyance occasioned by seeking to dispose of the products through the regular channels of trade to say nothing of the risk of loss of accounts through failures and bad debts That this plan was eminently practical was evidenced by the reports obtained by the Committee on Prisons of the Legislature of 1886. Naturally, these returns were quite imperfect, but enough was given to show that the plan was entirely feasible. The population in these institutions has increased rapidly since 1886, and the consumption of manufactured products has kept pace with the increased population.

"The Commonwealth is a very large consumer; the Commonwealth is also to a limited extent a manufacturer. This being self-evident, then why not manufacture such goods as can be used by the State itself in her many and varied institutions, without the intervention of any one but State officers. This idea may not be popular with the purchasing agents" — and what is true of Massachusetts is true of New York — "this idea may not be popular with the purchasing agents of many of our institutions, for reasons that may be obvious."

And the reasons for that I will give you before I finish. Now, it has been found in this State within a few years that road making may be profitably performed by prisoners. Some thought that that could not be done. Clinton prison has solved the problem. Two or three years ago a law was passed permitting convicts to make public highways, and in the last report of the superintendent in regard to that matter, we have beautiful photographs of prisoners out on parade, making magnificent roads; we have their road machines illustrated, and we have a report from the warden of that prison showing that it has been very successful. I read from page 161 of the report:

"Taking into consideration that the convicts only work eight hours per day, and that they, as well as their keepers, were inex-

perienced in road making, the above showing is one that is entirely satisfactory." He gives figures before that as to the quantity of road work performed. He continues:

"That a limited number of convicts can be worked successfully at road building is now an established fact, and that the road constructed is a first class one is conceded by every one who has seen it."

Road building goes on also at one of the other prisons, and the last Legislature was so well satisfied with the results that they passed an act providing that not to exceed 300 prisoners from each prison might be employed upon road making, or in all, 900 prisoners in the State.

That is only one of the many things that they may do. Is it not strange that they do not make their own shoes in our prisons to-day? The warden of the Clinton prison says in this report, that he has just started the prisoners at making their own shoes within the last year, and that it is a marked success. Why should not they make their own shoes in every prison in the State? Why should not they make their own clothing, if they make overalls to sell outside? Why not put a woolen mill into the prison, and manufacture for all the institutions in the State? They can do it. Four or five years ago they wanted a wall around Clinton prison, and $30,000 were appropriated by the Legislature, to a contractor, to build that wall; and I was told by the warden of that prison within a month that the wall was rotten, that the prisoners have had to rebuild it, and they are at it now. That is good work for them. The Legislature three or fours years ago appointed a commission to locate grounds for a new prison. The people of that beautiful city of Sing Sing are tired of the name Sing Sing while the prison is there. It seems to detract from the greatness of living there, to a certain extent, and I was told that they did not fancy having the prison there. The wardens have been clamoring every year for a new prison. They say that two men are assigned to each cell and in a well-regulated prison that should never happen. Well, this commission located a prison site somewhere down in Ulster county, on a farm. The prison, however, has not been started as yet. Now, why not take up four or five hundred acres of rough ground there that is not of great value, in which stone may be found, and set the prisoners to building their own prison? That is one of the lines of work they have done on Blackwell's Island. There is a great stone quarry on that island and stone is quarried there, and every time they put up a new building these prisoners are employed

upon it. They built a sea wall around that island. They have improved that property so that New York to-day could get millions and millions of dollars for it if they should sell it. The system that was proposed by what is called the Yates bill, of which many of you have heard, provided that prisoners convicted of misdemeanors might be kept in their own counties, each county having in that case only a few prisoners to look after, who might be employed upon a county farm, and raise enough to support themselves. The warden of Clinton prison told me the other day that he was going to break up forty acres of ground this year on which to plant potatoes; let the prisoners plant them, and hoe them, and eat them; and that is good work for them; good, wholesome, healthy work. Now, these county farms would make a little colony in the respective counties almost self-supporting. With breaking stone for the road and all that, they could all be kept busy. Then we should not have the spectacle of a penitentiary sending attorneys to Washington to induce the government of the United States to send prisoners here, and to Kings county and other counties, for the sake of getting the board money and work out of them. An attorney from Albany was sent to Washington some years ago to induce the government to send prisoners here, and hence we had prisoners from Texas, from the Carolinas and from Navassa Islands. What do we want them here for? They are not desirable for us. What is the sense of paying the expenses of an official to come from Texas to Albany with a prisoner? It is something outside the desire to have these men work. I see it has become the custom here to ascertain what other States are doing, and if we can in that way establish a precedent for a proposition, it seems to be favorable to it. I think New York ought to lead in this, as she leads in other things, and whether any other State has adopted a particular measure or not ought not to make any difference with us, so long as it is right. But other States have profited by road making; Alabama, California, Colorado, Dakota, Illinois, Indiana, Missouri, Nevada, North Carolina, Pennsylvania and others that might be mentioned. I am aware that some one may say, "How about the cost? Ought not our prisons to be self-supporting? Ought not these men to be made to do work, to pay for their care and their board, and their lodging, their medical attendance and their spiritual welfare?" I should say, not necessarily. Do you ask that the courts shall require people to pay costs enough, or fines enough, to support the courts of the State? Why, no. If the primary object is reformation, if the object is to make these men better, we cannot say that they shall necessarily pay for it. That is not an answer. But if any man

holds that they ought to pay, then I meet him right there and say they do not. We are losing money by manufacturing goods in this State, and I will demonstrate it to you. The report of the superintendent to which I alluded before shows that we have invested a capital of $1,497,222.24; that is, the plant, the money, the machinery. Think of that vast capital engaged in competition against outside capital. In this last year there has been a deficiency in the three prisons of $477,266.97. Where have you made money? Why, all the materials bought and paid for at such prices as the purchaser sees fit to give, without any limitation, manufactured by these great State factories, then put upon the market, do not bring the cost of the raw material, or have not, for this last year. Our system is buy what you please, at whatsoever price you please, and where you please, manufacture in your prisons, and then sell at whatever price you please. Now, I want to read a few figures to this body, and, for the benefit of financiers, I want to draw their attention to some facts in connection with those figures. There are tables in this report showing the total cost per man for maintenance; and by maintenance is meant the care, the guarding of the prisoners, the feeding and clothing of the prisoners, the repairs of buildings, in fact every outlay made upon prisons. From the official report for the year 1887, I find that the average cost per man, in all the prisons, for every possible outlay, was $126.33 per year, for maintaining, feeding, clothing, making repairs, and guarding all the prisoners of the State. I compared the tables for 1887 with those of 1893. In 1893, when everything was cheaper, when these great factories were running with a capital of a million and a half, I find that the cost of a man per year for all expenditures was $138.38, or an increased cost as compared with 1887 of $12.05 per man, or $42,175 per year. Why is this? But it may be said that possibly there was more money expended on prisons, on repairs and so forth, and that that is hardly a fair comparison. Very well, let us take what it cost to feed them alone, ordinary support, as they call it. The item of ordinary support is about twenty cents a day for a prisoner, and, by the way, it is a mighty poor man that cannot earn for the State of New York twenty cents a day. But the ordinary support in 1893 cost $77 a year for each man. The ordinary support in 1887 cost $69 per man, or a difference of $7.63 per man as between 1887 and 1893, or a total of $26,705. Were they feeding the prisoners better in 1893 than they were in 1887? I doubt it. What is the reason of this increased cost? Now, then, the deficiency this last year was $477,266.97. The State paid out so much and got back so much, and the difference ——

Mr. Peck — On the manufacturing and everything?

Mr. McDonough — Everything. We cannot from these tables find just what we want, and we have to do the best we can with the figures that are furnished. These are official. The number of prisoners in the State prisons last year was 3,492. If you divide $477,266.97 by 3,492 it will give us the cost per man per year for every possible expense, and we have $136.67, ten dollars more than it cost in 1887 for each man. The consequence follows that these men could have been maintained in idleness, with not a dollar's worth of work done, or a dollar's worth of goods sold, for what the deficiency amounts to. Now, I do not want to see men maintained in idleness. But the plea has gone up from the superintendent of the prisons that these are hard times. I knew that this tariff law affected a great many people, but I did not know that it would strike the prisons of the State of New York. It seems, however, that the hard times have struck the prisons, and that is the excuse advanced for not making money during this last year. But, gentlemen, I will show you that they have not made money in ten years. I went to the Comptroller's office and asked him how much money the State paid out for all its State prisons in ten years and how much was received back, and I got a report. The report contained the items for each prison for each year, the amount paid out each year, and the amount received each year. If the committee will permit me, I would rather hand this statement to the stenographer and let him insert it. Mr. Chairman, if there is no objection, I would like to have it take that course.

Mr. Deady — Mr. Chairman, I would like to ask the gentleman if he will give way for a moment for a question.

Mr. McDonough — Certainly.

Mr. Deady — I wish to ask the gentleman now, he having investigated this question, as his speech shows, when the prisons of the State of New York were last self-sustaining?

Mr. McDonough — I do not know that they were ever self-sustaining, in the true sense of the word. Reports show that they make money in the prisons. I will tell you how they make money. They count nothing for rent, nothing for insurance, nothing for provisions, nothing for taxes, and nothing for support.

Mr. Deady — Never mind what they count. In the last ten years what has the deficiency been, since the contract system was abolished in the prisons? Let us hear that. Has it not amounted to a million dollars?

Mr. McDonough — Those are the figures which I was about to give you, Mr. Deady, with the permission of the Convention.

Mr. C. B. McLaughlin — Will the gentleman permit me a question?

The Chairman — Will Mr. McDonough give way for another question?

Mr. McDonough — Certainly.

Mr. McLaughlin — I see you include in this provision the reformatories of the State?

Mr. McDonough — Yes, sir.

Mr. McLaughlin — Now, as I understand the theory on which prisoners are sent to the reformatories, it is that they may be saved to the State. I would like to have you explain under what arrangement you would have the Legislature provide for the employment of persons sent to the reformatories, and especially juveniles?

Mr. McDonough — First, I would give them a thorough education. Secondly, I would not lash them as they are lashed in some of the reformatories in this State until they make savages of them. Thirdly, I would teach them trades, right in the reformatories. I would teach a man, or a boy, the whole of the shoemaking trade. The present law provides that in reformatories they may make walls and pull them down again, to make bricklayers of them. That is provided in the present law. The present law provides all that, and I do not see that they learn any more by selling the product of their work than they would by manufacturing those goods and selling them to a public department. There is no difference.

Mr. McLaughlin — Will the gentleman permit a further question? I do not think he gets the point of my inquiry. I am assuming that the reformatories in the State are good. I do not know whether they are good or bad. I assume that for the purposes of my question. Now, my question ——

Mr. McDonough — I will say right here that the people that are sent to the reformatories are not good or they would not be sent there at all.

Mr. McLaughlin — No; I say the reformatories of the State, I am assuming that they are good reformatories ——

Mr. McDonough — You have no right to assume it.

Mr. McLaughlin — The point of my question is, that there is an institution provided by the State for the purpose of reforming young people, saving them to the State. Now, why should we include

them in a class with State prisons, penitentiaries and jails? In other words, the reformatory in theory is a school.

Mr. McDonough — Very well, why should that school want to sell the product of its work any more than any other institution? My second answer is, that at the present time, the statute law provides for reformatories. That is my answer. They can be well taught there, and the reformatory that you perhaps have in mind, includes boys up to the age of thirty years; pretty old boys, some of them.

Now, I have not received leave to have this statement printed, as yet, Mr. Chairman. If there is any objection, of course, I will read this mass of figures. If not, I will simply read the totals.

The Chairman — Mr. McDonough asks unanimous consent to have certain statistics printed. Are there any objections? If there are none, it is so ordered.

Statement showing the amounts paid to, and received from, the several State prisons during the ten years ending with September 30, 1893:

AUBURN.

Year.	Amount paid from State treasury.	Amount received into State treasury.
1884	$120,623 42	$115,408 09
1885	370,495 55	166,542 84
1886	550,904 04	385,678 92
1887	729,576 58	482,108 45
1888	591,150 61	759,074 08
1889	176,824 84	103,916 77
1890	194,399 18	2,387 17
1891	137,609 29	5,128 28
1892	*146,930 47	154,234 33
1893	‡168,506 75	3,393 92
	$3,187,020 73	$2,177,872 85

*$150,000 of the amount of prison capital fund received during 1892 was turned into the State treasury during that year, so that the amount is included in both items of $154,234.33 and $330,656.13.

‡$30,000 of the prison capital fund used for rebuilding shops destroyed by fire in 1893.

Clinton.

Year	Amount paid from State treasury.	Amount received into State treasury.
1884	$120,375 10	$46,899 74
1885	428,131 68	93,866 27
1886	532,202 05	359,890 88
1887	527,426 16	477,195 95
1888	403,334 07	450,204 79
1889	171,683 58	273,264 18
1890	269,662 30	3,520 80
1891	267,156 32	5,951 39
1892	†290,290 07	82,479 97
1893	242,183 77	10,773 97
	$3,252,445 10	$1,774,047 94

Sing Sing.

1884	$191,866 59	$238,179 56
1885	188,601 74	246,284 60
1886	183,787 32	242,842 50
1887	340,857 58	182,519 49
1888	941,553 07	900,763 97
1889	223,033 02	82,149 36
1890	317,898 18	9,147 51
1891	293,578 09	8,306 88
1892	225,681 96	7,474 74
1893	215,046 83	7,585 70
	$3,121,904 39	$1,925,254 31

Recapitulation.

Auburn	$3,187,020 73	$2,177,872 85
Clinton	3,252,445 10	1,774,047 94
Sing Sing	3,121,904 39	1,925,254 31
	$9,561,370 22	$5,877,175 10

† $75,000 of the amount of prison capital fund received during 1892 was turned into the State treasury during that year, so that the amount is included in both items of $82,479.97 and $212,025.04.

AUBURN.

Year.	Amount paid from prison capital fund.	Amount received into prison capital fund.
1884	.....	.....
1885	.....	.....
1886	.....	.....
1887	.....	.....
1888	.....	.....
1889	.....	$11,343 83
1890	$139,363 58	169,184 19
1891	203,201 72	269,992 11
1892	184,083 18	303,856 13
1893	168,380 63	240,066 70
	$695,029 11	$994,442 96

CLINTON.

1884	.....	.....
1885	.....	.....
1886	.....	.....
1887	.....	.....
1888	.....	.....
1889	.....	$2,688 24
1890	$65,937 31	87,870 89
1891	227,069 67	308,748 89
1892	116,894 95	212,025 04
1893	252,022 58	167,548 94
	$661,924 51	$778,882 00

SING SING.

1884	.....	.....
1885	.....	.....
1886	.....	.....
1887	.....	.....
1888	.....	.....
1889	$1,300 00	$9,541 25
1890	164,000 00	187,284 06
1891	432,200 00	477,413 05
1892	665,390 00	631,803 59
1893	542,600 00	596,553 71
	$1,805,490 00	$1,902,595 66

Recapitulation.

Year.	Amount paid from prison capital fund.	Amount received into prison capital fund.
Auburn	$695,029 11	$994,442 96
Clinton	661,924 51	778,882 00
Sing Sing	1,805,490 00	1,902,595 66
	$3,162,443 62	$3,675,920 62

Mr. McDonough — As will be seen from this statement, in ten years the total amount of money paid out by the State of New York for its prisons was $12,723,813.84; total amount paid back, $9,553,095.72; leaving a deficiency of $3,170,718.12.

Mr. Deady — Will the gentleman give way for a moment?

The Chairman — Will the gentleman give way for a question?

Mr. McDonough — Certainly.

Mr. Deady — Has it shown the statistics for the preceding ten years?

Mr. McDonough — I can say this, that I have examined the statistics for the preceding ten years and there is a deficiency for that period also.

Mr. Deady — I know; but is the deficiency anywhere near, proportionately, to the deficiency for the last ten years?

Mr. McDonough — For the purpose of this argument, Mr. Chairman, that amounts to nothing. The contract system has gone, and you can never reinstate it in this State. The people have said by a majority of 138,000 that the contract system must go, and no public man dare stand up before the people to-day and say that it must come back, and face the people at any time thereafter. It has gone.

Now, then, with a deficiency of over $3,000,000 in ten years, with a capital $1,500,000 invested at five per cent, we have $750,000 more. We have, therefore, a deficiency of $3,920,718.72 in ten years; and that would support every prisoner in all the State prisons of the State in idleness. Where has the money gone that has been made in these prisons? I will admit that money is made. Where is it? Who has it? I will tell you who has it. I have examined every prison report for ten years to find out what the commissions were that were paid for selling prison goods. You will all remember that within two or three weeks, a scandal has arisen at the prison in Auburn, where the prison agent was not only selling the brooms manufactured in this State, but was buying brooms manufactured

in the prisons of another State, and selling them, and the Governor has called him to task for it. You will hear more about that before this debate is over. Now, inadvertently, and through some strange means, unaccountable to me, the amount of commissions paid in one prison for selling goods for one year, crept into a report in the year 1887, and never have we seen one since. It shows the net results. But to show you how munificently these prison agents are paid, I want to call your attention to one item. In the statement of the receipts and expenditures for Clinton prison for the year ending September 30, 1887, appears this item: "Commissions on sales;" and I wish you would mark this, gentlemen, for it is quite important: "Commissions on sales, $29,930." The man that received that money is satisfied that the present prison system is the best on the face of the earth — three times the salary of the Governor for selling the goods of one prison, and that the smallest prison in the State, for one year's services. Let us multiply that by three and then we have the total for the State. It must be more than that, for more goods are made in the other prisons than in Clinton prison. On this showing, we have $90,000 a year paid as commissions for selling these goods manufactured in these prisons. If there is money made, the money does not come to the State of New York; and this may account for what has been called in this State the "prison ring," for the great anxiety on the part of these people who are managing these prisons to have these industries continued, for their great love for the taxpayers, and their desire to save the taxpayers from paying out money. They have taken an extraordinary interest in this matter. Now, I think I may safely say that there is no profit for the State of New York in the business. There would be profit to the State of New York if these prisoners were working for the State. There is no question about that. Under the present law they may make goods for certain departments; but, as I said to you a moment ago, they do not. The Legislature ought to, if this becomes a law, compel every public department to receive from the prisons, penitentiaries, reformatories, every possible article that can be manufactured there; and then they will become self-supporting in the State of New York. We would not lose this money by that operation. I suppose I will be met with the objection that is directed against many measures here, that this is not a proper provision to be put into the Constitution. I say, gentlemen, it is eminently proper; it is eminently proper because it is a restriction put upon the Legislature; it is eminently proper, because, from what I have said to you, it will be apparent that the Legislature has not done its whole duty in regard to this mat-

ter. And, as before, I may cite other States which have provisions regulating their prisons in their Constitution. Mississippi, after having tried everything else, has finally come to the adoption of this plan, and on December 31, 1894, the prisons are to begin working for the State, and only for the State, on roads, public works, and in manufacturing goods for the State institutions; and that is made a constitutional provision. It exists in the Constitution of Mississippi. An article regulating prisons exists in the Constitution of California; an article with regard to prisons and the employment of prisoners exists in the Constitution of Montana; there is such an article also in the Constitution of North Carolina. This subject is of vastly greater importance than many others that have a place in our present Constitution. We provide for the laying out of private roads in our present Constitution. Could not that have been left for the Legislature? We provide for agricultural leases; we say that no farmer shall lease his land for more than twelve years. Might not that have been left to the Legislature? We provide for a laying out of highways and alleys; we provide for building bridges; we provide for the publication of the statutes; we provide for the security of the debts of corporations; we define corporations; we provide an oath of office. Many of the things that are in the Constitution might more easily and more properly be left to the Legislature than this. But I find here that when any gentleman is opposed to a measure, he will say that it is not a proper thing to have in the Constitution. When he is in favor of it, it is just the thing to have in the Constitution. Well, as many as favor this will have it in the Constitution if they can.

Now, I do not wish to take up much more of the time of the Convention. I am a sort of an anomaly in politics, and have been so since I was a voter; and you will pardon me if I mention it. I was a Republican when a boy, because the Republican party was opposed to slavery; I was a Republican during the war, as a young man of eighteen or nineteen, when at school, because the Republican party was for saving the nation. I was a Republican after the war, because the Republican party was in favor of reconstructing the nation. I am a Republican to-day, because the Republican party stands for protection, protection for the manufacturers of the country, protection for the wage-workers of the country; and I have heard it on the stump so often, and in so many varieties of phraseology that I never can forget it, that we ought to protect ourselves against the pauper labor of Europe. What about the prison labor of New York? Why, the pauper must make a living some way. The prisoners are cared for; they are fed; they are clothed by the

State of New York. There is no danger as regards them. Why should they be put into competition with free men? Why not protect us from these people; and if the Republican party is the party that I believe it is, it will protect us against these people.

Mr. Smith — I would like to ask a question of the gentleman, if he will permit me.

The Chairman — Will Mr. McDonough give way for a question by Mr. Smith?

Mr. McDonough — Yes, sir.

Mr. Smith — Would there be any objection to allowing the sale of the products of prison labor to foreign countries?

Mr. McDonough — Mr. Chairman, there is just as much objection to allowing the sale of prison products to foreign countries as there is to allowing the sale of the same products made in foreign countries here. The pearl button industry was ruined, four or five years ago, in New Jersey, by the importation of pearl buttons manufactured in the prisons of Austria. We ought to put up our gates against that; we ought to change our tariff law to save us from it. I believe the Knights of Labor have a motto to this effect, that an injury to one is the concern of all. I do not propose that New York shall manufacture goods to make more paupers abroad than there are now. Let them alone. I do not believe that it is a natural right for us to send our prison-made goods to another country. (Laughter.) They might meet us there with a tariff law; they might stop us, and we cannot say, "gentlemen, we have a right to come here whether you like it or not."

Mr. Maybee — I desire to ask the gentleman a question. Did he intend to intimate that the Democratic party was not in favor of saving the nation during the war?

Mr. McDonough — I beg your pardon. I do not think any such impression has gone abroad, that I believe that the Democratic party was opposed to saving the nation; that is the Democratic party of the north. If there has, I wish to take it all back. There was hardly a Democrat south of Mason and Dixon's line that had not a gun in his hand aimed at the heart of the nation; however, there were many patriotic Democrats. General Grant was a Democrat before the war; Douglas was a Democrat before the war. Brady, of this State, was a Democrat. There were a great many patriotic Democrats; but the good work was done more by individual Democrats than by the party; for the party that declared the war a failure, in Chicago, 1864, did not represent the patriotic Democrats of the State of New York.

Mr. Deady — I would like to have the gentleman give way for opportunity to ask a question. The gentleman has stated that the reason why this proposition is presented here is because the workingmen were unable to get legislation. I would like ——

Mr. McDonough — I beg your pardon. I did not state anything of that kind. On the contrary, I said that workingmen who could come here with so many votes got legislation.

Mr. Deady — Then, I would like to ask the gentleman where there has been any indisposition on the part of the Legislature of this State to give the workingmen of this State any rights to which they are entitled, and if there has been no such indisposition, why this proposition is presented to this Convention?

Mr. McDonough — Mr. Chairman, if the gentleman was as familiar with legislation at Albany as he is with questions in his own neighborhood, he would know better than to ask that question. Repeatedly, repeatedly, they have appeared here with a bill to abolish this system of prison labor, and repeatedly it has been defeated.

Mr. Deady — How many statutes are there on the statute books now providing for the protection of laboring men by restricting prison labor? Is it not true that only five per cent of those in any prison can be engaged in any form of labor?

Mr. McDonough — No, sir; that is not true. Not five per cent of those in any prison. It is five per cent in all the prisons, and consequently you can put 900 hundred men at almost any line of industry. But that is not true for all labor, either. It is only true as to certain labor, where there are more than fifty employed in it; but that applies only to certain things. Now, how many women are employed in making shirts?

Mr. Deady — I will have to give that up.

Mr. McDonough — Very well. Mr. Chairman, it is very easy to ask these questions. If the Legislature has done something for these people, and we ask for something more, that is just as proper, should it be refused because we have not done our whole duty? I am going to talk plainly to you. You talk of the unrest that is abroad. You are finding fault with the uprising of the working people throughout the State and throughout the nation. What do you do for them? They come here and recommend certain measures, and they are turned away every year from the Legislature, and they are turned away by the men who are sent here every year by corporations of this State, by the paid attorneys of these corporations, and what little you give them is, just as I read to you, so construed that it is of no benefit. They came here and recom-

mended a weekly pay bill, and it went out all through the country that the Legislature had done a great deal for them; and when the law got before the courts at General Term in the fourth department there was nothing left of it. They came up here and the Legislature gave them a so-called anti-Pinkerton law. There is no such law on the books. But certain people wanted an act called an anti-Pinkerton law as an excuse for not employing Pinkertons, but for calling out the militia of the State. It is cheaper, it is more effective, and the railroads receive pay for their transportation. There is no anti-Pinkerton law on the statute books of the State, and I defy this gentleman, or any other, to point it out to me. It has been a fraud perpetrated on these people, and thus we turn them away every year. Now, they come here and ask for a reasonable measure, that which is right and proper, and are you going to turn them away? Why, stop and think a moment. Suppose the State of New York should put its 10,000 prisoners building a railroad from New York to Buffalo, to parallel the New York Central road. The State could do it. Suppose the State should do that. Then it should sell that road to the highest bidder, what would the New York Central people say? What would the West Shore people say? They would come here and say it was paternalism, pure and simple, and that the State had no right to destroy their property; and you would listen to them; you would never allow it. Whom are you attacking now? Why, you are attacking the wage-earners of the State. They are not as strong as these great bodies, but they have rights that ought to be protected equally. If you attempted to start a law school in the prisons — and I am sure you could make many expert criminal lawyers there — every law school in the State would say you must not do that. If you should start a medical school there, and fit these people to go out and heal the sick and bury the dead, all the doctors would say you mustn't do that. Has not a granite cutter a right to say that the State of New York shall not compete with him? Has not the marble worker a right to say that the people shall not compete with him? Has not the man who makes brass bedsteads the right to say you shall not compete with him? The right is less in importance, perhaps, but it is a right, the right of self-preservation.

I leave this matter to the Convention. I have done my whole duty, gentlemen; you may do yours. I am not interested in this one iota. Personally, it does not affect me at all. If anything, it is hurting me. It has, in a business way, hurt me for ten years to do something and say something for these men. If you have any sympathy for the needs of the people, these are the men that deserve it;

and I am satisfied when they come here and ask for a measure that is reasonable, that is right, proper, and just, that they ought to have it.

Mr. Francis — Mr. Chairman, in supporting the pending amendment proposed by the Committee on State Prisons, I speak for 14,000 collar girls, including a large proportion of that number engaged in the laundry industry. These are employed in the great establishments of Troy and in the outlying tributary districts. My advocacy as well is in behalf of their employers, and, I may add, the interests and welfare of more than 150,000 citizens of my district.

Notwithstanding the legislation of 1892 forbidding the manufacture of shirts, collars and cuffs and the doing of laundry work in the prisons and penitentiaries of the State, it seems that under the pretext of some previous contract the right was claimed and has been enforced by the management of the Albany penitentiary to extend the time of laundry work in that prison for a period of several years. So now it is alleged that fully 200 convicts in that institution are employed, equipped with the latest labor-saving machinery in carrying on this industry under contract. Thus, in contravention of the spirit and intent of the Worden prohibitory law of 1892, this convict competition is waged against the honest and industrious women who are engaged in that service. The effect is to diminish their wages and absolutely to throw out of employment fully 300 worthy girls in this department of industrial activity.

At Dannemora the Worden law is evaded by taking up another branch of similar industry which is or has been carried on quite extensively in Troy and vicinity. That is, the manufacture of boys' shirt waists, which has heretofore given employment to hundreds of women in the city of Troy. This convict competition has had a disastrous effect upon the industry, depriving large numbers of employment and of the means of livelihood. As an illustration, it may be stated that the convict goods are sold in New York at $1.25 per dozen, when in fact with anything like living wages they cannot possibly be produced for that sum.

The plain, unvarnished facts afford an exposition of the situation demanding a constitutional mandate to the Legislature to take prompt and decisive action as required by the proposed amendment reported by the diligent, thoughful and very efficient Committee on State Prisons. I need not analyze the pending amendment. It strikes right to the point; it is concise and admits of no misinterpretation. It means a positive prohibition of the shameless war upon women by the State through the agency of its convicts. It means a prohibition that shall prohibit the war by the State by

means of its convicted felons as a working power against the legitimate and honorable business of its citizens. It means that the State shall at once and forever discontinue this disreputable business. It calls a halt; it says of this smirching of the body politic, "out, damned spot," and the constitutional washing will prove its purification. It commands a complete dissolution of the copartnership of the State with crime. It deals a most effective blow at that sordid, wicked selfishness that would profit by crime, and even reduce womanhood to unutterable suffering, that it may fill its purse with ill-gotten and shameless gain. So, in my humble but always earnest way, I speak in this matter for honored and industrious womanhood, and in the name of justice and for the good name of our imperial commonwealth, plead with you, gentlemen of the Convention, to protect this womanhood from further proscription by the adoption of the proposed amendment to the fundamental law of the State.

Mr. Chairman, I hold in my hands a communication from the Collar Girls' International Association, addressed to this Convention, authenticated by the signature of its capable president, Miss Mary F. Terry. It is a record of scandal, maladministration and wickedness almost indescribable, with cruelty most shocking, growing out of the competitive convict labor system at Dannemora, and consequent upon the greed of contractors and their influence upon prison management to produce the largest amount of goods for their benefit. It is shown, by official and individual reports, that prisoners in this competitive work against honest, wage-paid industry, were compelled to work fifteen and sixteen hours a day, and that failure to perform tasks demanded of them, impossible tasks without the working so many hours, even taking their work to their cells at night, was visited with most inhuman punishment. The result was awful demoralization, fearful increase of disease, insanity and suicide. All this the result of convict labor farmed out, contracted for, to make war upon the honest business of law-abiding citizens and wage-earning labor by toiling womanhood. So I say the time has come for decisive action, to have a State housecleaning, a purification, a reform — the utter extirpation of this disreputable business on the part of the State.

As to employment of convicts, the Chairman has discussed the matter in a clear and exhaustive manner, pointing out very conclusively that it may be directed in a way that shall not, as at present, constitute a war upon business and the honest industries of our people. It is said that convicts should have employment. This is conceded as desirable; nay, it is an essential factor to a policy

of humanity. But they may be employed, the men largely in road making; the women in making up clothing for the convicts, and all more or less in work for the prisons. Without entering into detailed discussion of this question, the fact for illustration may be cited that in counties of this State where the jail prisoners are put to work on the streets and highways, the effect is most salutary in a moral as well as physical sense; the deterrent influence against vice is apparent; the army of tramps never make their appearance. Certainly our State prison and penitentiary convicts may be assigned to wholesome labor that will not involve war upon our important business industries, nor make felons a power to strike down the wage-earning industry of womanhood.

The proposed constitutional amendment will be the entering wedge to achieve this beneficent result. Pass it and receive the blessings of toiling womanhood, the blessings of our best manhood, too, and the approval of the Higher Power that rules the universe and asserts with divine force His perfect and omnipotent will.

Mr. Griswold — Mr. Chairman, I offer the following substitute by way of amendment.

The Secretary read the substitute offered by Mr. Griswold as follows:

Strike out all after the word "reformatories in the State," in line 5, and insert "as shall be for the best interests of the State having regard to the safe confinement in prison and welfare and improvement of the prisoners without other limitations."

The Chairman — The question is on the adoption of Mr. Griswold's amendment.

Mr. Griswold — Mr. Chairman and delegates of the Convention, I agree that this is an important subject which is now before this Convention. I also recognize the fact that we are here in Constitutional Convention where we should have regard for the interests of the State, I mean the interests of all the people, the greatest, the best interests of the greatest number. You cannot legislate in the Constitutional Convention for a few in any particular locality. This is not the first time that this provision, proposed here as a constitutional amendment, has been proposed for enactment into a law. It was first presented at a special session of the Legislature in July, 1888. I wish to state a few facts to delegates which they can verify for themselves, and then let them exercise their honest judgment, and I shall have nothing more to say. We have heard what has been said upon this subject, and much time has been taken in this

discussion, but there are a few facts which, if presented, I think will enable gentlemen to form their own opinions satisfactorily to themselves.

I wish to state a few of the circumstances attending the original presentation of this provision to the Legislature. For some years prior to January, 1888, it was the law that labor should be performed in the several State prisons and in the penitentiaries, and it was provided by statute that the State should furnish requisite sums of money to purchase the raw material and provide for the other expenses of manufacture and carrying on the work in the prisons. For some reason or other there was a further law that the proceeds of these manufactures when disposed of, sold, should be turned into the treasury of the State. So you see that, whenever the money that had been appropriated for the purpose of purchasing the raw material was expended, the Superintendent of State Prisons had nothing in his hands to proceed with further, because he had to pay out every dollar that he received and give his vouchers and pay the proceeds into the State treasury. The result was, when that was done, that he was entirely out of funds. That was the situation prior to January, 1888. At that time, the Superintendent of State Prisons sent a most urgent request to the Legislature to provide means; stating that the money was about expended, and that the prisoners would remain idle and be shut up in their cells, and the State would lose the benefit of their labor. He sent two communications of that character to the Legislature, and the Legislature, after various delays, and after many prisoners had remained idle, granted about one-quarter of what was required and what was necessary in order to give the prisoners employment. The Legislature then adjourned without furnishing the means. So that the Governor was compelled in June or July to call the Legislature together at an extra session to provide means for furnishing the material and to set the prisoners at work. The prisoners were complaining; they were being sick, demoralized, and men in the prisons were saying, "We are getting crazy; save us; let us go to work." All of the delegates here, I think, must have heard of it and understood it at the time, and I know that there was a storm of indignation all over the State. I do not know whether that Legislature was Republican or Democratic, and I would not go to that door to ascertain. I never have given it a thought, and I do not care which it was; but if there was vicious legislation there I want the Convention to know it, so far as it may be material for its action. Now, at that extra session there was granted a small appropriation, not nearly what was required. It did not last, for that very year the

prisoners were without labor, I think, for about nine months. Then, at the time of that extra session, as seen by the statute, they further enacted this vicious act, as I claim it to have been, which contained as its worst provision the very provision that has been embodied in this proposed amendment to the Constitution, that no motive power, or machinery for manufacturing purposes should be placed or used in any of the penal institutions in the State, including penitentiaries. And mark the further provision, "That no person in such institutions shall be required or allowed to work while under sentence thereto, at any trade or industry where his labor or the product of his labor is farmed out, contracted, given or sold to any person or persons whatever." See what an act that is. It is an actual prohibition against the manufacturing of everything to be sold or used outside of the penal or charitable institutions of the State. I wish I had time to read what the superintendent said was the condition of those prisoners. They were demoralized. They were without work, which he regards as most essential for their reformation; prevented their being taught trades so that afterward they might be able to get a living honorably and honestly. Now, the next Legislature, in 1889, I think the act was signed June sixth, passed another act which was known as the Fassett act. I presume Senator Fassett drew it, and was responsible for it. It was a most excellent and admirable act in some respects; that is, in regard to the care and treatment of the prisoners, and was a very good act generally, but it was defective in this, because it limited the employment of the prisoners, it limited the industries to which the prisoners could be put at work, to three per cent of the manufactures in the State of boots and shoes and clothing, and all others, as I read it, were limited to five per cent, and thus they are restricted now. Now, any intelligent man must know that the State prisons are, from their situation and circumstances, limited in the employment that they can give to their prisoners. It is proposed here that they shall be sent out into the mountains and into the fields. Why, sir, it would require two guards to every prisoner. How could it be done? Again, they say, there are 300 girls at Troy in one place who want to make shirts, and I believe they kept the tariff up pretty well for them. I am a friend of the girls, but the delegates to this Convention must legislate for the State with due regard to their duties and their oaths of office. It is the State that we are to act for. Now, where is the great grievance that is complained of, if this State shall manufacture those things which they are so situated that they can manufacture with its prisoners? There is no State line for commerce which prevents the transporting here and

selling property from other States. Now, you cannot go into a village, a hamlet or a cross-roads store but you have got the shoes of Massachusetts or Connecticut which come here in great boxes, and you can see them in every shoe store. A millionaire can set up his manufactory of this same kind of goods here. Any man is a free man in this State so far as industry and manufacturing are concerned. Massachusetts can send any quantity of goods across the line, or any of the other States. Every man is free to set up in this State any number of manufactories of boots and shoes and all other articles. It is the taxpayers of this State who are concerned in this question — every poor woman with her children, who has a little house and lot, every poor man who owns a particle of real estate. It is the State that the great grievance is against here on the part of the few. It seems strange that all God's creation can manufacture what they have a mind to in the State, or can come into the State from outside and import all they see fit, and the only persons in the world who are prohibited are the taxpayers of the State. Is there any reason in that? The taxpayers collectively have as many rights and interests, I claim, as any individual has. They have a right to employ and engage in such employment as they see fit, and put their prisoners to such employment as they see fit. But it is said that the State prisons will manufacture and send their products out to the community to be sold at half price or a reduced price. Now, that is mere talk. If you have a proper officer to take charge of that, as we are presumed to have, and if we have not got them, they should be turned out and somebody else put in their place, but let them sell those products for all they can get. I do not believe that what they would manufacture of any of these different kinds of articles will be more than a drop in the bucket. Look at the country where these things may go. You have got all the western States, you have all the South American States and Cuba, and in fact the whole world is open to you. It is all talk about their reducing the price one-half. If that is so, then the products are sold for less than they are worth and by corrupt practices of the officers engaged in it. Suppose it is true that they make cheap shoes in the prisons. Where do they go? Who gets them cheaply, pray? It is the poor of the whole State and of the whole country. These poor people who use those things that are manufactured in the State prisons may be just as good as those clamorous people who come here. I see no grievance at all that people get those cheaply, if they do. Why is it that there must be this special legislation? Under this Fassett act now, the prisoners are limited as to the amount of their production, and the Superintendent of State

Prisons is fettered and tied up by these vicious laws. I do not say but what the drafter of this Fassett act meant to do as well as he could; I say it is an admirable act, all excepting the restriction on industries in the State prisons to three per cent on shoes and clothing and five per cent on other things, but there was probably part of the Legislature that forced them to do it, or would not allow the act to be passed. I would like to see an independent body like this that would not be influenced or carried away by any few individuals and pathetic clamorous talks about 300 girls. I think we should have a reasonable law, and let the prisoners do work, and make the prisons a paying institution. I believe from what I have seen and what I have read, that there is not the least difficulty, with proper legislation, in having the prisons self-sustaining, instead of the millions of debt. I say that the species of legislation which brings about such a result is all wrong, and any intelligent man will say so. I have no more interest in this subject than any one else. I think this amendment is unnecessary in the first place. It has no business in the Constitution. I say that hereafter, the prisoners should have such employment as will tend to the best interests of the State. That is what we should look for, having due regard to the safety of the prisoners in the prisons, their reformation, education and welfare. I think the amendment I offer is drawn in such a shape that there will be no trouble in its enforcement. There were, on the eleventh day of this August, 329 prisoners idle because they are limited in the right to manufacture such articles as they could manufacture. If it is proposed that they manufacture shoes in these prisons up bobs the shoemaker and says, "I am making shoes, and you must stop manufacturing shoes in the prisons." If you are making rough clothes, up jumps the tailor and says he is making clothes and you must stop manufacturing clothes in the prisons. Why, the whole thing is a fallacy, in my judgment. This may not be popular, but I cannot help that. I submit this amendment ought not to be adopted by the Convention. I think this substitute is a right and proper thing, and then you will put an end to that sort of thing, I believe it is the proper thing to do. I presume this Convention will never adopt the proposed measure. (Applause.)

Mr. Pratt — Mr. Chairman, ever since the proposed amendments introduced in this Convention have begun to be discussed here, complaint has been made that a large number of them were legislative in their character, and not fit to be introduced in the fundamental law of the State. Unquestionably, Mr. Chairman, a large portion of the mass of proposed amendments that have been introduced, and now sleep in committee, or have been passed upon

adversely, are of a legislative character, and not fit to be put in the Constitution. It seems as though every person and every association of persons in the State that had a grievance endeavored to get a perpetual injunction against its continuance by putting in the Constitution that every one who perceived the shadow of a danger of any right belonging to him being transgressed, sought to prevent such transgression for all time to come by putting some provision in the Constitution.

Now, Mr. Chairman, it seems to me, that no proposed amendment which has been introduced in this Convention has that legislative character more thoroughly stamped upon it and is more unfit to be put in the Constitution of the State and become the fundamental law of this commonwealth than the proposition which is now before this committee. If this proposition is put in the Constitution as it is sought to be put there, there is no telling what the effect upon the penal institutions of this State will be. There was a law passed in 1888, which was in substantial accord with the provisions of this proposition. That law was only tried, however, for one year. It was abrogated in 1889, and we have no criterion by which to determine what the effect upon the penal institutions of the State will be on the adoption of this proposed amendment. Therefore, before the insertion of any such provision in the Constitution, great care should be taken in investigating the matter and to ascertain if possible what the possible effects of the amendment will be. And I submit to this Convention that notwithstanding the very great, painstaking care and the thorough knowledge which the chairman of this committee evidently has, he has been biased in his work upon this matter. He has heard only one side, and has made up his mind on the evidence produced by one side only. He has had before him on public meetings of the committee representatives from nearly all the labor organizations of the State, who claimed to be affected. I have yet to learn that he has had before him any one of experience or scientific knowledge; that the committee has had before it any warden, superintendent or manager of a State prison or reformatory.

Mr. McDonough — Mr. Chairman, we did have a warden. We invited them all. We invited some superintendents of prisons, and one of the most experienced wardens of the State appeared before the committee.

Mr. Pratt — Against the dozen or twenty representatives of labor organizations, then, Mr. Chairman, there was just one warden of the State prisons of this State, or of any of the penal institutions of this State, before the committee; and from that evidence the chair-

man of this committee and the committee itself have made up their minds and given us this report.

Now, Mr. Chairman, I will yield to no one in my desire to protect the artisans, laborers and mechanical industries of this State against unfair competition. That class is a large portion of the superstructure of this commercial and industrial State, and it should be protected against unfair competition, unless such protection injures others or the State at large.

But this matter of convict labor, Mr. Chairman, is a bugbear with the laborers, and especially with the professional labor reformers of the State. To reverse the familiar saying, they strain at a camel when it is only a small insignificant gnat that is waiting to be swallowed. The fact is, Mr. Chairman, that the amount of the products of the industries of the prisons and reformatories of the State is so small and insignificant in proportion to the products of the industries outside of the prisons, that it is not worth considering. And in that connection, I desire to quote from the gentleman from whom the honored chairman of this committee has also quoted, the Honorable Carroll D. Wright, Commissioner of Labor Statistics of the United States. In his second annual report for 1889 is the following: "The prison population of the United States engaged in any degree of productive labor is 64,349; a proportion of the population of one in 930. The total product of all industries of the United States for 1880 was $5,369,579,191, and was produced by 2,732,595 employed, a *per capita* production of $1,965. The total product of convict labor was $28,753,999, by 45,277 convicts, being a *per capita* prison production of $635."

He follows these statistics with the following remarks:

"It is perfectly evident, therefore, that the competition arising from the employment of convicts would not of itself constitute a question worthy of serious discussion. The product of the prisons is but fifty-four one hundredths of one per cent of the total mechanical products of the country. The whole prison population of those institutions in which productive labor is carried on is but one in a thousand of the population of the country, and those engaged in convict productive labor but one in three hundred of those engaged in free mechanical labor."

I shall also crave the pardon of the committee if I take a little time in quoting from the eleventh annual report of the Massachusetts Bureau of Statistics of Labor, which says:

"In productive skilled work in Massachusetts there are 2,333 convicts employed in all industries carried on in prisons, and there are 159,755 persons employed in like industries outside penal insti-

tutions; that is, the convicts employed in the prisons of Massachusetts upon productive skilled work constitute one and one-half per cent of the persons engaged in like industries outside of prisons. A casual look will show that no great industry in this State is in any danger of being absorbed by prison work."

This, therefore, Mr. Chairman, is a great bugbear on the part of labor, and especially of the labor reformers. This whole matter should be left, Mr. Chairman and gentlemen, to the Legislature. I concede, and it is conceded by the Commissioner of Labor Statistics of the United States and the Massachusetts Labor Bureau, that if the entire force, or if any large proportion of the entire force of prisoners is concentrated upon any one industry, that industry may suffer serious damage. But it is within the power of the Legislature to so distribute the industries, to have such a diversity of industries in the prisons and reformatories of the State that no perceptible damage will result to any particular industry or to all of the industries combined.

Now, to show the ability of the Legislature to handle this question and to look out for the interests of the laboring man, I quote the acts of 1888 and the act of 1889, and I asseverate, as has been stated here before, that there has never been any disposition to sacrifice the interests of the workingmen of this State to the taxpayers or to the prisons or any other institutions of the State manifested by the Legislature. In 1888 the Legislature passed an act which is in substance identical with this proposed amendment. The consequence of that act was that every prisoner in the State of New York was obliged to be kept locked up in his cell, and that shortly, if that act had not been repealed, instead of having prisons and reformatories in different portions of this State, we would have had lunatic asylums, as the history of penology shows in all countries.

Now, Mr. Chairman, I wish to come more directly to the amendment proposed by Mr. Griswold. There are two classes at least of penal institutions in this State. One class is designated as State prisons. These are such prisons as Auburn, Clinton and Sing Sing. Prisoners are sent to those institutions for the purpose of being punished; the punishment being supposed to have a deterrent effect upon the commission of crime by others. The only object, therefore, in incarcerating, and the only object in their treatment while there, is to punish them by hard labor, to make them self-supporting as far as practicable, and to keep them so busily employed that they will not deteriorate and slip back into their old habits. There is, however, in this State another class of institutions, or, perhaps, I should say institution, for at the present time that class is repre-

sented by only one institution in the State. It will very soon, however, be supplemented by another, organized on the same plan and system, and has been followed and copied in many States of the Union. It is a class of institutions which takes no prisoner, no criminal above the age of thirty; takes only those from sixteen to thirty who have committed their first offense. No criminal, no convicted person above the age of thirty years, no person who is known to have been convicted of a crime before, is sentenced to that institution. Now, the plan of those institutions and the object at which they aim are entirely different and distinct from the objects aimed at by ordinary State prisons. The belief is that the great majority of men and boys sent to those institutions are reformable; that they have committed their first offense; that with proper surroundings, with proper training and proper education, they will leave the ranks of the criminal class and become self-supporting, respectable citizens of the commonwealth.

Now, sir, it is absolutely impossible to reform a criminal; it is utterly impossible to prepare and fit him for his duties in the world after he comes out, entirely impossible to prevent him from going back into the criminal class and becoming a professional criminal, unless while in this institution he is trained to habits of industry or learns some handicraft or trade by which he can maintain himself after he shall have gotten out of the institution.

In that connection, Mr. Chairman, I would like to read a few brief articles. I read first from this same report of Mr. Carroll D. Wright, Commissioner of Labor Statistics of the United States. He says:

"The experience of all countries shows that by the adoption of this plan of the abolition of convict labor, the convicts would gradually lose their status as convicts and become to a large extent the inmates of insane asylums."

Now, I quote from the periodical called the Metal Worker. I assume that it is a trade journal, and in the interest of artisans and laborers in metal. If I am mistaken, I am willing to be corrected. But whatever its predilections are, the following are its words:

"The formation of industrious habits in prisoners is an agency without which no hope can be entertained for their reformation. Labor is as much an auxiliary of virtue as it is a means of support. It was a favorite maxim with Howard, 'Make men diligent and they will be honest.' Work is the only sure basis of a reformatory discipline. 'Unless prisoners acquire habits of industry and a liking for some kind of labor,' observes Mr. Frederick Hill, 'little hope can be entertained of their conduct after liberation.' What ought,

therefore, to be aimed at as a matter of prime importance is the formation of fixed habits of labor in our convicts. Good resolutions are well as far as they go, but as a dependence for the future, unsupported by the habits of honest, useful toil, they will prove wholly fallacious."

I shall also read from the report of the special committee of the Prison Association of New York on convict labor, in the year 1885:

"The best reformatory treatment involves the assiduous industrial development of convicts. But the latter is always subordinate and subsidiary to the former. Prison labor must be regarded as only the instrument of reformation."

I will take the time of the Convention, Mr. Chairman, for just a moment longer to read some remarks of one of the most eminent penologists in the world. He says:

"The importance of industry in the reclamation of corrigible criminals is imperfectly known, and is, therefore, underestimated; hence we have indifference and apathy about it. It needs to be known that among the causes of crime the proximate one is very often lack of ability to earn. Most prisoners are youthful and improvident; not one in 100 has ever given a thought to providing properly for future needs. The Secretary of State of New York reports for 1887 that of the 3,191 persons convicted of felony that year, 60.6 per cent were men under thirty years of age, and that 73.8 had no trade or skilled occupation. The proportion of first offenders was 69.1 and of 84,531 persons convicted of misdemeanors 60.3 were first offenders or unknown to have been previously convicted. The need of industrial training and the amenability of prisoners to reclamation by this means are further suggested by the reports of Sing Sing and Auburn State prisons. Of the 2,536 convicts in October, 1887, 64 per cent were under thirty years of age, 71.4 per cent were first offenders, and 62.5 were without trades or skilled employments."

He remarks, from an experience of forty years as a penologist, an experience gathered in prison institutions, "What egregious folly, what inexcusable public damage, to confirm these prisoners in their inaptitudes and in their unfitness for society through their imprisonment in idleness or under fictitious industrial conditions."

Now, Mr. Chairman, if the objects of this class of institutions are to be subserved, if such institutions are to be in reality reformatories instead of State prisons and merely places of incarceration, it is necessary that trades should be taught there and should be practiced there, and that they should be practiced there in the same manner as they are practiced in the world; that the education which

is given there in the trades and the training which is given there shall fit the men when they come out from those institutions to support themselves in the way that the world requires and in the manner that the world requires. I hope, therefore, Mr. Chairman, that either the amendment of Mr. Griswold will be adopted or that the entire section will be rejected. I see no occasion, Mr. Chairman, for instructing the Legislature of the State to provide for the employment of the prisoners of the State when they have already done it, when they have never indicated any disposition to do otherwise, and have always been only too anxious to do that which this constitutional provision would compel them to do.

Mr. Springweiler — Mr. Chairman and gentlemen of the Convention, it is hardly necessary for me to say anything on this proposed amendment that is before this Convention, as it has been very ably presented and thoroughly discussed by the organized wage-workers of this State at the public hearing in this chamber some time ago, and the more fully explained by the introducer of the proposed amendment to-day.

I believe, Mr. Chairman, that it has been demonstrated to the satisfaction of all capable of grasping the subject, that prison labor is in direct conflict with labor outside of the prison walls. It is the employment of criminals to the injury of honest, law-abiding citizens; the proof is overwhelming. Already many honest men and women are suffering because they cannot obtain work at fair wages, and in ten thousand instances they can't find work at any price. While this condition of things exists, the State transforms its prisons into great workshops, hires out its crime-cursed muscle and skill to greedy contractors, who grow rich, while honest men and women are unable to find employment and homes are wrecked by enforced idleness.

It is doubtless true that it is good for criminals to be employed, good for their health and happiness; but it is equally true that it is good for the health and happiness of men who are not criminals to have employment; good for their children, good for society and good for the State. The leaders of the labor movement of the day are not demagogues, as is generally said when a movement in the nature of this proposed amendment comes up for consideration.

We consider, so do the wage-workers of this State and throughout the United States, that they are honest men and have feeling for their fellow-beings.

The purpose of transforming penitentiaries into great manufacturing establishments is to reform criminals; but the real pur-

pose is to make crime self-supporting, and, if possible, make it a source of revenue to the State, which has proven to be an entire failure, pure and simple, to the people of the State and a great benefit to the contractors and politicians who are on the inside track.

This contract system has enabled many men to amass large fortunes, and they are in favor of the contract system, but it has not been shown that by keeping criminals at work, by giving them books, good food, good physicians and spiritual advisers, the work of reformation has been such as to warrant a continuance of employment that takes the bread out of the mouths of honest men, and the conclusion has been arrived at that if any one ought to suffer by idleness it is the convict, and not the honest man; if any one ought to have the comforts of life, it is those who obey the laws, rather than those who violate them. To take burglars, murderers, footpads and the entire list of able-bodied scoundrels and work them for revenue and reform, when such work entails idleness and misery upon those who are trying to lead honest and upright lives, is an outrage which, in some of its features, is scarcely less than a crime.

Penitentiaries are not reformatory institutions as at present conducted; on the contrary, notwithstanding all that can be said, criminals become hardened while in prison, and the young in crime come out of prison after their first term, worse, if possible, than when they first entered their cells. This is the rule. The State feeds and clothes its criminals and then hires them out to mercenary contractors for a mere pittance, and they are worked in a way which injures honest men, and when a protest is made against such policy, we are told that criminals should have their lives and their health protected, regardless of the influence of their work and skill upon laboring men, who are trying to be honest and to bring up their children in an honest way. If any one is to be idle, let it be the felon, regardless of its effect upon health. The State should not pursue a policy calculated to impoverish workingmen. Such a policy simply makes criminals, and ought to be universally denounced by all men who have any regard for the welfare of society. If it were a fact to only keep the criminals employed, why is it that the State furnished the best and most improved machinery to do the work in the different branches of trade? This proves conclusively that the State is desirous of getting all that it can out of the convicts, and benefit the contractors and their agents. If the laws of this State are for the people and by the people, all machinery should be removed from our State's prisons and the

convicts worked by hand for the inmates of all State institutions, and not have any of their work come in competition with the wage-workers of the State.

We find in the annual report of the Superintendent of State's Prisons that it costs $138 per prisoner, with a daily average of 3,906 in the three prisons, making a total of $539,000. And a total deficiency of over $477,000, making a total of $1,016,000. Now, then, what use is there in this State giving this amount of money for the good and happiness of the convicts? Why not use that amount of money and build up our primary schools and meet the demands of the common people, educate the people's children and make good citizens out of them? It appears to me that that would do the State more good than to try and make the convict happy.

You all know, or at least ought to know, that there is a continual cry in all our large cities for more school accommodation. Our Legislatures have been informed by the Superintendent of Public Instruction and the chief executive of this State, that they should look after the common people's children, that thousands of them are not getting the proper education. This is a matter that the Legislature always loses sight of. I will trust and hope that this Convention will not lose sight of the fact that there is something radically wrong about the State prison labor, and that they will adopt the proposed amendment and meet the demands of the wage-workers of this State. It is not a party measure, but is a measure for the wage-workers of the State. (Applause.)

Mr. Moore — Mr. Chairman, coming as I do from a section which contains a State prison, it seems to me that it would not be proper in me to let this amendment go by without saying a word upon it. I have no desire to take up the valuable time of this Convention on such a measure as this, but, Mr. Chairman, it seems to me that this measure is eminently proper. This Convention has done a good many things for the members of the Court of Appeals. It has done a good many things for other judges. It has done a good many things for men who did not need help, and it is about time that it took a stand for men who do need help. It is about time, Mr. Chairman, that this Convention showed itself to be the friend of the people, if it expects to get the people's votes for the measures which the Convention shall adopt.

Where does the State stand as to the business, as to the trades which private men are engaged in in this great State to-day? It stands, Mr. Chairman, by reason of its State prison policy, as a competitor. It stands between the manufacturer of shoes and his trade. It stands between the manufacturer of granite and his trade.

By reason of this contract system, sir, we get labor free. We farm out this collar trade, this shirt trade, this hat trade, this shoe trade, this granite trade and various other trades; we farm them out to contractors and the contractors make fortunes out of them and the poor man may go to the wall. I am not an advocate, Mr. Chairman, of keeping men shut up in State prisons doing nothing. I am not an advocate of that system which would literally ruin men. Such a system as that is barbarous. But I am an advocate, Mr. Chairman, of the rights of the honest workingman who is outside of the walls of our State prisons, as well as the dishonest men within them.

Now, Mr. Chairman, what is the gist of this amendment? — and the most of you know that I do not make hour speeches or half hour speeches, hardly? What I have to say I try to say in a very few words and in a very few moments. What is the gist of this proposition? The gist of it is, it simply provides that this farming business shall cease; that the State shall no longer be a competitor of the honest industries of the State. Gentlemen have raised the point that it will not do to employ convicts outside of the State prisons: that it is a dangerous thing; that because two men who were employed in making roads at the Clinton prison, escaped, and it cost the warden about as much as was saved to recapture them, that, therefore, the convicts must not be used on the roads. There are plenty of places where convicts can be used in this State without coming into competition with industrial trades. There are the roads of this State; no State of this Union has more roads than New York State, and no State needs the aid of the do. Come with me up into the Adirondacks; get a buckboard and ride over those stumps and stones and hills and in the valleys and see whether or no there is not at least a place where convicts may be employed within twenty miles of a State prison upon the roads and kept at healthful employment, and still not come in competition with the honest laborers of the State.

Mr. Chairman, I think that this Convention had better begin to think something about the people. It is full time. You have taken care of those who are above the people. You have taken care of classes and castes. Now, then, let us get down and do something for the interests of the people who have sent us here and who are taxed to pay the expenses of this Convention. I read in the papers every day, in the metropolitan and the rural papers, the most severe criticisms upon the actions of this Convention. The most of the criticisms are not upon what it has dared

to do for the interests of the people, but what it is afraid to do for the interests of the people. I say to you, Mr. Chairman, that this proposition possibly ought to be amended some in phraseology, but I say to you that this is a good measure. It is in the interests of the whole people of the State for this Convention to adopt it. Somebody, perhaps, who has read between the lines more carefully than I have done, may possibly see some verbiage or some minor alteration by which it would read a little better, but the principle is the correct one.

Now, Mr. Chairman, I want to ask this Convention to consider this carefully, to give it sufficient time, to let it be discussed and to give time for its discussion here, as has been given for the pet measures which are put through here. Let us give the people a little time here as well as some of these other articles which it is said are to be crammed down the throats of this Convention whether or no, and everything else dropped in the soup. It is about time, Mr. Chairman, that if there are any men in this Convention, men of courage, Republicans who dare to act and speak with the courage of their convictions, that they stood up here and did something for the rights, for the comfort, for the better welfare of the people of this State. Mr. Chairman, I hope that this bill will pass.

Mr. Marshall — Mr. Chairman, it seems to me that the subject that is dealt with in this amendment is legislative, as was said by Mr. Pratt. Yet, I believe, it is perfectly proper that we should lay down some principles upon this subject in the Constitution. I think that a correct principle is stated in the first three lines of the proposed amendment submitted by Mr. McDonough, "The Legislature shall by law provide for the occupation and employment of prisoners sentenced to the several State prisons, penitentiaries, jails and reformatories of the State." Every student of penology recognizes the necessity of giving employment to the prisoners as a philanthropic measure. Ever since the Auburn experiment became so successful, it has been the idea of all who have legislated with reference to State prisons to compel the prisoners to work for their own welfare as well as that of the State. The most intense suffering, the worst abuses, prevail in such institutions in which there is not a compulsory system of labor. But beyond that provision, it seems to me that the proposed amendment is fraught with great danger. It is an experiment at the best, and an experiment which if introduced into the Constitution, and which in the sequel proves a failure, is one which would do infinite harm to the State.

There has been an attempt in the Legislature for the last ten or fifteen years to devise some plan which would avoid all the evils

which have been so well described by Mr. McDonough in his very able address to this Convention upon the subject. But it has been found that every experiment that has been tried was not an entire success, and that it was necessary to resort to modifications; to repeal one experiment and to try another. Now, we are asked to try another one and to put it into the Constitution.

What is the situation which confronts us? Mr. McDonough has stated that there are in the various penal institutions of the State at this time about 12,000 convicts. Now, it is necessary under the first clause of his amendment, under this principle, to give them occupation and employment. Now, how are they to obtain this employment? What provision is made in this proposed amendment for the occupation and employment of the prisoners? It is suggested that they may work, and that the products of their labor may be disposed of to the State or any political division thereof, or for or to any institution owned or managed or controlled by the State or any political division thereof. But suppose it should prove that the product required for these several institutions would be so small in quantity as not to occupy the labor of those in the penal institutions for more than two months in the year, what will be done with these prisoners during the remainder of that period? No provision is made for them. The result will be that a manifest inconsistency would be created between the first clause of this constitutional amendment and the remaining clauses, and the very principle with which this amendment starts out would be lost sight of, because it would be impossible to give these men or women in the penal institutions of the State employment. It, therefore, is very clear that we must avoid Charybdis while we are steering away from Scylla. Now, it seems to me that all that we can be expected to do in the Constitution will be to lay down a principle in respect to the employment of the prisoners in the several institutions of the State, which shall always be observed by the Legislature when it comes to consider the question of the employment of those prisoners. And the two principles are, first, the one which Mr. McDonough has so well stated in the first three lines of his proposed amendment, and the other principle is that which I desire to have substituted for the remaining portion of the section. For the purpose of expressing my ideas on the subject, I move as an amendment to the proposed amendment of Mr. McDonough, the following: Strike out all of page 1, after line 5, and all of page 2, and insert in place thereof the following: "So far as practicable, such employment shall be restricted to the performance of labor upon public works and the manufacture of products

for use by the State or any political division thereof, in the public institutions of the same and by the several charitable institutions, subject to State visitation and inspection." By this provision, therefore, the Legislature will be admonished to do two things: First, to provide for the employment, the occupation and employment of prisoners sentenced to these penal institutions; and, secondly, to bear in mind always that such employment shall be restricted, so far as it is practicable to do so, to the performance, first, of labor upon public works — that would enable them to work upon the highways and upon other public works of the State — and, secondly, to the manufacture of products for use by the State in its institutions, by the various charitable institutions which are subject to such visitation and inspection.

Mr. Griswold — Mr. Chairman, may I ask the gentleman a question? I think that I have an amendment by way of substitution after Mr. McDonough. You speak of amending Mr. McDonough's amendment.

Mr. Marshall — I can offer it either as an amendment to Mr. McDonough's amendment or an amendment to Mr. Griswold's proposed amendment, Mr. Chairman. My idea is that we should express here the idea that so far as it is practicable to do so this employment should be restricted to the performance of labor upon public works and of the manufacture of products for use in these various institutions.

Mr. Griswold — Is not your amendment substantially the same as mine?

Mr. Marshall — I think it goes a little further than the gentleman's, Mr. Chairman, but in principle it is the same possibly.

Now, we must also bear in mind another important idea and that is this: It has been shown that the expense of maintaining the various prisons in this State amounts to about $1,000,000 a year. Of course it is the duty of the State to make provision for the prisoners who are sentenced in its various institutions. But such machineries should be devised as to enable the State so far as it may to make such institutions self-sustaining. I do not mean to say it is absolutely necessary that the State should make a profit out of these institutions, or under all circumstances the State shall not be obliged to make up a deficiency. But so far as it is possible these institutions should not be a burden upon the people.

Much has been said about the evil of having prisoners engaged in productive pursuits in these institutions. It seems to me that the

alleged evil is more a bugbear than an actual existing evil. At any rate by legislation arrangement may be made so that the labor of those who are sentenced to the various institutions may be so adjusted, so divided, that a very small percentage or fraction of the prisoners shall be engaged upon any particular class of work, and the result will be that there cannot be any competition in our prisons which would result in the reduction of the prices of products which are manufactured out of prisons, or so as to affect the price of labor of those who are engaged in useful occupations outside of the penal institutions of the State. Of course, it is a great wrong, it is a great evil to so employ prisoners in our institutions as to lead to the diminution of the earnings of the honest laborer who is not employed in them; but it seems to me if we bear in mind the two principles which would be enunciated in this amendment if my proposed amendment should be adopted, it would be very easy for the Legislature with those two guiding stars, to work out this problem, and we would not be putting into the Constitution a provision which is, at most, an experiment and which might result in greater harm than the continuance of our present system.

The Chairman — The Chair holds that it will treat Mr. Marshall's proposition as an amendment to the original proposition; that Mr. Griswold's proposed amendment is a substitute.

Mr. Crosby — I would like to have Mr. Marshall's amendment read by the Secretary.

The Secretary read the amendment of Mr. Marshall as follows: Strike out all on page 1, after line 5, and all of page 2, and insert in place thereof the following: "So far as practicable such employment shall be restricted to the performance of labor upon public works and the manufacture of products for the use by the State or any political division thereof in the public institutions of the same and by the several charitable institutions, subject to said visitation and inspection."

Mr. Crosby — Mr. Chairman, I am opposed to the proposed amendment offered by Mr. Marshall. It appears that in this discussion we have not gone to the foundation of the prison labor question; that we have discussed results only, dealing with conditions instead of principles, and that the proposed amendment is merely a suggestion upon the subject, and not an expression or declaration of a fundamental proposition. We are liable to overlook the distinction between fundamental principles of law, which should form parts of a Constitution, and legislative enactments, which are

intended to regulate the affairs of the people of the State, subject to constitutional law.

The first proposition to consider is whether or not the great State of New York, with its vast population and wealth, should go into business as a manufacturer, in competition with any individual citizen or class of citizens. Crime is one of the burdens visited upon the body politic; the expense first falls upon the county where it has been committed, and afterward upon the whole people, when the accused has been convicted, sentenced and imprisoned.

Should the people of the State of New York, in their corporate capacity, directly by State account, or indirectly by contract, enter into competition with the laborer or the manufacturer for the purpose of raising revenue to pay the expense of restraining and confining the criminal classes, and thereby protecting society from danger and contamination, any more than they should engage in competitive business for the purpose of providing revenue to defray the other expenses of the State government? This is the first question for our consideration and the foundation upon which we should build our superstructure. If it is just and in accordance with the spirit and genius of a government of the people, by the people and for the people, for the masses, the aggregation of inhabitants composing the State, with their vast combination of capital and intellectual and physical power, to enter into competition with an individual producer, to make money from which to pay the expenses of our prisons and reformatories, why should not the State compete with other laborers or manufacturers in carrying on trades and great manufacturing enterprises, or as a common carrier, and in that manner raise the necessary revenue to defray all the other expenses of the State government?

I assert the broad proposition that the State of New York should not engage in or carry on any business in competition with a citizen, whether he is a laborer or manufacturer, who is earning a living by honest, free employment.

Mr. Chairman, no attention has been given to the great expense incurred by the county attending the arrest, detention, indictment and trial of the accused. If it is right and just that, by convict labor and the use of improved machinery, money shall be raised to defray the expense of confining and caring for the criminals after sentence, why should not the State of New York go farther and provide the means necessary to reimburse the taxpayers of the county, who have already incurred and paid all the expenses before the sentence of the prisoner?

There is much involved in the proposed amendment, as reported by the committee, that does not appear by a casual examination of the proposition. The discussion has proceeded upon the assumption that the only question considered by the committee and referred to in the proposed amendment relates to the employment of convicts at manual labor. The words "occupation and employment" were carefully discussed by the committee, and include much more than manual labor.

We have in the different prisons and reformatories conflicting systems of punishment, occupation and employment of the prisoners. In the prisons of the State the policy has been, and is, to treat the convict as a slave, an outcast from society, having no right to protect his person, and his labor has been farmed out to contractors for a nominal consideration, or has been used by the State to produce articles of commerce to be put upon the market in competition with goods manufactured by free and honest labor. In the State reformatory at Elmira, in theory, attempts are made to reform the prisoners. But a monarchy is established there, and the arbitrary will of one man is supreme over all under his control. The convicts are compelled to work at hard manual labor during the day, and at night are required to devote their attention to intellectual training when weary from manual labor, and then, if after his daily toil and his study in the class-room at night, a prisoner is unable to compete with an educated, bright fellow, if he is not able to learn as rapidly as others with whom he is graded, and if he does not attain the same degree of proficiency in his studies, he is put in a lower class, and generally remains there several years thereafter. In the reformatory for fallen women, at Hudson, kindness, love, charity and mercy govern the institution, and the inmates are taught in the rudimentary branches of education, as well as in the performance of domestic duties. They are instructed to work, to perform the labor of those within their social spheres, and there has been no demand for the sale of the products of their labor. The experiment made by the managers of that institution, and the zeal which they have shown in their work, have resulted in the reformation of over seventy-five per cent of the prisoners committed to their charge. The county of Albany has one of the most severe and inhuman penal institutions in the United States. In the Albany penitentiary silence and exclusion are inflicted as punishments. The convicts are compelled to turn their backs upon the world; both men and women are required to toil early and late without communication with others, without sympathy and without intellectual training of any kind. In our reformatories for juvenile delinquents much

attention is being given to the moral and intellectual culture of the prisoners, and but little manual labor is demanded of them.

I desire to call the attention of the Convention to the fact that no product of the labor of any convict is sold from any reformatory for juvenile delinquents or from the Hudson Reformatory for Women, and that the products of convict labor in the State's prisons and Albany penitentiary are alone sold in market and put in competition with free labor.

This is a complicated question in view of the different methods of training and government adopted by the authorities in the different penal institutions, and we are brought back to the consideration of what is the correct policy for the people of the State to adopt, in order to protect society from the dangers and contaminating influences of the criminal classes and at the same time to induce them to reform and become honest and useful citizens, while inflicting upon them a proper degree of punishment by compelling them to labor.

There are two sides to this question, and, while I do not desire to unnecessarily occupy the time of this committee, I urge these suggestions believing that the committee will permit the proposed amendment to go to the Convention to be voted upon after it has received more thorough consideration.

We are asked what shall the prisoners do? In reply to that, permit me to say that we are required to furnish food and clothing for the inmates of our prisons, reformatories and jails; we have purchased large farms of land for the use of our State hospitals for the insane, upon which we raise large quantities of food, consumed annually by the thousands of inmates of these institutions, and we employ large numbers of men and women to perform labor upon such farms and pay them large sums of money for their services from the State treasury. There should be a farm near each State prison and reformatory, owned and managed by the State, upon which employment could be given to the prisoners in the production of a large portion of their necessary food. Clothing is needed for the inmates of the prisons, reformatories and hospitals for the insane of the State, and the jails of the different counties. That which is needed in the State institutions should be produced or manufactured by convict labor, and the articles needed by the counties should be supplied by the State at actual market price, quality considered, and the local authorities should be required to purchase from the State what they need for the use of local institutions. Furniture, bedding, etc., will be needed in all these institutions, and should be supplied by the prison labor. Each year we are building additional buildings for our State prisons, our State hospitals and

our insane convicts. We are about to build a large prison in Ulster county and a new building at Sing Sing. And why should not the work be largely performed by convicts, if it does progress a little slower, and the money is saved which would otherwise be paid from the State treasury for outside labor?

Mr. Chairman, we have the authority of the Superintendent of State Prisons showing that such a plan has worked well, and I read from his report to the Legislature for the year 1894. He says: "There has been a maturing judgment among the officers who deal with the matter of prison labor directly that construction work in prisons could be thoroughly and well done by convicts with marked economy and consequent advantage to the State. Frequently, in late years, the wardens of the State prisons have reported favorably from time to time on the execution of such work done in the respective prisons by the prisoners. The State is having a large amount of work performed each year in dredging the canals and rebuilding and repairing the canal locks, for which it pays out large sums of money, especially shortly before each general election. Why should not that work be done by contract labor and the money kept in the State treasury? There is also an unlimited amount of work needed upon the public highways of the State upon which convict labor can be profitably and successfully employed. There can be no question about ample opportunity and demand for the labor that every convict can perform for the benefit of the people of the State under proper management without putting the products of his labor in competition with free labor.

If the employment which will be furnished within the prison walls and upon the prison buildings, upon the asylums and the canals for the use and benefit of the State, and for other State purposes, does not occupy the entire time or the proper part of the time of the convicts, shall the State then engage in a business which will compete with free labor of the individual citizen or class of citizens? If any loss be sustained by reason of the lack of profitable employment of the convict labor, who shall be compelled to bear that loss? Shall such loss be sustained by the gentlemen who are engaged in a particular business in the field of free labor? — and when I speak the word "gentleman," I use it intentionally, because the man that toils with his hands from day to day in any respectable vocation, is entitled to as fair consideration by this Convention and the people of the State as the professional man who labors with his brain or pen — or should any particular individual or class of citizens suffer, or, on the other hand, should the expense be borne by the people of the whole State by direct taxation?

Insanity is a public misfortune, and the people bear the burden of taxation necessary for the proper care and treatment of the unfortunate patients; contagious diseases visit the State, and the people meet the expenditures properly incurred for the public protection, and crime is a disease upon the body politic which must be restrained and punished, and the expense of detaining and punishing the violators of law should also be paid by the whole people and not by a particular class, especially by men who earn their daily bread by honest toil.

Mr. Chairman, it has been well said that this Convention has been taking care of those who are able to protect themselves; that we have been making liberal provisions for the judiciary and those who enjoy the higher walks of life, and I now assert that the laborers and manufacturers of the State of New York should have the same protection, the same consideration by this Convention and the people of the State as the professional men and that no delegate can afford to refuse to recognize the right of the laboring man and vote blindly against the proposed amendment.

I am confident, sir, that each delegate will vote in favor of progressing this proposition to its third reading to the end that it may be further discussed and considered and finally adopted.

Mr. Pratt — Mr. Chairman, if an amendment be in order, I would like to amend Mr. Marshall's amendment by striking therefrom, in line 5, the words "and reformatories."

A recess was here taken until 3 o'clock P. M.

AFTERNOON SESSION.

Saturday Afternoon, August 25, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, at the Capitol, Albany, N. Y., August 25, 1894, at 3 P. M.

President Choate called the Convention to order.

Mr. Platzek — Mr. President, may I ask the Convention to be kind enough to excuse me for the day's session on Monday? It is the first request of the kind that I have made, and it is absolutely necessary that I should be absent.

The President put the question on excusing Mr. Platzek, as requested, and he was so excused.

Mr. Jesse Johnson — Mr. President, I have a telegram from Mr. Nostrand, saying that he is called home by sickness in his family, and requesting an excuse for this afternoon's session.

The President put the question on excusing Mr. Nostrand, as requested, and he was so excused.

The House then resolved itself into Committee of the Whole, and Mr. Dean resumed the chair.

The Chairman — The House is in Committee of the Whole, in consideration of general order No. 25, and Mr. Pratt, of Chemung, has the floor.

Mr. Pratt — Mr. Chairman, just prior to the noon recess, I handed up an amendment to general order No. 25, or rather an amendment to Mr. Marshall's amendment of that general order, which I understand is acceptable to Mr. Marshall. It simply provides for the striking out of the words "and reformatories," in the fifth line of the first page, and excepts reformatories from the actions of this proposed amendment.

I wish to state very briefly, Mr. Chairman, my reasons for making this amendment, perhaps with some repetition of what I have already said to the Convention. If this amendment should pass and should prohibit the carrying on of any manufacturing operations or handicrafts in the prisons of this State, the character and existence of the State prisons would not be affected at all. They would simply have to change the method of employing prisoners, or to cease employing them at all. It would be with them simply a matter of internal arrangement and management. But, sir, if the proposed Constitution should prohibit the reformatories of the State from carrying on in such reformatories any industrial occupation or handicraft, it would be the entire destruction of the distinct character of those reformatories, and it would make and constitute them, from that time, mere State prisons. A great advance has been made in the development of penology by the establishment of these reformatories, and by the passage of such an amendment as this, followed by proper legislation, those institutions would be strangled almost in their birth. Now, all of the inmates of these reformatories were admitted thereto under the age of thirty-one years, running down to juvenile delinquents. Moreover, the number of them is very small. The manufactured articles which it is possible for them to turn out will not, in any perceptible way, or to any perceptible amount, affect the product of manufactured articles in this State; and for that reason I ask that the two words indicated be stricken from the amendment.

Mr. Kerwin — Mr. Chairman, I would like to ask the gentleman a question. I would like to ask him if he ever heard or has learned of the fact that in the case of industrial troubles, inmates of the

reformatories are paroled on good behavior and sent into the shops where such industrial troubles exist?

Mr. Pratt — Mr. Chairman, I heard it this morning for the first time, when it was stated by one of the gentlemen who are here in the interests of this amendment. That was the first I ever heard of it.

Mr. Kerwin — I would like to ask the gentleman if he thinks the people who are favoring this amendment would be justified, in the face of that fact, in consenting to strike out the word "reformatory."

Mr. Pratt — That, Mr. Chairman, is a matter of judgment.

Mr. Smith — Mr. Chairman, I had intended to offer an amendment to the proposition under consideration, but have concluded, on reflection, that my contemplated amendment would not very materially improve the measure.

We are called upon to deal with the subject of convict labor and to so control the use of it that it shall not operate prejudicially to the great cause of labor. The number of convict laborers is so very small compared with the masses of honest laborers, that the subject might be regarded as one easy of solution, and yet, I confess myself more embarrassed by it than any question thus far presented for our consideration. It is a subject linked into the great chain of circumstances called the "labor question." It is a vast subject to speak of. Vast, because it involves the consideration of the great subject of competition, a subject of vital interest and importance in the sharp struggles of life, to every member of the human family.

Now what is implied by this strong effort to prevent the labor of the comparatively small number of persons in prison from coming into competition with the great masses of laborers of the State? What does it show? I think it shows that industrial competition is very sharp; that the struggles of life are growing more and more intense. It shows that the markets of this country are over-supplied with the products of certain industries, at the prices demanded for them; and it is claimed that the competition of prison-made products is injurious to the cause of labor. Now, I am ready to believe that under existing conditions, this claim is well founded. I have no doubt that some industries are injuriously affected by the competition of prison labor as it is now conducted. And in view of existing conditions, I am in favor of this measure and mean to support it. I believe that we should adopt, as a fundamental principle, and assume its truth, that the great masses of the laborers of the State shoul not be compelled to compete in any respect,

if it can be avoided, with the labor of convicts in prison. I think we may adopt, therefore, as a principle to guide us, that so far as we can prevent that competition, without injustice or inhumanity to others, we should do so. (Applause.)

I have referred to the sharp competition that exists in the markets of this country, and to the severe struggles of life under existing conditions. If we were to attempt to study the causes that have made these conditions so hard to bear, it would open the door to a subject that would involve a discussion of six months or a year to do it justice. I do not propose to enter that great arena. I will say this, however, that whenever the policy of this country is so improved that it will open the markets of the world to the manufactured products of this country, so that all such products shall find a market somewhere, this sharp competition of the several classes of laborers will cease forever. (Applause.) But that is something beyond our control in this Convention.

Now, as I have already stated, I intend to support this measure because I believe it will help labor or lead to something still better to improve the condition of labor. But in doing so, I will take the liberty to say that this is a many-sided question, and my remarks are intended only for consideration in dealing with the question. I do not wish to be understood as proposing any plan of action in particular. It has been suggested that convicts might be employed on the public works of the State, or of its subdivisions, in the construction of the public buildings or upon the highways. Such a use of convict labor, I believe, would meet with great opposition, and would be quite as injurious to the cause of labor as the present objectionable system.

Within the last ten or fifteen years we have, in the city of New York, vastly extended that great system for supplying the city with pure and wholesome water. All that work was of a character that belonged to the public. Suppose that convicts had been brought out in chains and put to work in building up that magnficent system. There would, I am ready to believe, have arisen from the vast army of laborers a protest that would have penetrated every household and received a sympathetic response from every human heart. (Applause.) Convict labor on public works would displace honest labor; would displace the men who have no machines to help them in the struggles of life, and who go forth bare-handed to earn an honest living. I am not ready to believe that convict labor should ever be allowed to compete with honest labor on our great public works. (Applause.) The truth of the matter is, Mr. Chairman, that every laborer who works at all, in view of the

restricted markets of this country, does come into competition more or less with some other laborers at some point of the great circle. You may, by prohibiting convicts from making shoes, help honest laborers engaged in manufacturing shoes, and so, too, if you set convicts to work on public improvements, you will displace or bar out honest labor that is dependent upon such work for a living and for the support of families, women and children, numbering thousands or tens of thousands. So that the competition at these points of the great circle would be very sharp and very fatal, more fatal, indeed, because the vast army of laborers now working for the public are men without machines and entirely dependent upon their bare hands. I am in favor of doing everything in my power to help the men who do not own machines and who are dependent upon their bare hands to gain an honest living.

To-day, with the aid of the contributions of science and of scientific inventions, the man with a machine is the man who has the advantage. I lately visited an establishment in this State engaged in making fish lines. I was told that five persons were at work, three men and two women, and a two-horse power steam engine with one hundred and fifty spindles. I inquired the capacity of the establishment computed in day's work, and was told that it was equivalent to five hundred and fifty persons. Let me suggest for consideration, that if you wish to prevent the competition of the labor of convicts in prisons that you take from them the machines in the prisons. Let them make shoes and everything else, by hand. Let them be kept busy. Every prisoner would then learn a trade that would be of great service to him on being released.

I have indulged in most of these remarks by way of suggestion, and to show the vastness of the subject and its many sides, to show how widely this great circle of human labor extends. The great fabric of human society is so interwoven and so connected together that it is a unity. One class of laborers dig the foundations and others build, and others again adorn the superstructure, and notwithstanding the fact that the faithful workmen one by one, their spell of toil accomplished, retire from the struggle, perhaps to shades of oblivion, yet the great work goes bravely on; civilization advances, bringing to humanity in all the varied walks of life its benefits, and higher and higher rises the standard of our social policy, and broader and broader and more beautifully spread out on every side the beneficient results flowing from the division and distribution of labor, mental and manual; further and further back retire the dark tides of misery, ignorance, superstition and crime; nay, even of disease and death itself, until the enthusiastic spectator

upon the destinies of the human race may well become impressed with the hope that in the course of time it will be granted to the intellectual energy and the moral development of mankind to recover a lost paradise and restore the shattered harmony of creation. (Applause.) This is the greatest age of the advancement of civilization. Touch the great circle at any point unjustly and you disturb the harmony and unity of the system. I shall vote for this measure because I am in favor of adopting what the laborers believe will help them. If it fails we will try and try again for better results. (Applause.)

Mr. Peck — Mr. Chairman, and gentlemen of the Convention, you have heard a discussion of this subject by a representative of the district from which I come. That district is, in its surroundings and circumstances, one of the largest industrial neighborhoods of the State, and the reason why I ask your attenton for a few moments is to point out to you the difference that exists between experience and statistics. We have heard it argued from statistics, very ably and apparently very conclusively, that the small percentage of general labor constituted by prison labor would not affect any industries disastrously which were of any particular importance; and yet every representative from my district will be able to tell you from experience that one industry has been driven from it entirely by prison and convict competition; that is the hollow-ware, enameled-ware industry, which was engaged in to a large extent in Troy at the time I went there and subsequently. That was driven out from the industries of that place, and of this State, by convict labor, not of the convicts of this State, but of an adjoining State. It, however, illustrates the principle; and those foundries are entirely closed, and that business is entirely gone in consequence of that competition. Another industry in that district largely engaging the efforts of the people of Lansingburgh, the brush industry, has been very seriously injured and its continuance threatened by convict labor in the penitentiaries of this State. It is almost prostrated at this time by this kind of competition. So, that as you see statistics and actual experience are not always in harmony. At the present time another industry is being threatened. It is an industry which engages the efforts of a very large proportion of the working people of the city of Troy, and which has already been alluded to in different forms in this discussion. It is an industry which occupies largely the attention of the working women of Troy. In speaking of them, I wish to say that I speak of a very intelligent and very prosperous and very self-respecting body of working people, the working women of the city of Troy, the great pride of the city, a body of

women that commands by its own self-respect, the respect of every person in that vicinity. They are being competed with now by convicts in the prisons, and their wages are being affected by that competition. There are no votes to be affected by it, except the votes at this Convention, and it does seem to me that they are entitled to that measure of respect and assistance from you. It is no answer to say that this is legislation. We are here to legislate. This is fundamental legislation; it is equitable legislation; it is the legislation which lies at the sub-structure of society, that free labor shall not be put in competition with convict labor, and when we shall have enacted that in this Constitution, as I hope we shall, we will have taken this question away from the Legislatures to a considerable extent, leaving to them only the development of the particular plan by which it is to be administered. Now, then, gentlemen, do not allow this to be amended in such a way that it will be suffocated. If it needs amendment, let us take hold of it as men, as business men, and put it in proper form. Let us put it in such shape as it ought to be, if this is not the proper thing, but do not let us vaporize it; do not let us put it in such condition that it will float away because it has no consistency and leave not even a shadow behind it on society. Let us make it mean something. If anybody here has any criticism to make on it, let it be made now, and while I am talking about criticism, gentlemen, let us put ourselves in a position on this question where we shall have a right to criticise. We are all accustomed to say that the working people do not use the proper methods to get their recompense; that they resort to violence; that they resort to methods which cannot be justified on any score of intelligent criticism. Well, then, if we want to have the right to criticise people who are doing the best they can according to their light to secure the remedies they ought to have, when they do ask for something in the right method, in the right way; when they come to us and offer us a measure which involves none of those methods which we are likely to criticise, let us acquire the right to criticise their wrong methods by applauding the right ones. When they ask for what is right, when they are doing it in the right way, let us join hands with them, and then, when they are wrong, we shall have the right to criticise them, and they will listen.

Now, gentlemen, I will not ask the attention of this committee any further on this matter. I hope that this Convention will do something on this subject which will be of benefit to these people. If anybody thinks that it is wrong in form let him tell us where it is, and we will correct it, but do not, as I said before, vaporize it and let it float away without any results.

Mr. McIntyre — Mr. Chairman, following the remarks of some of the gentlemen, it seems to me that we have wandered a little from the real common-sense view of this whole question. Just as soon as this Convention goes to the adoption of any particular scheme to favor any particular class, without there exists a good and solid foundation back of it, it seems to me to make a mistake. If you take the argument of the gentleman from New York (Mr. Smith) and follow it out to its logical conclusion, the only thing that you can do will be to shoot the inventors and do away with all inventions; the only thing that you could do with this matter would be to say to the State, when it produces certain articles, that it must stop manufacturing, and you might as well say to every other manufacturer that he must stop manufacturing because he is competing with some other person, because he employs certain laborers and the other man does not want to have him do it. Now, it strikes me that the error arises from this fact, it is a lack, perhaps, of a suitable and proper head in control of all these public institutions. This great State of New York, that has these prisoners, is under certain obligations to the prisoners themselves. There is no way so good to correct vice as to give vice something to do; there is no way you can reform prisoners so well as by having them employed at labor, and if you follow out the arguments of the different gentlemen, you will find this fact staring you plainly in the face. The gentleman from Rensselaer county states that prison labor interferes with some of their industries there. The gentleman from Delaware (Mr. Crosby) says what? Why, he says we can employ them on the canals down his way. What shall we do with them where we have no canals to employ them on, or any public roads to make? The question comes up, they must be employed. How will you employ them? Let them be employed by the superintendents or the legitimate heads of the institutions in a legitimate manner, doing whatever they can do best and make the most of, and get the most money out of, for the State. But how? Not by putting down prices and having them beat the price down upon the market, but by having a just and wise regulation of the whole matter, and whenever an article is put upon the market, put it on the market at just the price that other people put it at; do not lower it in competition, but make the article and compete regularly and properly. One gentleman springs up and says that the reformatories must be excepted. Why? Because he very well knows that the large reformatory in Westchester county manufactures shoes, manufactures chairs, and such other necessary articles of industry as they make, and sells them; and why? To help support the institution;

and every dollar they earn in that way saves the State of New York so many dollars in the support of her convicts. The State of New York should handle all her convict institutions in the same practical, common-sense way. When you say we must take the prisoners of the State of New York and keep them locked up in idleness because some few laborers come here and cry out that they are competing with them, I say that that is not practicable. It is purely and simply a legislative matter. It should be under the control of the proper head. We are not here to say that the head that manages and controls that that department cannot be regulated, because he can be changed. We are not here to say that the legislators of the State of New York are to be corrupted by the shoe men and the paper men when they come up here. You might just as well say that the head of every other department of the State government will be corrupted. There seems to be an attempt here on the part of some delegates to pose as the representatives of the poor men, the laboring men, and we are willing to lie down and bind ourselves down, to be walked over for them, simply in speech. That is not the way to help them. The way to help them is to have the employment, but not to say we are going to shut up this factory or shut up that institution for the sake of helping them; but to say that we will not go into unjust competition with them; that we will have the goods manufactured, but we will have them put upon the market for what they are worth. These prisoners must labor. It is no time in this nineteenth century to bow down and say that the industries of the nation shall stop because forsooth some labor institutions come up here and say they want to have it. I had a gentleman say to me the other day that he manufactured tables, and that in another place they manufactured tables, and he could not compete with them because they got them at a lower price; he understood that prison laborers manufactured them. I said, "How do you know?" It proved to be nothing but a mere rumor. The man that he referred to was manufacturing the tables himself, but he could compete with the other parties. There is a great deal of hue and cry about this. It seems to me that if we are to exercise the common sense that is talked about, we should be logical in our arguments, and we should go at this thing as we ought to. We should have every prisoner employed, and employed in doing that which he can do the best. You cannot limit it to breaking stone upon the roads, because we may not have them. You cannot limit it to repairs upon the canals, because we may not have the canals. You cannot limit it to any particular thing. This is particular legislation.

You have to have broad, general principles in a Constitution; and I hope for one that this Convention will not be carried away by any false sentimentality in this matter, but that it will look at the subject upon its merits, and if it is right, have such a proper amendment as will simply leave it under the proper care of the appropriate persons; and if those persons are not proper ones to have the care, then change them; but let us not wipe out of our State prisons all opportunity of employing prisoners. They ought to work, and it is the only way in which you can reform them. They cannot be kept in idleness. Down in the city of New York, on their island there, they work them in the quarries and have them get out stone, and build buildings. They have a way to employ them. That particular work cannot be had in all the institutions. They work them in Dannemora in some such way as that, but there may be a thousand and one ways of finding employment in the other State prisons. Let us have a broad, general principle; let us not be boyish in this matter, and let us not be led away simply by local affairs. It reminds me of the tariff. Every man will rise to advocate some pet scheme at home that he is looking after. That is not a matter for constitutional enactment. It must be a broad, general principle having its application throughout the whole State.

Mr. Kerwin — Mr. Chairman, after listening to the debate as far as it has proceeded, and listening to the statistics brought forward by different gentlemen, and especially to the able argument presented by my colleague, Mr. McDonough, all that I can do is to produce some facts bearing on the question as to whether or not this system should be abolished. Mr. Chairman, the first recollection I have of the prison contract system extends as far back as 1876. At that time a prominent stove foundry was in operation here at Albany, employing anywhere from 800 to 1,200 or 1,500 men, as the season demanded. Trouble arose in that shop. The employer said: "Gentlemen, you must submit to a reduction of wages." The men in that foundry said: "No, we will not stand a reduction of wages." What was the outcome? The warden of Sing Sing Prison came to the city of of Albany, made a dicker with that foundry firm, and the entire plant was removed to Sing Sing Prison. Well, that encouraged the agitation against the prison contract system. The agitation against that system went along until 1883. The Legislature of that year, elected on a platform for the abolition of the prison contract system, cowardly in their action, sent to the people the question as to whether or not the contract system should be abolished. More than 400,000 people decided affirmatively, against 200,000 in the negative, and said that the contract system

should go. Well, we come along to the next Legislature. What was the outcome? Gentlemen, the contractors of this State, the people interested in the prisons of the State, went to that Legislature with a lobby, the equal of which has never been seen in the legislative halls of the Senate or Assembly since; and in the face of the fact that the people by a majority of 200,000 had said: "Away with the contract system," the inducement was strong enough upon the members of that Legislature to say: "No, we will retain the contract system;" and it was retained. We come along to the Fassett act. There is no use in reviewing all the ground from the time of the incidents mentioned, to the time when Senator Fassett introduced his act. Section 104 of that act reads as follows:

"It shall also be the duty of the Superintendent of State Prisons to determine what lines of productive labor shall be pursued in each prison, and in so determining said superintendent shall select diversified lines of industry with reference to interfering as little as possible with the same lines of industries carried on by the citizens of this State, and also with reference to employing the prisoners so far as practicable in occupations in which they will be most likely to obtain employment after their discharge from imprisonment. The Superintendent of State Prisons shall annually cause to be procured and transmit the same to the Legislature with his annual report, a statement showing in detail the amount and quantity of each of the various articles manufactured in the several penal institutions under his control within this State under the public account or piece-price plan which have been or were intended to be sold other than to public institutions.

"Sec. 105. The total number of prisoners employed at one time in manufacturing one kind of goods which are manufactured elsewhere in the State shall not exceed five per centum of the number of all persons within the State employed in manufacturing the same kind of goods, as shown by the last United States census or State enumeration, except in industries in which not to exceed fifty free laborers are employed. Provided, that not more than one hundred prisoners shall be employed in all the prisons of the State in the manufacture of stoves and iron hollow-ware."

Mr. Chairman, that is the Fassett act. You might as well return to the Fassett act as to adopt the amendment which is offered by Mr. Marshall. Mr. Marshall's amendment practically is this, that, so far as practicable, the prisoners of the State shall manufacture for the benefit of the charitable institutions of the State. But when our prison authorities find it impracticable to manufacture for the insti-

tutions of the State, they will turn around and manufacture for outside concerns. The amendment embodied in the Fassett act is virtually the same. Mr. Chairman, we thought we had a great help when we obtained the Fassett act, and it was nothing else than this same amendment proposed by Mr. Marshall. This Convention might be pardoned for favoring such a measure were it not for the fact that we have had the experience furnished by the Fassett act, as proposed by Mr. Marshall's amendment. But, Mr. Chairman, the Fassett act says that one hundred men shall be employed in the stove trade and the hollow-ware trade. Well, let us see what that means. They employ one hundred men in the stove trade; they employ one hundred men in the hollow-ware trade. Not content with that, they take advantage of the extra five per cent and put them on also, so that they are employed in the State, too, especially at the Elmira reformatory. Then we come along and we find the reformatories of this State standing ready at any time with a surplus of men, who have just enough knowledge of the different trades which they conduct at Elmira, to come out and do the work. A strike occurs, an industrial question arises in some portion of the State between employers and employes. What is the outcome? The parol system is put into effect; every person in any of those reformatories who has had any experience at all immediately writes to the employers, and Mr. Brockway sends those persons immediately to the employer to take the place of honest men. Mr. Chairman, we will now come down to the conditions prevailing during this last period of depression. We have all heard within the last year of the prominent men who have gone through the State preaching this lawful depression, the fact that the rich men have been immediately impoverished, that the poor man is to-day lying in want and hunger by reason of lack of employment. Up at the city of Auburn, where one of the prisons is situated, there are several jobbing shops, or new workshops. During the depression, those shops were practically closed, so far as new work was concerned. So far as Auburn was concerned the shops were closed. The prison authorities went to those people, and not content with having the new work, they took the jobbing out of the shops and took it to Auburn. We come down to Brooklyn. We find in Brooklyn, less than eight months ago, a firm by the name of Coyne & Delaney — the delegates from Brooklyn will bear me out in this — a firm employing three hundred men. The prison authorities of Sing Sing, finding that trade was dull in their business, immediately go to Brooklyn to see Messrs. Coyne & Delaney. Messrs. Coyne & Delaney accept their most liberal offers, close up their shops in

Brooklyn and remove their entire plant to Sing Sing prison. But, the gentleman says, it is only sentiment that we are looking for in this Convention; there are no facts staring us in the face at all. Then again, the broom industry went so far, and the law was violated to such an extent that the committee went to the Governor and the Governor instructed the Superintendent of the Labor Bureau to make an investigation. That investigation shows that they imported brooms from Pennsylvania and sold them in this State at one dollar a dozen; and the Superintendent of the Bureau of Labor Statistics states that the brooms cannot possibly be manufactured for less than two dollars a dozen. Mr. Paulding, of New York, a broom manufacturer, who some of the delegates from New York city may know, states that since this investigation was inaugurated and the prison authorities compelled to comply with the law, his sales of brooms have increased fifteen per cent. His letter, gentlemen, is on file in the office of the Labor Bureau. Mr. Paulding's letter, over his own signature, states that within two months the broom industry in his own establishment has grown fifteen per cent. Another gentleman says that this is an experiment that has never been tried. Gentlemen, if 400,000 people of this State, going to the ballot-box on election day, decide in favor of an experiment which has never been tried, have one hundred and seventy delegates sitting in this Convention any right to say that they will refuse to allow the people to try that experiment? I do not think they have. Mr. Peck states that the hollow-ware industry in Troy was wiped out of existence. Mr. Chairman, I remember within my time an extensive hollow-ware foundry in the southern section of this city, one that I can remember well, that was wiped entirely from the face of the globe by the prison competition system. The brush industry was also alluded to by Mr. Peck. And so far as the brush industry is concerned, I may add that the Superintendent of Labor has on file in his office reports made since this investigation took place making a very favorable showing as to the picking up of trade in that special industry.

Mr. Chairman, I do not intend to take up the time of the Convention any longer on this subject. I was in hopes from the general sentiment which appeared to prevail in the Convention, that when Mr. McDonough finished his remarks this morning, followed by my able friend, Mr. Francis, we would immediately rise and report upon this question one way or the other; but it seems that considerable opposition has developed; I know not from what source, nor why. This is a practical question. It is no dream. It is a live question, and before us; and I think the Convention should decide it.

Mr. Chairman, it is now ten minutes of four. Not wishing to take up any more of the time of the Convention, I move that this committee rise and report to the Convention with a recommendation that this amendment be passed.

The Chairman — The motion is not in order at this time, as there are two amendments pending.

Mr. Powell — Mr. Chairman, I simply want to make one suggestion in reference to the amendment that is now before the Convention or before the committee — the amendment of the gentleman from Onondaga, Mr. Marshall.

Having, as I do, great confidence in his legal judgment and in his ability to use words properly in all matters relating to the building of a Constitution, and having on numerous occasions during the session of this Convention consulted with him about matters where I was in doubt, and having on all those occasions placed great confidence in the formation and opinion which he gave me, I am surprised that he should propose an amendment to the Constitution which shall contain a provision that some thing or things shall be done so far as may be practicable. Now, if there is any one thing that we want more than another in the Constitution, it is precise, accurate, definite language, about the meaning of which there can be, if possible, an absolute certainty. So far as practicable, these things shall be done. Suppose we adopt this proposed amendment to the amendment of the gentleman from Albany. Should it be considered then as mandatory or merely advisory? Will the courts construe it simply as advice which this Convention gives to the Legislature for them to follow it so far as practicable? Who shall determine what is practicable? The Legislature, the Governor, the Superintendent of our State prisons, or the proposed State Board of Prisons, if such a board shall be instituted, as I believe one will be, when the work of this Convention is finally passed upon by the people? And who can say that that which is practical to-day will be practicable next week, or that which is not practicable to-day may become practicable a week from now? I certainly think that it would not be only a mistake so far as this matter is concerned, but that it would be a grievous error for us to introduce anywhere in the Constitution of the State of New York such words as these; provided that certain things shall be done or must be done so far as practicable. There are certain persons who come to us and ask us for a certain thing. They define it clearly. There is no room for doubt, and it is the duty of this Convention either to give them that which they ask

for, or to refuse to give it to them. In other words, do not let us try to cheat them with a subterfuge. Let us deal honestly with them. Either give them that which they request from us, or else absolutely deny it to them. Finally believing this, I shall vote against all of these amendments, and if the amendments be voted down, I shall vote affirmatively for the proposition itself. But let us not be deceived in stretching out to them that which appears perhaps to be a helping hand, but which shall turn out in the end merely to be the hand of death, without muscle, without nerve, without power.

Mr. Osborn — Mr. Chairman, I wish only to make one practical suggestion in regard to the matter, which has not yet, I believe, been touched upon, and which strikes me as having some value. It has been suggested that the prisoners and the reformatory inmates of the State should be used upon the public highways of the State, and I only suggest that there are great local jealousies, or such jealousies would arise between various communities, those on the one hand which would be favored by having their highways improved by the prison labor, and those on the other hand which would not be so favored. I can easily imagine, for instance, that residents of one portion of Westchester county residing near the Sing Sing prison would hail with delight the building up of the highways, and thus building up the land values which surround the Sing Sing prison, but that another part of the county would feel aggrieved, that they would be compelled to bear their share of the burden for the support of the prisoners in Sing Sing, while their farms or villa sites would be lying in the same condition as they were before this proposition was introduced.

Mr. Bigelow — Mr. Chairman, I am sorry to see so much eloquence running to waste in this Convention, every drop of which might be admirably utilized in the next Legislature. (Applause.) This is purely a question for legislative action. It has no place here, at least that is the way it strikes me. We are asked to tie the people's hands and say they shall have nothing to do with the occupation and employment of the prisoners of the State after this Constitution goes into effect. They shall take no note of the fluctuations of trade and of business, and as was very properly said by the gentleman who spoke a few minutes ago, Mr. Powell, that your recognition of what may be changed to-morrow of what did exist yesterday cannot be determined. I think, therefore, that this is purely a question for the Legislature. I will, however, allow myself to say a word or two upon the particular amendment which I think

implies an entirely false system of legislation, even if we had jurisdiction. It practically says that the prisoners shall only be employed on work for which there is no market. That is what it amounts to. In other words, they may work upon State work, public work as it were, but they may not work upon anything that shall be sold in the general market. In other words, they may not make shoes or brooms, but they may be police officers, they may be sent to the Legislature, and you may make Governors of them. It seems almost an absurdity to put it in that light, but that is really the legitimate conclusion from the wording of this amendment. It reminds me a little of the old song we used to read of in our youth, attributed to Mother Goose:

"Mamma, may I go out to swim?
Yes, my darling daughter;
Hang your clothes on a hickory limb,
But don't go near the water."

Gentlemen, there is no labor which you can imagine upon which you can employ prisoners that won't come right into competition with some other labor. Place them on a public work, and you displace free men. Place them anywhere else, and you bring them into competition with some one.

I do not wish to argue upon this question. I only wish to say in conclusion what I said before, that this is only a question of legislation, and we should dismiss it from this body.

Mr. C. B. McLaughlin — Mr. Chairman, I desire to say but a few words on this proposition. I do not care to go into the discussion as to whether this proposed amendment is wise or not, but I propose to address myself most exclusively to that portion of the amendment embodied in the amendment offered by Mr. Pratt. Now, it seems to me clear that the words, that Mr. Pratt proposed to strike from the proposed amendment, ought to be stricken out. The State prisons and the penitentiaries and the jails are not to be classed with the reformatories of the State, and any person who has had any experience in sending young boys to these reformatories will not for one moment think of classing boys from twelve to eighteen years of age with the criminals that are committed to State prisons. Now the whole theory of the reformatories of the State is that persons that have committed some minor offenses, who are possibly prone to evil, may be reclaimed and made good citizens. I have in my mind now an application which is pending before myself concerning a boy thirteen years of age whom his mother wishes to be committed to the State Industrial School

at Rochester. Now when we are asked to put into the Constitution a provision, which provides that the Legislature shall provide by law for the occupation and employment of that boy, it seems to me to be a principle which is vicious in its character throughout. In the first place, the boy is committed to that institution to be governed by its rules that he may be reclaimed and made a good citizen. Now when you say in a constitutional provision, that the Legislature of this State shall provide for the employment and occupation of that boy, you destroy the whole principle which underlies the reformatories of this State, and all I care to say upon this subject is that it seems to me a most dangerous doctrine when you ask the Legislature to act to that extent. You destroy the whole principle which underlies that class of institutions, and I sincerely hope that that amendment, if not anything further, may be adopted.

Mr. McIntyre — Mr. Chairman, I would like to ask the gentleman a question. Would not that same argument apply equally as well to all the State prisons?

Mr. McLaughlin — I answer it with pleasure. They are not of the same character. In the first place, a person is sent to a reformatory to be discharged when, in the judgment of the management of that institution, they should be permitted to go at large. Whereas in the State prisons of the State a person is committed for a definite term of years. It has not been the theory that the person committed to a State prison will be entirely reformed. He is not sent there solely for reformation. On the contrary, it is to furnish an example to the State at large, and the other citizens of the State, that they must not commit the same offense that he has. The theory which underlies the two institutions are as separate and wide apart as can be conceived of.

Mr. McIntyre — Mr. Chairman, I would like to ask the gentleman another question. Are they not both punishments? Are they not corrective in their nature?

Mr. McLaughlin — Well, the whole theory of the reformatories of the State is not to punish a boy of thirteen years of age. It is to correct him. He is sent to such an institution that he may be reformed, not to punish him.

Mr. Crosby — Mr. Chairman, the Convention will pardon me in making this suggestion: The words "employment and occupation" include study as well as work — occupying their minds as well as training them. The Elmira reformatory is a full-grown man; a full-grown tyrant. There is no boy about it. The labor is as severe,

the hours exacted as long, and the punishments are more cruel than in any prison in the State, and when the superintendent fails to get the work out of them that he exacts, or fails to get the obedience required from the treatment that the inmates receive, he has the power and he sends them off to a prison to serve out the remainder of their sentences. It is a part of the prison system, and comes more in point with this system than any other prison institution in this State to-day.

The Chairman — The question is on the motion of Mr. Pratt to strike out the word "reformatory."

The Secretary will read the amendment.

The Secretary read the amendment as follows:

Mr. Pratt moves to amend by striking out in line 5, the words "and reformatory," and insert before the word "jail," in the same line, the word "and."

The Chairman put the question on Mr. Pratt's amendment, and it was determined in the negative.

The Chairman — The question now is on the amendment of Mr. Marshall.

Mr. Moore — May we have it read?

The Chairman — The Secretary will read the amendment of Mr. Marshall.

The Secretary read the amendment as follows:

Strike out all after line 5 and insert the following: "So far as is practicable such employment shall be restricted to the performance of labor upon public works and the manufacture of products for the use of the State, or any political division thereof in the public institutions of the same, and by the several charitable institutions subject to State visitation and inspection."

The Chairman put the question on Mr. Marshall's amendment, and it was determined in the negative.

The Chairman — The question now is on the substitute of Mr. Griswold. The Secretary will read the substitute.

The Secretary read the substitute as follows:

Strike out all after line 5 of the first page and insert the following: "As shall be for the best interests of the State, having regard for the safe confinement in prison and the welfare and improvement of the prisoners without other limitation.

The Chairman put the question on Mr. Griswold's substitute, and it was determined in the negative.

Mr. McDonough — Mr. Chairman, I move that the committee do now rise, report this amendment to the Convention and recommend its passage.

The Chairman put the question on the motion of Mr. McDonough, and it was determined in the affirmative by a rising vote of fifty-five to twenty-seven.

Mr. McIntyre — Mr. Chairman, no quorum is present. I raise the point of order there is no quorum present.

The Chairman — The members will please rise and be counted for a quorum.

The Secretary proceeded to count the members present.

The Chairman — A quorum is present; eighty-nine.

The President resumed the Chair

The Chairman — Mr. President, the Committee of the Whole have had under consideration proposed constitutional amendment, printed No. 392, entitled, an act to amend article 3 of the Constitution by adding a section to provide for the occupation and employment of the prisoners in the State prisons, penitentiaries, jails and reformatories of the State, have gone through with the same, made no amendment, and have instructed the chairman to report the same to the Convention and recommend its passage.

The President — The question is on agreeing with the report of the Committee of the Whole.

Mr. Abbott — Mr. President, owing to the fact of the slim attendance here, I move that the report of the Committee of the Whole be laid upon the table.

The President put the question on motion of Mr. Abbott to lay the report of the Committee of the Whole on the table, and it was determined in the negative.

The President — The question is on agreeing on the report of the Committee of the Whole.

Mr. Powell called for the ayes and noes, and the call was sustained.

The Secretary proceeded with the call of the roll.

Mr. Abbott — Mr. President, after having listened attentively to this discussion, I am satisfied of at least two, and perhaps three, things. First, that there is a wrong which should be remedied. Second, I am not satisfied that the wrong can be remedied by the adoption of this proposition. Third, I am thoroughly satisfied, as has been so admirably stated by the gentleman from New York

(Mr. Bigelow), that it is entirely a matter for legislation. Now, I think that the fact that this matter receives the support that it does in this Convention is because, as has been stated so often here, of a distrust of the people. It is said that it cannot be carried through the Legislature by reason of the lobbying interests preventing it. Mr. President, I have confidence in the people and in their representatives that are elected every year, and I have confidence that if there are any evils they can be remedied from time to time. I withdraw my excuse, and vote no.

Mr. Alvord — Mr. President, I desire to be excused from voting, and will briefly give my reasons. My reasons are that this is purely and entirely a legislative matter. It has no place in the Constitution of the State. The question comes up from time to time, and the exigency requires different treatment at different periods of the time. You put it into the Constitution and there it must remain, if the people say so, years and years, without any alteration whatever. I think if the people go so far as to approve of this amendment, if it is submitted to them, they will repent their action in sackcloth and ashes, but I think, Mr. President, that the people would condemn the proposition now before the Convention. Under those circumstances. I withdraw my request to be excused from voting, and vote no.

Mr. Becker — Mr. President, I desire to be excused from voting, and will state my reasons. I believe that when the people of this State put into the Constitution the prohibition of convict contract labor they meant what they said. I believe that the subterfuge that has been used under the name of the piece-price plan to avoid the effects of that constitutional prohibition, has worked great harm to the State, as well as to the honest labor within the State. I believe that no first-term prisoner that goes to any prison in this State should be required to labor, except in manual training; that he should be educated and kept separate and apart from the older and corrupt minds of those that are in the prison. I am afraid that under the present condition, developed by the investigation of the Elmira Reformatory, a blow has been struck at indeterminate sentences for first-term prisoners that it will take this State ten or fifteen years to recover from, for I am afraid, from what I have heard from our judges and from the friends of prison reform throughout the State, that the tendency will be not to send these prisoners any more to these reformatories where indeterminate sentences prevail. I am one of those who believe that the solution of the problem of the reform of first-term prisoners rests in the inter-

mediate sentence. I see no other hope for the reform of the first-term prisoners. Experience extending over nearly five years in the district attorney's office of Erie county showed me boys who came back from contact with hardened criminals and with the second-term criminals, corrupted in these prisons, and I believe that this measure, although it may work hardship, although I am of the opinion that it is going to cost the State a large amount of money, is the beginning of a reform, if the people adopt it, that will lead to the making of these penal institutions, so far as the first-term prisoners at least are concerned, solely and principally educational. For these reasons, and while I believe the scope of the amendment is so broad that it will not be ratified at the polls, while I believe that it will raise up against us a host of those who would not oppose Mr. Marshall's amendment, those who are furnishing the penal institutions with materials and products throughout the various counties of the State, making contracts in those counties from which they reap wealth ——

The President — Your time has expired, Mr. Becker.

Mr. Becker — I favor this amendment, because I believe it is a measure of reform. I, therefore, withdraw my excuse and cheerfully vote aye.

Mr. E. A. Brown — Mr. President, I ask to be excused from voting, and will briefly state my reasons. I do not agree with the gentleman from Erie (Mr. Becker) when he says that he thinks there should be no labor performed by the convicts sentenced to the prisons of this State.

Mr. Becker — I said first-term prisoners.

Mr. Brown — First-term prisoners or second-term prisoners, or any other prisoners. I say that it is the duty of the people of this State to keep the minds and the hands of the prisoners busy at something. I agree with my veneralble friend on the left (Mr. Bigelow) when he says that there is competition in every branch of labor; that the minute you turn out a convict to work on the roads or on the canals of the State you are turning an honest man out of work. I believe that the great harm that will be wrought is a direct blow at the agricultural districts of the State. I come from a district that is mainly agricultural, and I tell you that the farmers will not support any such measure. It is proposed to saddle the State with the expense of keeping these prisoners in idleness, and a large share of that expense will fall upon the farmers of this State. This is a whim of class legislation. For that reason, I withdraw my request to be excused from voting, and vote no.

Mr. Gilbert — Mr. President, I ask to be excused from voting, and will briefly state my reasons. I think prisoners should be employed. I think they should be employed in productive labor. So far as that obtains I agree with the gentleman from New York (Mr. Bigelow), that it must to some extent come into competition with free labor. I am in sympathy with the general purpose of this proposed amendment. I do not think it wise to provide in the Constitution specifically what convicts shall be required to do. If we put in there a general proposition that their labor shall come in competition with other labor with the least possible injury to the industries of the people of the State I should have no objection to it, but in the form which it now is, I am compelled to vote in the negative, and withdraw my request to be excused, and vote no.

Mr. Holcomb — Mr. President, I would like to be excused from voting, and will briefly state my reasons. I am in favor of the amendment. I am entirely convinced that it is quite proper that a proposition like this, that the State of New York shall not and is unwilling to make money or make any earnings out of the crime committed within her borders, should be put into the Constitution of the State. I would like to have convicts employed, but if any men are to be made idle in this State, in my judgment it should not be the honest men outside of the prison walls, but they should have employment even though the convicts never have any work to do. I am in favor of the amendment, and, therefore, withdraw my request to be excused, and vote aye.

Mr. I. S. Johnson — Mr. President, I think it is not necessary to ask to be excused from voting under the present rules.

The President — Not under the present rules.

Mr. Johnson — But that any member may state his reasons. I am in favor of this amendment, and I am in favor of settling these great questions that are being discussed, and that have been agitating the people, and settling them now and for twenty years to come if possible. Every year and for several years past, for many years past, this question has been discussed by the people. It is well known to every member of this Convention what their views are and whether it is right or wrong, and if it is right that this matter should be settled in the affirmative, I am in favor of settling it now. I believe that this proposition is right and I am in favor of placing it in the fundamental law of the land, and I, therefore, vote aye.

Mr. O'Brien — Mr. President, coming as I do from one of the prison towns of this State, I have seen very many of the disadvantages of competition between the free labor and the convict

labor of the prison. I have from the start, from the very beginning of this Convention, felt that something should be done to remedy the evils which are suffered there. I have, however, from the introduction of this amendment and before our Committee on Prisons, of which I am a member, opposed it, because I have believed that it has gone altogether too far. That is too radical and sweeping a measure to incorporate into the fundamental law of this State. I think we are taking a very serious step when we bind by a system in the Constitution the prisons of this State for no one knows how many years to come. I believe that we should be content here and now with passing some general Constitution provision which should crystallize into our law the determination of the people of the State upon this question. But to incorporate into the Constitution of our State a hide-bound system from which we cannot depart, I believe to be a very serious wrong. I think, therefore, Mr. President, I must vote no.

Mr. Spencer — Mr. President, in explaining my vote I desire to say that I do not believe that we should arrogate to ourselves all the duties of the Legislature. We were not sent here to legislate in regard to matters of this character. It is a matter which the Legislature is fully competent to deal with, and one which it has not shown any disposition to shirk from. As I understand it, there is no complaint anywhere but that the Legislature of this State has listened patiently to all complaints and petitions in respect to this matter, and have tried to the very best of their ability to deal with it in an intelligent and fair manner for all, and for us, a Constitutional Convention, to take up and experiment with a matter which the Legislature has not yet dared to do, and incorporate it into the Constitution, and provide, as this provision does, that the results of the labor of the prisoners of this State shall not be sold to any person or corporation, we are putting into the Constitution a matter that should be left out, and which we will hear from to our sore disadvantage, if we put it in, when we come to lay the results of our labor before the people. They will say to us: "You have been dealing with a matter that belongs to the Legislature, that may be changed from time to time, as the exigency arises, and it will, therefore, not receive our approval." I, therefore, vote no on this proposition.

Mr. A. B. Steele — Mr. President, as I understand the effects of this proposed amendment, it requires that all persons confined in prisons and the other places mentioned should work and should be put to work, and then the next proposition is in effect that they

must produce nothing, or, in other words, their production cannot, must not, be disposed of. Now, if the Legislature, as has been said, has been endeavoring to solve the problem as to how best to care for the persons confined in prisons, and as to whether or not if they work their productions should be disposed of, and the Legislature has been unable for a number of years to solve it, it seems to me that we are taking a wonderful stride and arrogating to ourselves wonderful knowledge in undertaking in the short time that we have been assembled here to solve it. I, for one, am not willing to do it. I am willing to make that statement. I believe it is for the Legislature to do it, and believing that, and having full confidence in the ability of the Legislature to handle and properly dispose of any questions that come before it, I vote against this proposition.

The President — In explaining my vote, I wish to say that I regard this amendment as a most unwise interference with the power of the State to manage the prisons of the State according to the best results of modern science as it has developed from time to time. In my judgment, this matter of the relation of prison management to free labor outside in the State is a problem which has not yet been solved and will not be solved for some time to come, and while it goes without saying that free labor ought to be protected in every possible manner from competition of convict labor, whether in the form of contract labor or piece work, or any other form, that it is no place and no time for us now to put into the Constitution such a rule as this, that cannot be changed for twenty or thirty years. In my judgment, if adopted, it will be seriously regretted as well by the champions of free labor as by the other people of the State. I vote no.

Mr. McDonough — I call for the absentees.

The Secretary called the absentees.

Mr. C. B. McLaughlin — Mr. President, I desire to be excused from voting, and will briefly state my reasons. I believe this matter to be entirely a matter for the Legislature. I think the people of the State can safely trust the Legislature with this problem to decide wisely for the best interests of the State. I cannot conscientiously vote to put the reformatories on a par, in the same class of the prisons of this State. I, therefore, withdraw my request to be excused from voting, and vote no.

The President — The report is agreed to, fifty-eight in the affirmative and thirty-three in the negative. The amendment goes to the Committee on Revision, and when reported by them will be put upon the order of third reading.

The vote in detail is as follows:

Ayes — Messrs. Ackerly, Arnold, Barnum, Becker, Blake, Bowers, Campbell, Cochran, Coleman, Crosby, Davenport, Dickey, Floyd, Francis, Augustus Frank, Fraser, C. A. Fuller, O. A. Fuller, Gilleran, A. H. Green, Hecker, Hill, Holcomb, Holls, Hottenroth, Jacobs, I. Sam Johnson, J. Johnson, Kerwin, Kinkel, Kurth, Marks, McArthur, McDonough, McKinstry, Meyenborg, Moore, Morton, Ohmeis, Parker, Peabody, Peck, Platzek, Porter, Powell, Rogers, Smith, Speer, Springweiler, T. A. Sullivan, Titus, C. H. Truax, C. S. Truax, Tucker, Turner, Vogt, Williams, Woodward — 58.

Noes — Messrs. Abbott, Alvord, Bigelow, E. A. Brown, Cady, H. A. Clark, Deady, Dean, Doty, Emmet, Farrell, Gilbert, Griswold, Hamlin, Hawley, Manley, Marshall, McIntyre, C. B. McLaughlin, J. W. McLaughlin, O'Brien, Osborn, Parkhurst, Phipps, Pratt, Putnam, Rowley, Spencer, A. B. Steele, W. H. Steele, Tibbetts, Wellington, President — 33.

Mr. Gilbert — Mr. President, I move that the Convention now go into Committee of the Whole on general order No. 65. I do it for this reason: It is one which, I think, will provoke very little if any discussion. I think every member will be in favor of it when he knows what it is. It does simply one thing. It provides that the annual session of the Legislature shall begin on Wednesday instead of Tuesday, so as to avoid desecration of Sunday by caucus work on that day. I think there will be no discussion about it.

Mr. Peabody — Mr. President, I would like to be excused for the balance of the session to-day in order that I may catch my train for home.

The President put the question on excusing Mr. Peabody for the balance of the day, and it was determined in the affirmative.

Mr. Powell — Mr. President, I ask that Mr. Allaben, of Brooklyn, be excused. He sent word to me this morning, and I did not have an opportunity to request it then. I, therefore, ask now that he be excused for the day.

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

Mr. Kerwin — Mr. President, Mr. Andrew Frank stayed here up to the roll-call, and was obliged to leave in order to take a train for home, where he is called on business of importance. He stayed until the last moment.

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

The President put the question on the motion of Mr. Gilbert, that the Convention go into Committee of the Whole on general order No. 65, and it was determined in the affirmative.

The President — Mr. Platzek will please take the chair.

The Convention resolved itself into Committee of the Whole. Mr. Platzek in the chair.

The Chairman — The Convention is in Committee of the Whole on general order No. 65 (O., I. No. 385, P. No. 444), introduced by Mr. Gilbert.

The Secretary will read the proposed amendment.

The Secretary read the proposed amendment, entitled "A proposed amendment to amend section 6 of article 10, in relation to the time when the Legislature shall assemble."

Mr. Gilbert — Mr. Chairman, I have already stated the object of the amendment, and I presume it is not necessary to say anything more.

Mr. Bowers — Mr. Chairman, I make the point of order that there is no motion before the House.

Mr. Gilbert — Mr. Chairman, I move that the Committee of the Whole do now rise, report this amendment to the Convention, and recommend its passage.

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

The President resumed the chair.

Chairman Platzek, from the Committee of the Whole, reported that said committee had had under consideration general order No. 65, made no amendment thereto, and was instructed to report the same to the Convention and recommend its passage.

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

The President — The amendment goes to the Committee on Revision, and on their report will be put on the order of third reading.

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

Mr. Moore — Will Mr. Bigelow give way for a moment?

Mr. Bigelow — Certainly.

Mr. Moore — Mr. President, it may be necessary for me to be absent on Monday morning. I am not sure of it, but I would like

to make provision for it. I, therefore, ask to be excused for Monday.

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

Mr. Bigelow — Mr. President, I renew my motion to adjourn.

The President put the question on the motion of Mr. Bigelow, that the Convention do now adjourn, and it was determined in the affirmative, whereupon the Convention adjourned until Monday morning, August twenty-seventh, at ten o'clock.

Monday Morning, August 27, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, at the Capitol, Albany, N. Y., Monday, August 27, 1894, at 10 A. M.

President Choate called the Convention to order.

Mr. Lincoln moved that reading of the Journal of Saturday, August twenty-fifth, be dispensed with.

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

Mr. Durnin — Mr. President, family matters call for the absence of Mr. Deyo until to-morrow afternoon, and I ask that he be excused until that time.

The President put the question on the request that leave of absence be granted to Mr. Deyo, and he was so excused.

Mr. Lincoln — Mr. President, I have been present so far at every session of this Convention since it was organized, but I think I will ask the grace of the Convention to be absent on Thursday, Friday and Saturday of this week and Monday of next week, if the Convention sits on Monday.

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

Mr. Hill — Mr. President, I would like to be excused on Saturday of this week and on Monday of next week.

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

Mr. Porter — Mr. President, there are some matters demanding my personal attention, and I ask to be excused on Friday and Saturday of this week.

The President put the question on Mr. Porter's request to be excused from attendance, and he was so excused.

Mr. Turner — Mr. President, I would like to be excused on Friday and Saturday of this week, and Monday and Tuesday of next week.

The President put the question on Mr. Turner's request to be excused from attendance, and he was so excused.

Mr. H. A. Clark — I would like to be excused on Saturday afternoon of this week, and Monday of next week, on account of business engagements.

The President put the question on Mr. H. A. Clark's request to be excused from attendance, and he was so excused.

Mr. O. A. Fuller — Mr. President, I would like to be excused on Saturday of this week and Monday of next week, on account of important business. This is the first time I have asked to be excused.

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

Mr. Hottenroth — Mr. President, Mr. Ohmeis asks to be excused to-day.

The President put the question on the request that Mr. Ohmeis be excused from attendance, and he was so excused.

Mr. Ackerly — Mr. President, I should like to be excused on Saturday of this week and the Monday following.

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

The President — The Chair is very sorry to state that Mr. Alvord, for the first time, in consequence of the condition of his health, wishes to be excused to-day.

The President put the question on the request that Mr. Alvord be excused from attendance, and he was so excused.

Mr. Powell — Mr. President, I have just received a letter from my associate in business in New York, and I find that my presence will be required there for a short time to-morrow, and I ask to be excused from attendance at to-morrow's sessions.

The President put the question on Mr. Powell's request to be excused from attendance, and he was so excused.

Mr. Woodward — Mr. President, on the eighteenth day of August I presented a minority report as member of the Committee on Preamble. I supposed it was referred to the Committee

of the Whole, but it does not seem to be by the Journal. It has been printed, and is Document No. 56. I desire to have it referred to the Committee of the Whole.

The President — The rules do not permit it to be referred to the Committee of the Whole, but when the question is under discussion in the Committee of the Whole you can move it as an amendment. That is the course minority reports have taken. Are there any petitions or memorials, notices or resolutions, reports of committees?

The first business in order to-day is general order No. 8 (O., I. No. 258, P. Nos. 260-317), unfinished, with Mr. C. H. Truax in the chair.

Mr. Dean — Mr. President, is that Mr. Lauterbach's general order? Is that a continuing special order?

The President — It is continued especially for this morning.

Mr. Dean — My understanding was that it was for Saturday.

Mr. Holls — I think the cities article is the first special order.

The President — The Chair understands from the Secretary that this amendment of Mr. Lauterbach's was a special order for Saturday, and will require a vote to be taken up now.

Mr. Holls — Well, I call for the order of the day.

The President — Mr. Lauterbach, will you give your attention for a moment? It seems there has been some difficulty about your order as to its losing its place. The Chair had the impression that it was continued as a special order for this morning. The Secretary states that it was a special order for Saturday and was reached that day, and, therefore, no motion having been made, it lost its place.

Mr. Lauterbach — I make the motion now.

Mr. Dean — I rise to a point of order, Mr. President, that it requires a two-thirds vote to displace a special order. The cities article is a special order for this morning, and it requires a two-thirds vote to displace that before this can be taken up.

Mr. J. Johnson — Mr. President, I entirely concur in Mr. Lauterbach's motion. It prevents the necessity of discussing section two twice.

The President — On consulting the rules, the Chair finds that unfinished business of general orders comes ahead of special orders. Judge Truax will please take the chair on this general order.

The House resolved itself into Committee of the Whole, and Mr. C. H. Truax took the chair.

Mr. Lauterbach — Mr. Chairman, there seems to have been some error in the understanding at the Secretary's desk. Mr. Bowers's motion was, in which I, of course, concurred, that the amendment be printed. It does not appear to be printed, but I presume the Convention would be satisfied if it were again read. It is very brief, and contains the substance of the original proposition, and is only a change in phraseology to conform to the suggestions of the Cities Committee, so as to be a substitute for the provision in that respect contained in the report. I ask for the reading of the amendment.

The Secretary read the amendment as follows:

"Sec. —. All laws creating, regulating or affecting boards or officers, charged with the duty of registering voters or of distributing ballots, or of receiving, recording or counting votes at election, shall secure equal representation of the two political parties which at the general election preceding that for which such boards or officers are to serve, cast the highest and the next highest number of votes. All such boards and officers shall be appointed or elected in such manner upon the nomination of such representatives of such parties respectively as the Legislature may direct. Existing laws on this subject shall continue until the Legislature shall otherwise provide."

Mr. Lauterbach — Mr. Chairman, I stated the substance of the amendment fully on Friday, and I suppose that its general nature is thoroughly understood. Its discussion was checked, and a necessity created for its being put over owing to the ignorance of the gentleman in charge of the proposition as to the charactertistics and peculiarities of town meetings. The gentleman having been born in the Bowery in the city of New York had not very much experience in town meetings of any kind or character. Conference with those having full knowledge of the subject has resulted in a general consensus of opinion that it would be wise to restrict the effect of the proposed amendment from town meetings, and I offer as amendment that at the end of the proposed amendment there be added the words, "This section shall not apply to town meetings of this State." Mr. Dickey may explain, if he will kindly do so, the present practices that prevail in respect to town meetings.

Mr. Bowers — I make the point of order that you cannot amend a substitute until the substitute has been adopted. We are on the original amendment. It can be amended or a substitute offered. I do not see how we can receive a substitute and amend a substitute and keep any track of where we are. When the substitute is

adopted it takes the place of the original amendment and then we can amend it. If Mr. Lauterbach withdraws his substitute and amends it, then he can put it in any form he likes.

Mr. Lauterbach — Well, I add that as a part of my substitute, if there be no objection.

The Secretary read the amendment as follows:

"This section shall not apply to the town meetings of the several towns of this State."

Mr. Lauterbach — If you would add another qualification so that it may be fully understood, I will qualify the substitute further at the suggestion of Mr. Holcomb and others. The words "officers shall distribute ballots" might, perhaps, be held to apply to police superintendents and police commissioners. There is no such intent, and in order to cover that objection, which also appears to be valid, I propose that there be added after the words "distributing ballots," in the third line, "at the polls," so that it shall only apply to the official distributer of ballots who has been designated as a ballot clerk and who officiates at the polls. In that form I submit it as a whole.

Mr. Holls — May we have it read in its amended form?

The Secretary read the amendment as follows:

"All laws creating, regulating or affecting boards or officers charged with the duty of registering voters, or of distributing ballots at the polls, or of receiving, recording or counting votes at elections, shall secure equal representation of the two political parties which, at the general election preceding that for which such boards or officers are to serve, cast the highest and the next highest number of votes. All such boards and officers shall be appointed and elected in such manner and upon the nomination of such representative of such parties respectively as the Legislature may direct. Existing laws upon this subject shall continue until the Legislature shall otherwise provide. This section shall not apply to town meetings in the several towns of this State."

Mr. Dickey — Mr. Chairman, at the request of the mover of this amendment, I desire briefly to explain to those gentlemen from the cities who never get into the country the reason of the exception of the towns from the general provisions of the amendment as originally proposed. In towns where there is but one election district, and that applies to a great many towns in the State, the board of election officials is made up of the four justices of the peace and the town clerk, they sitting as an election board. Large towns are

some of them divided into election districts, some as many as three and four election districts. In some towns where they vote in election districts, as many as three or four at the fall election, at the spring election they vote all together at one polling place, and there elect their town officers, the supervisor, the town clerk, the justices of the peace, the constables, the excise commissioners and such like town officers. The general provision might might apply to towns where there is more than the one election district. I had placed on Mr. Lauterbach's desk without seeing him, in his absence, an additional amendment to this section, reading as follows: "This section shall not apply to town meetings in the several towns of this State in which the voters therein all vote at one election place;" limiting the exception only to such towns where all the voters voted at one polling place. The election officers are elected in the spring in all the towns of the State, and at that election, where they have more than one election district for the fall elections, they elect the inspectors of elections in the respective districts. Leaving it as he proposes it now, might make an embarrassment as to those various election districts in the several towns, because the justices of the peace and the town clerk, in towns where there is more than one election district, could not well divide themselves among the possible three or four election districts. So that I think the qualification and the reservation and exception should be in the form that I have now indicated. But in those towns where there is but one election district, the requirement of one inspector from each party should not be made, because in the towns the justices of the peace and the town clerk are frequently the big men of their respective localities, and we do not want to array that mass of people against this Constitution, because if you do there will be no chance of its passing in the rural districts or getting any votes. They are so powerful and influential, that if you take away from them the fees they get as town officers at the elections in the spring, I fear it would influence them so strongly that they would be effective in massing a large number of votes against this Constitution. I think it ought to be amended in the particulars that I have indicated, so as to leave them to perform their functions in the spring as they have been in the habit of doing from time immemorial. And as this is an ancient prerogative, I am sure the Chair and a good many of the members will approve of continuing it because of its antiquity, if for no other reason.

Mr. Emmet — Mr. Chairman, I should like to inquire as to the duties of local boards in relation to local elections in towns in which there is only one election district. I understand from Mr. Dickey

that in such towns the local boards consist of the justices of the peace and supervisors.

Mr. Dickey — Not the supervisor — the town clerk.

Mr. Emmet — Well, the town clerk; they act as election inspectors. I understood that in such towns and all towns, they acted as boards of canvassers, acted as canvassers of the returns, but had no dealings with the votes. It seems to me that in the town in which I live, and which, I think, is a representative town, their duties have no connection whatever with those of an ordinary election officer. They deal only with the returns which come in from the election officers, and I wished to make a suggestion about their being excluded in these towns, excluded from the operation of this law.

Mr. Dickey — In answer to the gentleman's question, I do not know how it may be in regard to his particular town, but in all the towns of the State, of which I have any knowledge, they act as a board of election officers at the town meeting only. They receive the votes themselves. There are no separate election officers other than the town board, made up of the justices and the town clerk.

Mr. Dean — Mr. Chairman, the full growth fetich having been introduced into this committee, the experience of the past few days ought to adminish me that I should be quiet and not raise my voice in opposition. But in the language of Thomas Jefferson, "I have sworn eternal hostility to every form of tyranny that rules over the mind of man." This word "reform" has grown into a tyranny in this country. Everything that comes into this Convention designated a reform is carried along as though it was something sacred, something that must be considered without any regard to any other question which may come before us. Now, this proposition for bi-partisan elections does not accomplish the objects which the movers claim for it. It does not provide for the appointment of men by responsible representatives of the public, but leaves it entirely in the hands of the Legislature to juggle with this fetich in any manner which may suit their purposes. Now, we are driven away from fundamental principles. If the rule of majorities is right, then there is no more excuse for introducing this bi-partisan fad into this Constitution than there would be for any of the many other foolish propositions which have been submitted to this Convention. Logically, if the majority cannot be trusted to conduct elections, then we should go to the other extreme and give to the minority a majority of the election officials. Certainly there is nothing logical in making a double-headed board of registration.

It is fatal to our system of government, because it leaves no place where the matter can be decided in the event of a discussion, a difference of opinion, as between parties. There is absolutely no power of decision. It is simply anarchy. In our system of government, in the Senate of both the United States and the State of New York, we provide a presiding officer, whose duty it is to cast a vote in the event of a tie between the two parties. In this we have entirely violated that principle. This is probably the first time in the history of a constitutional government, when a dignified and deliberative body, brought together for the purpose of formulating the fundamental law of the State, has recognized political parties and political committees as the foundation of a system of government. I find in the statute of 1894, chapter 348, I believe it is, the law which is proposed to be made a part of this Constitution. Our Constitution provides that no statute shall become a part of any other statute unless it is embodied in the statute which has been enacted. We are proposing to introduce in the Constitution a statute which as yet has been inoperative, never has been in force; simply came into effect in July, and never has been operative. I find in that statute that the mayors of the several cities of the State, outside of New York and Brooklyn, are empowered with the duty of appointing election inspectors in the several election districts of their cities. They do this upon the suggestion of the local committees, or the county committees, as may appear, and if these do not agree, the mayor himself is allowed to do these things. It does away with all the inspectors of election in the several towns and cities of this State, and puts it into the hands of mayors chosen without any reference to this question, to come in and nullify the action of the electors. I find in this statute, that if more than one list for any political party is submitted to the mayor, the appointment shall be made from the list, if any, submitted by the organization of such party, recognized as regular by the State convention of such party, held next before the tenth day of August, or if the regularity of any of the organizations of the parties submitting two or more such lists, shall not have been passed upon by such State convention of such party, then such appointment shall be made from the lists submitted by the organization decided to be regular by the State committee appointed or organized in pursuance of such convention. These gentlemen in this convention who have laid awake nights, fearful that Thomas Platt would organize the party in this State against the best interests of the people, are deliberately going to work to put in the Constitution this provision that Mr. Platt's State committee, or Mr. Sheehan's or Mr. Murphy's State

committee may decide upon the regularity of the election officials in every city in this State practically. All that is necessary is to get up a little faction somewhere, and get the machine, the State committee, to recognize it as regular. This may be making a Constitution which will be approved by the people, but, in my opinion, it is not. In my judgment it is a fatal defect. In the cities of New York and Brooklyn it is provided that these election inspectors shall be chosen by the board of police commissioners out of lists submitted by the several party organizations, and in section 15 it is provided that if they do agree in organizing these boards they shall draw lots for the position of chairman. Is not that a dignified thing for a Constitutional Convention to be providing, that we should go into the organizing of an election official or an election board by lot? It is a mere game of lottery. We have in our Constitution a provision that we shall have no lotteries in our State, and here we are deliberately providing for a lottery in the choice of election officials. It is all wrong and vicious. There is no reason in the world why the people of the several election districts should not elect their election officials. There is no reason why, having elected them, they should be legislated out of office by a statute, and that statute indorsed by the Constitution of the State. I know it is true that the Legislature is allowed to change these constitutional provisions, but it seems to me that that is a very extraordinary provision, to put something into the Constitution, and then say that the Legislature may change it at its pleasure. It is absurdity. We want the rule of majorities. I would rather trust the Democratic board of inspectors elected by the people, than to have a bi-partisan, namby-pamby, goody-goody sort of a board chosen by the mayor at the dictation of a lot of cheap ward politicians. I am opposed to it. I do not believe you can carry such a provision before the people of this State. I understand, Mr. Chairman, by the impatience of this Convention in listening to these remarks, that is is absolutely useless to talk against it. You might talk here until the day of the resurrection and you could not stop anything in the nature of a fad, but I want to be put on record as opposing any such kind of fallacy, which is absolutely opposed to every conception of dignity and decent government by the people.

Mr. A. H. Green — Mr. Chairman, I move that the committee rise, report progress and ask leave to sit again, have these amendments printed, and have the matter reserve its place on the calendar. This is a matter of vast importance and everybody ought to understand it. I must confess there are amendments I do not

understand that have been offered here, and I want it in such shape that I can understand them.

Mr. Bowers — Will the gentleman from New York (Mr. A. H. Green) withdraw his motion for a moment to allow an explanation to be made?

Mr. Green — Certainly.

Mr. Bowers — Mr. Chairman, the substitute which has been offered is taken from the language of one of the proposed bills bearing upon the cities of the State, and it is exceedingly important that this question should be disposed of before we take up the cities article, which is down for consideration next, as this bears upon the whole State. I think there is no difficulty in our proceeding. I first felt as the gentleman from New York (Mr. A. H. Green) feels, but on discovering that the language of Mr. Lauterbach's substitute is precisely the same as one of the cities articles, I think there is no difficulty in our dealing with the subject and amending it and passing it now. I hope the gentleman from New York will permit us to amend it and dispose of it before we go into the cities matter.

Mr. Lincoln — Mr. Chairman, I move to amend, if an amendment is in order, by excepting from the provisions of this amendment, charter elections in incorporated villages.

Mr. Bowers — I make the point of order that until the substitute is adopted it cannot be amended.

The Chairman — The point of order is well taken.

Mr. Lincoln — I am not advised as to the order of amendments.

The Chairman — There is a substitute now before the House.

Mr. Lincoln — What is the substitute?

The Chairman — The Secretary may read the substitute.

Mr. McIntyre — Mr. Chairman, I rise to a point of order. I understood the gentleman from New York (Mr. A. H. Green) made a motion and only withdrew it for the purpose of an explanation. I think that motion should be entertained.

The Chairman — The Chair understood the gentleman from New York (Mr. A. H. Green) to withdraw the motion.

Mr. Green — I withdrew my motion for the purpose of allowing the gentleman from New York (Mr. Bowers) to make an explanation. I now insist upon the motion.

Mr. McIntyre — We know nothing about this, and I think it should be printed that we may know what is being done.

Mr. Lauterbach — I desire to explain that the resolution on

Friday was, as we understood it, that the amendment should be printed. The motion was not made so clearly as to cause the Secretary to catch the point as to the printing, and the amendment was not printed. If any gentleman desires to have it explained, it is an amendment of six or seven lines, which carries out the original purpose with a little more detail as to the appointment of bi-partisan or non-partisan election inspectors at every election throughout the State. General order No. 8 contains the printed amendment. The substitute, instead of providing for boards of election officers only, which might be construed to be inspectors of election, refers in detail to the registering officers, the clerk who receives the ballots, the ballot clerk and the poll clerk. It specifies that they shall at all times be bi-partisan. I will state for the information of Mr. McIntyre, as stated on Friday, that the present law seems to be entirely satisfactory to the people throughout the State, and has precisely the provisions that are sought now to be embodied in the Constitution, and the amendment provides that the existing law shall not be modified or repealed unless any law made in substitution of it shall contain those provisions. In other words, it is intended to engraft into the Constitution of the State the policy that the casting of the votes and the counting of the ballots shall be under the supervision of the representatives of both parties, and not of one party only, and that that shall prevail generally throughout the State; and is simply crystallizing into the Constitution the essential element of the statute of 1894, so far as it applied to towns and the city of New York, and other statutes which apply to other cities of the State, Brooklyn and Buffalo, which had been enacted before that, in which the policy of bi-partisan election boards has been steadily maintained.

Mr. Dean — Mr. Chairman, this provision is wide enough in its scope to cover every school district election in the State. It has not been printed. Gentlemen in this Convention do not know anything about what it provides. It is impossible to find out anything about it. I move that the committe rise, report progress and ask leave to sit again.

Mr. A. H. Green — And that it be printed and retain its place.

The Chairman — That motion must be made in the Convention.

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

Mr. Ackerly — Mr. Chairman, this matter of bi-partisan boards throughout the State I am in favor of, and it seems that all the delegates here are in favor of it generally. Now, the question arises in regard to town meetings. It seems to me that this matter of town

meetings has not been, perhaps, fully explained, so that all the members understand it. The old rule was for the towns to meet at one place during the spring elections, at their town meetings, and that provision, I understand, now prevails in a majority of the towns. A few years ago the Legislature passed an act by which it was submitted to the vote of the people to have their elections in districts. Then the board of supervisors were given power to pass an act allowing them to have their elections in districts. Now, when they do have their elections in districts, members will understand that the same board of election officers act as such in the fall, and at all other elections. So that in the towns that voted to have their elections in districts, the same state of affairs exists. But if you extend it and do not except towns that did not vote for elections in districts, then the Legislature will have to make provision for those towns, and where they now have one board of election in the whole town, they may be divided up into districts, and, perhaps, four or five districts. That would meet with great opposition, and, perhaps, would be unnecessary. But I am in favor of this amendment, provided it excepts towns which do not now vote in election districts.

Mr. Vedder — Mr. Chairman, I suppose the object of this is to have all elections in cities and in every locality of the State provided with boards which conduct those elections non-partisan. I suppose those are the general elections that were intended to be provided for, in which all the State are interested, the elections for Governor, State officers, members of the Legislature and federal officers, and I would ask Mr. Lauterbach whether he could not make this apply only to those general elections, leaving charter elections in cities and elections in towns to be regulated as the Legislature might direct. For instance, what concern is it to that great city which sits at the gates of the sea, the city of New York, how a town meeting is carried on in the western part of the State, or in the great northern part of the State, whether this supervisor or that supervisor is elected, or this or that town clerk or constable or justice of the peace. Why not let the system that they have in towns be as it now is, or as the Legislature shall direct, for the reason that those elections do not affect the balance of the State? Now, when you say boards of election officers, that would mean the election officers of a town or any municipality, incorporated villages, at general elections or special elections, and so forth. Why not start in by amending the section so as to have it apply only in the first instance, to general elections which attract the whole people of the State, and let it go at that. I understand the gentleman from

Brooklyn has a scheme for the organization and regulation and government of cities. That takes in, as I understand it, the election boards in all of the cities of the State. That is provided for. Would it not be easier and better to have this non-partisanship apply to boards of election, in those elections only which affect the whole State, where the city of New York, for instance, is interested in what the town of Little Valley, where my friend Lincoln resides, shall do. I simply offer these as suggestions to the gentleman from New York (Mr. Lauterbach).

Mr. Lauterbach — Mr. Chairman, I understand there are two suggestions, the one to limit the operation of the proposed amendment to general elections. The answer to that is that the main object of those who are anxious to secure bi-partisanship at elections, is that fair elections shall certainly be conducted at local elections in the great cities, which is of as much, if not more, consequence to the inhabitants of the State than general elections. We desire to accomplish the results not only at general elections, but especially at local elections, therefore, the limitation in that respect would not be wise. As to the further suggestion that is proposed that it be left a matter for the Cities Committee to arrange as a part of their general scheme for the government of cities only, I desire to say this, that for many years while the inequality of the election boards throughout the country and in the city prevailed in the country in favor of one party and in the cities in favor of the other, that it seemed to be a general feeling that fair elections should be provided as far as possible not only in the cities, but also in the country, and that the same principle that obtained in an election in a city to a great degree was equally applicable to an election in the country to a lesser degree. Now, there are one or two cases which have been pointed out in which there can be no substantial grievance at the election, and in which there would be greater difficulty in endeavoring to create bi-partisan election boards than the wrong that is complained of creates. Therefore, it seems to be not unfair to make the exception as to town meetings in which all elections are held at a single polling place, and it seems to be not unfair, as suggested by Mr. Lincoln, that in incorporated villages, the methods of whose elections are prescribed by their charters, and whose elections are doubtless controlled by a board of trustees, should also be excepted from the rule. But I believe that what is fair for the city is fair for the country in respect to any effort to regulate the election and render it certain that it shall be honestly conducted. For that reason I should not desire to entertain an amendment that would cause a change in either respect, either as

to a limitation to local elections or as to a limitation to the effect of the provision to cities only.

Mr. Woodward — Mr. Chairman, there is one idea that suggests itself to my mind. Suppose you have four election inspectors, two from each party. A man comes up with a vote and is challenged, and the board stands two and two; who is to decide? How is he to get in his vote? Should there not be a majority on the election board, three to two, instead of two and two, so that it may be decided whether a man is a voter or not; and so of any other question? I only mention that as one question that may arise. Should not the majority party have the power to decide, and the responsibility be thrown upon the majority party? It is true you may get out a mandamus, days afterwards, to compel them to admit this voter, but it is too late for the election. It should be decided at the election, at the time the vote is offered. So of any other question that may arise before this election board, if they stand two and two, and they happen to differ as they stand with reference to parties. How can you get a decision?

Mr. J. Johnson — Replying to what has been stated by the gentleman from Cattaraugus (Mr. Vedder), in relation to the cities article and the article now before the committee, the Cities Committee deemed a provision for fair elections necessary to any scheme for city government. Another committee proceeding on parallel lines arrived at the same conclusion as to the whole State, and the two provisions came before this committee in slightly different language, at about the same time. As the article on cities was about to be presented, it was suggested that much objection to it would be obviated if the provision of the Committee on Suffrage was taken up first, so that what should apply to cities should apply to the whole State. This has been taken up, as I understand, in order to avoid the necessity of debating it as to a part of the State, that is, as to cities, and in order to avoid difficulty raised by the fact that it should be uniform throughout the State. In reference to the objection of the gentleman who has just spoken (Mr. Woodward), theoretically he states a difficulty. It is a difficulty, however, which a large and varied experience in many elections in cities all over the State, where there are a thousand polling places, I think, has shown does not exist in practice. At any rate, if it does exist, it avoids the much greater difficulty, not difficulty alone, but danger and menace, of the majority party having practically the control over the election; it avoids the much greater difficulty, and I think is necessary to any scheme of fair elections at this time in this State.

Mr. Moore — Mr. Chairman, I wanted to say in answer to Mr. Woodward's remarks to the Convention, that a board of inspectors very rarely divides on agreeing or disagreeing to allow a man to vote; that that is done by challenge, and then if they vote to sustain the challenge or not to sustain it, the man votes or not as he likes. If the challenge is sustained, he may swear in his vote, and there is no necessity of an agreement. Under the ballot law as it stands now, there are three inspectors. By some mistake in the original ballot act it was made five, but the Secretary of State, under an opinion from the Attorney-General, decided that three inspectors were sufficient, but that they must be divided among the two dominant political parties, according to a vote of a certain election previout to that act; and, therefore, the inspectors of election now — I speak of my own county especially — are two of the majority party and one of the other party; but they only agree on whether they shall sustain a challenge or not. No one's vote is disturbed, or is his registry disturbed, unless that vote is challenged, and in that respect only are these inspectors required to act.

Mr. Cookinham — Mr. Chairman, when this amendment was before the Committee on Suffrage it was formulated, as appears in general order No. 8. My recollection is that the committee were unanimous in its report upon this amendment. Since then, as a member of that committee, I have carefully examined the proposed amendment as reported by the committee, and also the one now offered as a substitute by Mr. Lauterbach, and I am very clearly of the opinion that any gentleman who investigates the subject will come to the conclusion that the substitute is a vast improvement upon the amendment as reported from the Committee on Suffrage. It seems to me that it removes doubt upon certain matters that appear in the proposed amendment reported from the committee. It seems to me clearly, if delegates will bear in mind the contested election cases that have been before this Convention, that they will see that the terrible abuses in Buffalo and at Gravesend came about and the frauds were perpetrated largely, if not entirely, because the election boards in those election districts, although theoretically Republican and Democratic, in reality were neither. They were simply the tools of certain persons who had conspired together to defeat the honest voters and to elect whom they saw fit. Now, I believe, Mr. Chairman and gentlemen, that if this amendment, as now proposed by Mr. Lauterbach, is adopted, it will be a step, and a very long step, in the direction of honest elections. The amendment as proposed now, and I will read it, that every delegate may hear the exact wording, seems to me

to cover the questions involved, to cover them completely, and to provide, when the Legislature shall have carried it out, almost a perfect system of elections. The amendment reads as follows: "All laws creating, regulating or affecting boards or officers charged with the duty of registering votes or of distributing ballots at the polls, or of receiving, recording or counting votes at elections, shall secure equal representation of the two political parties which at the general election preceding that for which such board or officers are to serve, cast the highest and the next highest number of votes. All such boards and officers shall be appointed or elected in such manner and upon the nomination of such representatives of such parties, respectively, as the Legislature directs. Existing laws upon this subject shall continue until the Legislature shall otherwise provide. This section shall not apply to town meetings in the several towns of the State."

Mr. Lauterbach —"In which the electors therein all vote in one polling place, and in village elections."

Mr. Cookinham — Mr. Chairman and gentlemen, it seems to me that there is but one desire in this Convention, and that is to provide for honest elections, and this amendment will do it, and I, therefore, hope Mr. Lauterbach will now move that the committee rise and report the amendment favorably to the Convention, and recommend its passage.

Mr. Dean — Mr. Chairman, let us be absolutely honest about this. If we are going to have this kind of thing, let us be honest about it. Now, we are conceding the fact that the majority cannot be trusted in the conduct of elections. Now, I propose this substitute: "Boards of election inspectors shall be elected or appointed as the Legislature by law may direct. The minority of the voters in every district shall be entitled to the majority of the election officials." That is the only logical conclusion of this contention that the majority cannot be trusted. I offer that as a substitute for this proposition.

The Chairman — The gentleman is out of order.

Mr. Dean — Do I understand the Chair to rule that some gentleman may offer a substitute for an original proposition, and in that manner shut out all possible amendments to this proposition?

The Chairman — No; the Chair simply ruled that you were out of order.

Mr. Dean — Then, Mr. Chairman, I will offer this as an amendment to the proposition.

The Chairman — There is one substitute before the committee now.

Mr. Dean — Then I offer this as an amendment to the substitute.

The Chairman — That is out of order. The question now is upon the substitute.

Mr. I. S. Johnson — Mr. Chairman I would like to inquire of the Chair whether the ruling will be that the substitute may be perfected or amended after ——

The Chairman — If such a question comes up, the Chair will then determine it.

Mr. Bowers — I move, Mr. Chairman, the adoption of the substitute, with leave to the committee to perfect it afterwards.

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

The Chairman — Motions to amend the substitute are now in order.

Mr. Dean — Mr. Chairman, I now offer the proposed substitute, and ask the Secretary to read it.

The Secretary read the substitute offered by Mr. Dean, in the following language: "Boards of election officers shall be elected or appointed as the Legislature by law may direct. The minority of the voters in every district shall be entitled to the majority of the election officials."

The Chairman put the question on the adoption of the substitute offered by Mr. Dean, and it was determined in the negative.

Mr Bowers — I move to amend the substitute, by inserting after the words "distribution of ballots," and before the words "at the polls," the words "to voters."

Mr. Lauterbach — I will accept that amendment, Mr. Chairman. I think it makes it a little more specific as to its application. I propose another amendment in the interests of those who have town elections in which the votes are all cast at one voting place, as well as those who have made the objection as to village elections, and move to amend by striking out the words "this act shall not apply to town elections," and substitute therefor the following: "This section shall not apply to town elections."

The Chairman — Does Mr. Bowers move an amendment?

Mr. Bowers — Yes, sir; it was accepted. I moved an amendment which was not opposed.

The Chairman — It cannot be accepted now.

The Chairman then stated again the amendment offered by Mr. Bowers, and the Secretary read the substitute, as amended by Mr. Bowers's proposition, in the words following: "All laws creating, regulating or affecting boards or officers charged with the duty of registering voters or of distributing ballots to voters at the poll," etc. The Chairman put the question on the adoption of the amendment offered by Mr. Bowers, and it was determined in the affirmative.

The Chairman — Mr. Lauterbach offers an amendment to the substitute, which will now be read.

The Secretary read the amendment, proposed in the language following.

Mr. Lauterbach moves to amend by striking out the last two lines ——

Mr. Hawley — What are the last two lines?

The Chairman —" This section shall not apply to town meetings."

The Secretary (resuming) — And substitutes the following: "This section shall not apply to town elections in the several towns of this State in which the electors therein shall vote at one polling place, or to village elections."

Mr. Kimmey — Mr. Chairman, I do not see any necessity for this amendment, for the reason that where the election is held for spring elections in election districts it is not a town meeting. The town meeting is held on the following day when the board of town officers meet as a board of town canvassers, and there the vote is canvassed and all the results which are to be passed upon by a *viva voce* vote are voted upon at that meeting. Therefore, I think there is no occasion for the amendment.

Mr. C. B. McLaughlin — Mr. Chairman, I would like to hear the amendment to the substitute read.

The Secretary again read the amendment offered by Mr. Lauterbach.

Mr. McLaughlin — Mr. Chairman, I would like to ask what the purpose is in excepting towns that do not all vote at one polling place; why there should be an exception made of such towns.

Mr. Lauterbach — Because, as Mr. Dickey has explained, the rule is different. They have inspectors of election other than the

justices of the peace, who preside in those special meetings which are all held at one polling place. I so understand it, Mr. Dickey?

Mr. Dickey — Yes, sir.

Mr. McLaughlin — Does the gentleman mean to say that the justices of the peace are any more honest or better prepared to supervise elections than the inspectors?

Mr. Lauterbach — No; I only mean that four justices of the peace are enough; I do not want eight.

Mr. McLaughlin — I do not think this exception ought to prevail here. I do not know of any reason why this should go into a constitutional provision; why a town having, for convenience, if you please, two, three or four polling places, should be made an exception in a constitutional provision.

Mr. Lincoln — Mr. Chairman, under the statute of 1893 there is provision made for holding town meetings for the election of town officers, by election districts in certain towns, and a vote is to be taken upon that question, whether the election shall be by election districts upon the application of twenty-five electors of the town. Now, if a town is divided into town election districts, the election inspectors are to be elected or appointed for those districts, but the canvass of votes for the town is still to be made by the same town board and the same officers that would canvass the vote if there was only one district, and in case there are two or more districts in a town voting at town meetings for town officers, then the town officers, the justices of the peace and the town clerk, who act as a canvassing board for the town, are required to meet on the day following the town meeting and canvass the votes from the several election districts in the town. Now, as I understand it, this amendment would require those justices of the peace to be partisan, if you please, or require some different arrangement from what the statute now requires.

Mr. Lauterbach — Mr. Chairman, for the gentleman's information, I will say that there is no effort to regulate the canvassing of votes after election. The law in that respect remains unaltered. This simply covers the case of registration, of the distribution of ballots and the voting as it occurs on election day. The matter of canvassing is, of course, unaffected. I do not mean that there shall be a second board of aldermen in the city of New York to perform the canvassing of votes. One is enough for the present. We have one board of aldermen that does canvassing; so that there is nothing in the constitutional amendment that refers to canvassing at all. It refers simply to registration ——

Mr. Lincoln — As originally introduced it does.

Mr. Lauterbach — No. Well, it does not now; it refers simply to registration.

Mr. Hamlin — I think, Mr. Chairman, that this matter can be much better settled out of the committee than in committee. I move, therefore, that we rise, report progress and ask leave to sit again.

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

Mr. Nichols — As I understand the provision of this substitute, it comprehends the canvassing of these votes.

Mr. Lauterbach — No.

Mr. Nichols — That is, as I understand it from the gentleman who moved the substitute.

Mr. Lauterbach — It is at elections. Mr. Chairman, it refers only to the conduct of the election at the election, and not to proceedings after election. It has no reference to canvassing.

Mr. Nichols — Well, what is the objection, may I ask Mr. Lauterbach, to making the exception apply to all town meetings, irrespective of whether they be held by election districts or in towns?

Mr. Abbott — Mr. Chairman, is an amendment to the amendment in order?

The Chairman — An amendment to the substitute is in order.

Mr. Abbott — An amendment to the amendment offered by Mr. Lauterbach?

The Chairman — There is one amendment now before the House, the amendment of Mr. Lauterbach.

Mr. Abbott — Then I desire to offer another, an amendment to the amendment.

The Chairman — It may be done.

Mr. Abbott — I am opposed to this exception of towns having more than one election district, and I propose that the exception be, "except town or village elections." Strike out the provision in regard to separate districts.

The Secretary read the proposed amendment to the amendment, offered by Mr. Abbott.

Mr. Lauterbach — Mr Chairman, if it be in order I accept the amendment, because that certainly is broad and general enough and covers the question and leaves the matter no longer in doubt,

and to prevent further discussion, I will accept Judge Abbott's amendment.

The Chairman — The gentleman from New York cannot accept the amendment; it must be voted upon.

The Secretary read again Mr. Abbott's amendment, as follows:

Mr. Abbott moves to amend the amendment of Mr. Lauterbach so that it shall read as follows: "This section shall not apply to town or village elections."

Mr. Bowers — What is the objection to making it municipal generally?

Mr. Abbott — No ——

Mr. Bowers — What is the objection?

The Chairman — The Chair has not recognized anybody yet. There are so many up that he cannot see them all at once.

Mr. M. E. Lewis — I only desire to suggest, Mr. Chairman, that possibly a better wording of that amendment will be: "This section shall not apply to elections for town or village officers." I do not think the words "town elections" appear in the Constitution, and I make the suggestion that "town or village officers" would be a more proper term, if Mr. Abbott sees fit to accept that suggestion.

Mr. Abbott — I accept the amendment.

Mr. Ackerly — Mr. Chairman, I think a supervisor, although elected by the town, is considered a county officer. That would not do. They are elected at town elections.

Mr. Carter — Mr. Chairman, I think we do not want to shut out village appropriations. That certainly would not be advisable. I do not think that would do. I think Mr. Abbott's wording is much preferable.

Mr. Moore — Mr. Chairman, may I ask through you, a question of Mr. Abbott, the mover of this amendment? Would it not be better to say that this shall not apply to town meetings? That is the term used in the Constitution and in the law "town meetings," not town elections.

Mr. Abbott — The term does not apply to villages; it does not say village meetings. I think "town" means the same thing, town or village elections.

Mr. Moore — You should say this should not apply to town meetings and village charter elections; then you have the exact wording of the law and of the Constitution.

Mr. Abbott — We are not making the law, Mr. Chairman.

Mr. O. A. Fuller — Mr. Chairman, if this amendment is for giving us purer elections, although I come from the rural districts, town meetings and village elections ought not to be excepted, and for this reason: we have in our town about fourteen hundred voters. It is very closely divided as to politics. The town board is wholly upon one side, and I remember that, about two years ago, first one candidate was declared by that board elected by one vote. A recount was had, and the other candidate was declared elected by two votes. Now, that applies equally to our village elections. The trustees, who count the votes and receive the ballots, are for renomination generally. They count and receive their own ballots. That is also true of the justices of the peace who sit as inspectors of election at our town meetings. It seems to me that a provision could be made for towns where one election for town meeting is held, as in my town. We have, for general elections, four districts; at our town election, only one district. It seems as if it could be provided that the inspectors of election who reside in the district where we hold our town elections should preside at our town elections. As I said before, Mr Chairman, if this amendment is to give us pure elections, we need it in the towns; we need it at our town elections, and we need it at our village elections as much, and more, than we need it at our general elections; and I am sorry, for one, that the town elections and the village elections should be excepted from this amendment.

Mr. Bowers — May I ask the gentleman, through the Chair, who introduced that amendment, its object? Is there any reason for it?

Mr. Abbott — Mr. Chairman, I come from a county which is noted for its non-partisanship ——

The Chairman — What county? (Laughter.)

Mr. Abbott — The county of St. Lawrence. Perhaps I am not qualified to speak on this question. Every town of that county is Republican at the general election. We very frequently elect Democratic supervisors, and we have all the machinery of the election, the town board, always in existence, and the proposition without this exception would involve the election of another set of officials to act in that capacity. There is no partisanship in our town meetings and at our village elections, and I do not see, of course, even if there were, with the village and town boards constituted as they are, the election officers composed of the best men of the town, the justices and the town clerks, the village clerk, and with the watchers of both parties to superintend the election, there can be possibility of any fraud in the town meetings, and there

is no fraud; and for that reason, and in the interests of economy and the saving of expense and the multiplying of election boards, I offer this proposition.

Mr. Bowers — Mr. Chairman, I suppose that the only justification for this amendment is that the State at large is not interested in the village or the town elections. That may be a good reason for exempting them from the provisions of the proposed act, but it is somewhat difficult to perceive what interest the gentleman from St. Lawrence has in the municipal elections in the city of Brooklyn; and it is somewhat difficult to perceive why the cities article should provide with such great care that the cities of the State should have bi-partisan boards, and yet the general principle be announced here that while we apply it to the whole State, we shall not apply it to towns and villages of the country. I think the gentleman from St. Lawrence is right in his proposition, unless it is right to deal with the whole State on the theory that everywhere fraud or wrong is being done. If that is conceded, which seems to be the view of very many members of this Convention, why then of course we ought to restrain gentlemen in the country from voting in their ordinary way. To my mind the general theory of this is that while we protect the whole State on every question which applies to the whole State, there is no necessity for making it apply to the city elections at Ogdensburg, or a village election at any village or town election in any town; and I should suppose that the same principle would apply to the great cities of the State. Perhaps Mr. Johnson would inform us why the distinction should exist.

Mr. Abbott — Mr. Chairman, in answer to the gentleman from New York, I will say that I am not very familiar with the provisions of the cities article, which is not, however, open for discussion in this committee, as I understand it; but there is quite a distinction between the boards as constituted in the country and boards constituted in the cities. In the cities, as I understand it, they are appointed, while in the country they are elected by the majority vote of the towns and villages, and, of course, they represent entirely local matters; and it seems to be that the exception should be made.

Mr. Lauterbach — Mr. Chairman, I desire to ask the gentleman a question. Is it not a fact that under the statute of 1894 the present provision is that in town meetings where the election inspectors are elected, two shall be appointed by the opposite political faith?

Mr. Abbott — The act does not apply to town meetings and vil-

lage elections. It applies simply to the general State and county elections. The town meeting board is composed of the justices of the peace and town clerks of the towns.

Mr. Lauterbach — Mr. Chairman, then it seems to me that Mr. Bowers's objection is entirely met, so far as town and village elections are concerned, which affect simply the town and village business and nothing else, the exception that Judge Abbott speaks of might be made; that in respect of the conduct of elections which affect the people of the State generally, the present law, the statute of 1894, provides for bi-partisanship as well in towns and villages as it does elsewhere, and under these circumstances it appears to me that the amendment of Judge Abbott might prevail without at all endangering the principle which govern the bill.

Mr. O. A. Fuller — Mr. Chairman, I would like to ask Mr. Abbott one question. That is, if at our town elections, we do not have more partisanship in the election of our town officers than we have at our general elections?

Mr. Abbott — Mr. Chairman, in answer to the gentleman, I will say that that is not the fact in St. Lawrence county; of course, I cannot speak for Allegany.

Mr. Fuller — I know that it is true in our town, and wherever I have had any experience, and as I said before, if there is a principle in this amendment that will conduce to purer elections, I hope it will apply to the whole State and to all our elections.

Mr. Cookinham — Mr. Chairman, it seems to me that it should read, "This section shall not apply to town meetings or to village elections." It frequently occurs that a town meeting is called for the sole purpose of appropriating money, and it would not be an election technically speaking. It would be a meeting, and it seems to me that a better expression would be "town meetings or to village elections." I move, therefore, as an amendment ——

The Chairman — There are two amendments to the substitute now proposed. The question is upon Mr. Abbott's amendment to the amendment of Mr. Lauterbach to the substitute.

Mr. Kimmey — Mr. Chairman, I hope that Mr. Cookinham's amendment may prevail, for the reason that if you except the town meetings or town elections ——

The Chairman — The Chair will inform the gentleman from Albany that Mr. Cookinham's amendment is not before the House.

Mr. Abbott — Mr. Chairman, is it in order to accept the proposition? If it is within my power to accept the amendment of

Mr. Cookinham, I am willing to do so, and make it "town meetings or to village elections." The term "meeting" applies evidently to all elections of town officers as well as to other meetings.

The Chairman — Mr. Abbott having expressed his desire to change his proposed amendment, it will be changed, no one objecting.

The Secretary then read the amendment as modified by the suggestion of Mr. Cookinham and accepted, in the language following: "This section shall not apply to town meetings or village elections."

The Chairman put the question on the amendment as read, of Mr. Abbott, to the amendment of Mr. Lauterbach to the substitute, and it was determined in the affirmative.

The Chairman — The question now occurs upon the amendment of Mr. Lauterbach, as amended by Mr. Abbott's amendment. The Secretary will first read the section as it now stands.

The Secretary read the section in the language following:

"This section shall not apply to town meetings or to village elections."

Mr. Dean — Mr. Chairman, I desire to offer the following amendment.

The Secretary read: Mr. Dean moves to amend as follows: "This section shall not apply to the election of school district officers."

Mr. Dean — Mr. Chairman, this proposition is broad enough in its provisions to cover the election of school officers in all of the school districts of this State. They are purely non-partisan elections and have no reference to politics in any way, shape or manner. It is absolutely absurd to go on here making a constitutional provision requiring bi-partisan elections boards for school elections.

The Chairman — The question is upon Mr. Dean's amendment, which is to be added to the amendment as it now stands.

The Secretary again read the amendment offered by Mr. Dean.

The Chairman — That is correct, Mr. Dean? To be added at the end of the section?

Mr. Dean — Yes, sir.

The Chairman put the question on the adoption of the amendment offered by Mr. Dean, and it was determined in the negative.

The Chairman then put the question on the adoption of the

amendment offered by Mr. Lauterbach, as amended, and it was determined in the affirmative.

Mr. Lauterbach — Mr. Chairman. I move that the committee now rise and report favorably upon the proposition as amended, and recommend its adoption by the Convention.

Mr. Bowers — Mr. Chairman, I call for a reading of it before we take that vote.

The Secretary read the amendment as follows:

"Sec. —. All laws creating, regulating or affecting boards or officers charged with the duty of registering voters or of distributing ballots to voters at the polls, or of receiving, recording or counting votes at elections, shall secure equal representation of the two political parties which, at the general election proceding that for which such boards or officers are to serve, cast the highest and the next highest number of votes. All such boards and officers shall be appointed or elected in such manner and upon the nomination of such representative of said parties, respectively, as the Legislature may direct. Existing laws on this subject shall continue until the legislators shall otherwise provide. This section shall not apply to town meetings or to village elections."

Mr. Gilbert — Mr. Chairman, I had not intended to participate in this debate, but there are one or two considerations that I want to call attention to. First, this exception would seem to imply that the principle of non-partisan or bi-partisan supervision of elections should not apply to village and town elections. Now, it cannot be that anybody wants to exclude the operation of this principle from those local elections. I do not care to enter at large upon the merits of this at all, but it does seem to me that the importance of this measure is sufficient, and that the uncertainty in regard to what ought to be done and in regard to the effect of what is proposed to be done, are such as to make it in a high degree desirable that we should see this proposition in print and have an opportunity to examine it carefully before finally acting upon it. As was suggested by one gentleman who wanted to have this course taken, we have provided that the Legislature shall not pass bills without having them three days in print before the members. Now, I trust it will meet with the approval of all concerned that this take such a course that it may be printed and be upon our files where we can examine it. There is no factious opposition; there is no opposition; simply a desire to get it right, to have the principle go wherever it ought to go and in the way that it ought to go.

The Chairman — The Chair understands that it will be printed

after it comes from the Committee on Revision, and will be upon the files for some days before it is reached.

Mr. Choate — Mr. Chairman, may I ask a question in the same view in which Mr. Gilbert has presented his suggestion? The last clause of this struck my attention when it was read by the Secretary, and I have not the knowledge that enables me to judge whether that exclusion provided for in the last clause covers all elections that may take place in towns and villages; and if it is so intended, why have a provision with an excepting clause, and why not say in the principle proposition "in cities," if that is all it is intended to apply to?

Mr. Lauterbach — Mr. Chairman, I understand that that would not cover the object. I understand that at the general elections in towns, the existing law of 1894 has perfect application, and that this exception is simply intended to give an exception as to town meetings and village elections affecting local interest. In point of fact the existing law of 1894 provides absolutely for bi-partisanship, not only in city elections but in town elections, and provides that the presiding officer at a town meeting shall appoint two inspectors who shall be of the opposite party to those who have been elected at the same town meeting. That provides for general elections and ought not to be militated against in any way, and will be preserved by this amendment. As I understand it at town meetings and village elections the exception does not apply here.

Mr. Choate — The exception of villages or village elections is a somewhat equivocal phrase and might cover everything that is voted on at the village elections.

The Secretary again read the clause in question as follows: "This section shall not apply to town meetings or to village elections."

Mr. Choate — Now, my question is, whether, when the people of a village vote for electors for president or for State officers, it is not a village election. That is the question.

Mr. Bowers — Mr. Chairman, I move to strike out the following words: "All such boards and officers shall be appointed or elected in such manner and upon the nomination of such representative of said parties respectively as the Legislature may direct." It is absolutely unnecessary to have that clause in the section.

The Chairman — The gentleman from New York is out of order. No motion can be made while the present motion of Mr. Lauterbach is pending.

Mr. Bowers — Well, this motion is debatable. I hope the motion will not prevail then, because I failed to move to strike out that

particular clause, and the reason I move to strike it out is this, it is unnecessary, as it is purely legislation.

Mr. Lauterbach — I will withdraw my motion at this juncture, so that Mr. Bowers may make his motion.

Mr. Bowers — If that clause remains in there it will be within the power of the Legislature to appoint the inspectors from the whole State, I suppose, by name if they want to. I presume all that we intend is that at least the authorities of each county are to do that work, and it seems to me that we had better leave the provisions all just as they are and let the Legislature legislate as they may deem best to carry out the spirit of the act, and it is wholly unnecessary for us to go on and put this in, as it may be used in a way to do a great deal of harm, and certainly bring no benefit.

The Chairman — Does Mr. Bowers offer an amendment?

Mr. Bowers — Yes; I move to strike out: "All such boards and officers shall be appointed or elected in such manner and upon the nomination of such representative of said parties, respectively, as the Legislature may direct."

Mr. Nicoll — I would like to offer another amendment.

The Secretary read the amendment proposed by Mr. Bowers, striking out the words as stated.

Mr. Lauterbach — As to that amendment, I desire to oppose it for this reason. So far as the words, "all such boards or officers shall be appointed or elected in such manner as the Legislature may direct," it appears to me there can be no objection that the Legislature, to whom is confided the province of making laws governing and regulating these boards, can determine the manner — which is, perhaps, a repetition of the idea, but there certainly is nothing objectionable to it. As to the other sentence, "and upon the nomination of such representative of said parties, respectively, as the Legislature may direct," I believe that to be in entire accord with the spirit that prevails of recognizing the fact that there is and always will be a majority and minority party in the State, and that the parties have their arrangements, and that the Legislature may continue to do, as it has done in 1894, not only provide for bi-partisanship by permitting a partisan to designate the members of the board who he believes are representatives of the other party, but to make such laws as will enable the party itself, as such, to be consulted in respect of the nomination of the incumbents of the office. In other words, that a Democratic Governor or a Democratic mayor shall not be at liberty to say, "I look upon A and B as being Republicans." His notion of what a true Republican may be may be a very false one,

and the idea is that the Legislature may do, as they did at the last session, provide for a method by which the nomination of the opposing inspector of the minority party may not be at the whim and caprice of an adversary, but may be at the suggestion of the party itself; a nomination not made for the party but by the party, else the whole thing is useless, and I think there can be no gainsaying this proposition. The man does not exist who is so thoroughly to be trusted that he can say, that he should say, that he should be permitted to say, who of his adversaries shall be the ones to be selected in determining the representative character which they bear toward their party. That should be done if possible as it has been done successfully by the party itself; and I believe there should be engrafted in the Constitution, if we are to recognize the question at all of the existence of parties — and it appears that the evolution of affairs from the beginning of the creation of this State down to the present time has been such as to render it absolutely necessary that the existence of majority and minority parties should be recognized — that if that should be done and we make any provision in this respect, the provision should be such as to enable the party itself to make the designation for themselves and not have it made for them.

Mr. Gilbert — Mr. Chairman, I made the suggestion a few moments ago that it seemed to me that this matter ought to be upon our files in print before we finally act upon it. The suggestion was made in reply that after the Convention shall have put it upon the order of third reading it can then be amended. Now, I desire information upon that point. It has been stated authoritatively in this Convention that there can be no amendments after a proposition is ordered to a third reading. Now, I would like to be instructed upon that point.

The Chairman — Rule 40 provides that on the third reading of a constitutional amendment, no amendment shall be in order without unanimous consent. It may be recommitted again.

Mr. Gilbert — Yes; but if it is going to be recommitted, why not let it stay there? Mr. Chairman, if it is in order, I move that the committee now rise and report progress and ask leave to sit again, for the purpose, and for the sole purpose, of enabling us to see it on our desks in print before we finally act upon it. And at the suggestion of my friend, Mr. Green, I would add, and that it be printed.

The Chairman — That part of the motion cannot be made here.

Mr. Gilbert — No, that is true; it cannot be made here.

The Chairman then put the question on the motion of Mr. Gilbert, that the committee rise, report progress and ask leave to sit again, and it was determined in the negative.

Mr. Lauterbach — I now renew my motion that I withdrew, that the committee rise, report favorably and ask the adoption of the amendment.

The Chairman — There is an amendment before the House. Mr. Bowers moves to strike out the words "all such boards of officers shall be appointed or elected in such manner and upon the nomination of such representative of said parties respectively as the Legislature may direct."

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

The Chairman — The question is now on Mr. Lauterbach's motion.

Mr. Abbott — Mr. Chairman, at the suggestion of Mr. Choate, the President, I think it would be well to insert before the word "elections," and after the word "village," the word "charter," making it read "village charter elections," to save any question of construction hereafter. I ask that that be done.

The Chairman — The section will then read, "This section not apply to town meetings or to village charter elections."

Mr. Dean — Mr. Chairman, I rise to a point of order.

The Chairman — Mr. Dean will state his point of order.

Mr. Dean — My point of order is that the proposed amendment is not germane to the proposition of Mr. Lauterbach.

The Chairman — The point of order is not well taken.

Mr. Hotchkiss — Before that vote is put, I want to state that although I have attempted to keep watch ——

Mr. Abbott — I withdraw the proposition made by me.

Mr. Hotchkiss — I renew the motion for the purpose of speaking. I do not know what you have got through or where you are ——

The Chairman — The Chair will state. The question is upon the motion of Mr. Lauterbach.

Mr. Hotchkiss — I renewed the motion for the purpose of speaking — the motion made by the gentleman ——

The Chairman — State your motion.

Mr. Hotchkiss — I do not know what his motion was. I repeat it simply for the purpose of addressing the Chair. I find that

chapter 233 of the Laws of 1893, relating to elections, provides that there shall be a ballot clerk and a poll clerk of each of the two greater parties in each election district in the State. From these amendments which have been offered here, exempting certain classes of elections, I am left entirely in the dark as to whether at those elections which are now covered by the statute of 1893, the proposed constitutional amendment will be operative or not. Under those circumstances, I am certainly not in a condition to pass any judgment upon the amendment upon which the vote is to be taken. I withdraw the amendment which I offered.

Mr. A. H. Green — I understand that at the suggestion of the President, the word "charter" was proposed to be put in with regard to villages. I would like to know what distinction there is ——

The Chairman — That amendment was withdrawn.

Mr. Green — The amendment may have been withdrawn, and yet there may have been very great merit in it. I would like to know what merit there is in it.

Mr. Lauterbach — Mr. Lincoln did not think there was much.

The Chairman — It is not now before the House. The question is on Mr. Lauterbach's motion that the committee rise, report this amendment favorably to the Convention and recommend its passage.

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

The committee thereupon rose and President Choate resumed the Chair.

Mr. C. H. Truax — Mr. President, the Committee of the Whole have had under consideration proposed constitutional amendment printed No. 317, entitled, "To amend article 2, relative to suffrage," have gone through with the same, have made some amendments thereto and instructed the chairman to report the same to the Convention, and recommend its passage.

The President — The question is upon agreeing with the report of the Committee of the Whole.

Mr. Dean — Mr. President, I move that we disagree with the report of the Committee of the Whole, and that the proposed amendment be printed and referred back to the Committee of the Whole.

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

The President — The question is on agreeing with the report of the committee.

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 and take its place on the order of third reading.

Mr. Davenport — Mr. President, in behalf of the minority of the Cities Committee, I beg leave to submit the minority report. I may say that Mr. Fitzgerald, of New York, concurs in the report, but has not been able to reach here and sign it.

The President — This minority report will be printed and placed on the desks of the members, and anything in it may be moved by way of amendment to the majority report in Committee of the Whole.

Mr. Jenks — Mr. President, I ask leave of absence for Mr. Chauncey S. Truax, of New York. Mr. Truax has been suffering from an attack of rheumatism, and he has been advised to seek a change of air for a week. I ask that he be granted leave of absence for the balance of the week.

The President put the question on excusing Mr. Truax, and it was determined in the affirmative.

Mr. M. E. Lewis — Mr. President, Mr. E. A. Brown asks leave of absence for the day.

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

Mr. Hamlin — Mr. President, I have a dispatch from Mr. O'Brien, who is unavoidably detained at home to-day, and asks to be excused for the day.

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

Mr. Jesse Johnson — Mr. President, I would like to have the minority report of the Committee on Cities read. The majority of the committee have not been furnished with any copy of it.

The President — The Secretary will read, before we go into Committee of the Whole, the report of the minority of the Cities Committee.

The Secretary read the minority report as follows:

Minority report of a minority of the Committee on Cities, dissenting from the proposed constitutional amendment (Int. No. 369, P. No. 451, G. O. 13), to provide home rule for cities.

A minority of the Committee on Cities, dissenting from the proposed amendment (Int. No. 369, General Order No. 13, printed No. 451), reported by a majority of said committee, do respectfully submit the following as a minority report and substitute:

ARTICLE —.

All cities are classified according to the last State enumeration, as such enumeration shall from time to time be made, as follows:

The first class includes all cities having a population of two hundred and fifty thousand or more; the second class includes all cities having a population of less than two hundred and fifty thousand, and of more than fifty thousand; the third class includes all other cities.

The Legislature shall enact general laws for the government of cities, so that all cities of the same class shall possess like powers and be subject to like restrictions. Such laws shall include in their provisions that the electors of every city shall elect a mayor vested with the chief executive authority, and a common council vested with sole legislative authority to legislate for all city purposes, including the following subjects: Streets, parks, public places, docks, markets, water-works, sewers, public buildings and property, the character and structure of buildings as to safety and security, salaries of all officers and employes paid out of the city moneys, ward boundaries, local assessments, finances, including the issue of municipal securities and obligations, the raising and the appropriation of moneys for city government and public purposes lawfully charged upon the city, and such other matters as are the concerns of the local government of cities. The Legislature shall not enact any law relating to cities as to any of the subjects enumerated in this section except as hereinafter provided.

The Legislature may enact general laws for each class of cities relative to the subjects which, though concerning the State at large and the people thereof generally, are entrusted or to be entrusted to the administration of cities or any officer thereof, or any local officer elected by the electors or appointed by the authorities thereof.

All heads of departments, city officers and employes, including members of the police and fire forces and all officers and employes, whose powers and duties are limited to the territory of the city or to

a part thereof, shall be chosen by the electors or appointed by the authorities thereof.

The Governor, after notice and a hearing upon written charges, may, for cause, remove the mayor of any city.

The Legislature shall not pass special or local laws for the government of any city, except with the approval of the mayor of the city affected.

No city shall hereafter be incorporated by special law, but the Legislature shall enact general laws for incorporating cities. Cities heretofore incorporated may become organized under such general laws whenever the majority of the electors voting thereon at any general or special election shall vote in favor thereof, and such general laws shall make provisions whereby the questions of the organization of any such city under the general laws applicable thereto may, from time to time, be submitted to the electors therein.

Nothing in this article contained shall limit or affect the power of the Legislature to consolidate contiguous cities, but no such law shall be enacted until a majority of the electors of each city to be affected have voted in favor of such consolidation.

August 25, 1894.

WM. B. DAVENPORT.
A. BLEECKER BANKS.
EDWIN C. ROWLEY.

I concur in the above, and I would gladly favor the further extension of the principle of home rule, to abolish all State interference with the local affairs of cities, and to give to every city the power to construe and to amend its own charter by the votes of its citizens.

W. McM. SPEER.

The President — It requires a motion to go into Committee of the Whole on this cities business, I suppose.

Mr. Bowers — Mr. President, has a motion been made to go into Committee of the Whole on the cities articles?

The President — Not yet; we are waiting for it.

Mr. Jesse Johnson — I move that we go into Committee of the Whole.

Mr. Bowers — Mr. President, before the motion is put, I desire to say a word.

Mr. Johnson — I made the motion, but I understood the matter was a special order, and a motion to go into Committee of the Whole was not necessary.

Mr. Bowers — Mr. President, I understand that one of the sections of this bill provides for separate elections in cities; not for separate spring elections, but for separate annual elections.

Mr. Jesse Johnson — I will show that when the article is reached, the gentleman consenting that we will pass it and hold it where it is without prejudice. If that is agreed to, we will ask that it be passed until the article that we have been considering this morning is disposed of, until the matter which has been discussed this morning is disposed of.

Mr. Bowers — If the gentleman will allow me to finish he will understand better. There is a provision in this article for separate elections, not to be held in the spring of the year but in odd-numbered years, and that is dependent upon the report of another committee, the Committee on Revision and Engrossment. It also depends upon the proposition in reference to the term of the Governor and the term of the members of the Legislature. I do not see any use of considering this section until the report comes in on that proposition. I understand it is not in. We will have no remedy in the Committee of the Whole, and I want to offer a resolution before we go into Committee of the Whole that these sections in reference to separate elections be deferred until this committee reports.

The President — The Chair is of the opinion that the motion is out of order, and will explain his view of it. This matter is already in Committee of the Whole and the special order of the House to proceed at this time. The object sought to be obtained by Mr. Bowers can be obtained in this way; after that matter has been considered that is contained in the first article of the report of this committee, it will be quite in order for the committee to rise and report progress and ask leave to sit again for the purpose of having an independent disposition made of that section and then go back into Committee of the Whole on the rest. That is entirely a possibility under the rule.

The Convention under the special order already made will go into Committee of the Whole on the report of the Cities Committee. Mr. I. S. Johnson will please take the chair.

Mr. I. S. Johnson in the chair.

Mr. J. Johnson — Mr. Chairman, I understand that under the rules section 1 of the proposed article is now the topic for immediate consideration. I ask the Secretary to read it.

The Chairman — The Secretary will read section one.

The Secretary read section 1, as follows:

"Section 1. All elections, except to fill vacancies, of city officers, including supervisors and judicial officers of inferior or local jurisdiction, elected in any city or part of a city, and of county officers elected in the counties of New York and Kings, and in all counties whose boundaries are the same as those of a city, shall be on the first 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, whose successors have not then been elected, which, except as herein provided, would expire in 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; the terms of office of all such officers which, except as herein provided, would 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."

Mr. J. Johnson — Mr. Chairman, this section, with the exception of a few verbal changes, is the same section which was before the committee in the previous article and numbered section 2. Its provisions have been so fully discussed that the committee do not, at this time, desire to say anything further in its behalf.

Mr. Jacobs — Mr. Chairman, it is with great reluctance that I propose to offer any opposition to the adoption of this section.

The Chairman — There is no motion before the House.

Mr. Jacobs — I understand Mr. Johnson moved the adoption of the first section, did you not?

Mr. Johnson — Yes, sir.

The Chairman — I do not understand that is a proper motion.

Mr. Holls — I make a motion that the committee report section 1 favorably.

Mr. Jacobs — Then I will speak to that motion.

The Chairman — The Chair understands the entire article must be reported and not by sections.

Mr. Johnson — I move that we agree to section 1.

Mr. Choate — Mr. Chairman, it seems to me that the ruling of the Chair is a necessary one, and there can be no escape from that. But I had in mind this (and I make the suggestion with a good deal of diffidence and upon grounds which I might now state). I believe that the principle of this first section is generally approved, not only

by the Convention, but by those whom we represent — by the communities — and that it receives that approval without regard to any political or partisan consideration whatever. By many it is regarded as in itself the most effective step that can be taken to secure the independence of municipal affairs, so that they shall be administered like the affairs of other corporations, like business matters, which concern chiefly and only the people whose money is spent and whose comfort and convenience is promoted in them.

Now, the other sections are wholly independent of this matter. They involve questions which may excite, and I think they will excite, great controversy in this body. They are in a measure experimental from this or that point of view. They will necessarily be carefully considered with regard to their political consequences, and it would be most unfortunate that a measure upon which all are agreed should be involved in controversy which may by a possibility involve the defeat of that as well as all the rest, although I do not think so. I think this Convention, by a large majority, will be prepared to come to some definite conclusion on the remaining sections of the article; but in this it is a wholly different matter. It would, in my judgment, be a misfortune if we should have to go to the people with the cities article as a party measure, and I hope for one that we shall not. But where there is something that both parties and all men agree to, in substance (I do not say that this first section is now perfect in form, because the second paragraph of it requires a very considerable amount of intellect to carry, and yet is may be the best form to express the purpose that all have in view.) My hope would be that the Convention, by some means, would be able to extricate this section, or the object of this section, from the controversy that the rest involves, and my way of doing it would be this (and I suggest it with very great difference and with deference to the parliamentarians who are on the floor and can advise us about it.) It seems to me that when this first section is discussed and has been perfected (as things are perfected in the Committee of the Whole), I might rise, or somebody else might rise, and move to report progress and ask leave to sit again. The matter would be then in Convention, and open to a motion in Convention that this first article as perfected be recommitted or be committed by itself to the Committee on Cities, with instructions to report it as a distinct and independent constitutional amendment, and then go back into the Committee of the Whole upon the rest. That is probably the view that Mr. Brown and Mr. Bowers had, and if it is practicable I should like to see this first section considered and perfected with that purpose in mind.

Mr. Jacobs — Mr. Chairman, if I am in order, I would say that while I may approve of the objects which were intended to be consummated by this section, I do not believe ——

The Chairman — Does Mr. Jacobs make a motion?

Mr. Jacobs — No, sir. I am talking to a question. I move to strike out the first section.

Mr. Johnson — Mr. Chairman, I submit the motion is unnecessary and should not be made for the purpose of discussing this question.

Mr. Jacobs — Mr. Chairman, I do not believe that the object which is intended will be consummated by any such provision. The idea contained in that provision, as I understand it, is that people will be aroused to some sort of civic pride by having separate elections and will turn out in such large numbers to vote. I do not believe they will turn out in any such numbers, or even equal the numbers, that turn out in general elections. We know as a fact in general elections — in presidential elections, where we have an exciting canvass for six months, with all the means to arouse enthusiasm and induce men to register and vote, that even then, on election day, there is at least six per cent of those who are registered who never take the trouble to vote. It is undoubtedly a fact that there is another six per cent who do not take the trouble to register. I have no doubt that at least twelve per cent of the men qualified to vote at any election do not vote at all.

It is a great loss, because those men are really substantial men. Those men who have nothing at stake always vote. But the men of substance, the taxpayers, cannot afford to lose the time, and do not vote; but the working people always vote. They never lose any time.

Now, if my recollection is correct, I think we have had in these cities separate elections that were held in the spring, separate, however, from the general elections, and because of the very fact which I am now pointing out to you, the non-interest taken by a large body of voters, they proved failures. The men that did not vote were the men who ought to have voted, and on account of this miscarriage it was changed, so that the elections would be concurrent with the general elections, in the hope that this lack of interest would disappear and a large vote would be polled for good government. I do not believe that any more men will be brought out at a separate election than will be brought out at a general election. I do not believe as many will be brought out. Now, let us take a general election, where men of large means or

large business interests have at stake not a few dollars, more or less, of taxation, but their business at stake. If twelve per cent of these men will not come out to vote when they have almost all they have at stake, do you think they will come out to vote at any little municipal election for the purpose of saving five dollars or so of taxes or to keep the tax rate down? The thing is absurd. The thing that appeals to them most, all their business interests does not affect them to that extent. Twelve per cent of those who ought to vote and are qualified to vote for good government do not vote. I think that a larger per cent will absent themselves from the polls at an independent election.

Now, I do not believe that all the people, and everybody, as the President suggests, is in favor of this. I have heard no such expression as that. Of course, I have heard a noisy clique and a noisy clack. I have heard them clamor. Why, they would clamor for the repeal of the ten commandments if everybody was in favor of them. They make a noise. They write to the newspapers; they write to the magazines; they swell themselves with their undue importance. They are men who have new ideas to whom they ways of the fathers are not good enough; who want to improve upon the whole scheme of divine Providence; and if you will only give them a lead pencil and a pad of paper they will reconstruct a perfect paradise for all good people. They will build a gingerbread heaven. I don't believe in such people. They are shams. They don't know the world they live in. They are legislating for a world that never did exist, and I hope to God never will exist. Now, I believe in real men, men who have passions and who have ambitions; living forces and not mock-orange men. Now, are not those men coming to us every day with their nostrums for all the political and social ills which exist mainly in their imaginations. We have lived now for more than six thousand years in our boorish and clownish way without any of those new-fangled notions. If there is anything that I have come altogether to hate it is this word reform; not because of the reformation itself, but because of the great abuse placed upon that word. To most of the new-fangled men it means a change for the sake of change.

Now, one of our parties (we might as well speak now of parties, because we are dealing with broad politics), one of our parties is simply a national party. It votes once every four years, and I presume you all know which that party is. The other party is a local party. It never misses an election. It is present at all the local meetings and is out in force at all the local elections no matter

for what office, and I have no doubt you know what that party is. It is composed largely of men in our large cities who abroad were nobodies, simply drudges. They come here and are placed upon an equality with everybody else and they take pride in it, and they never miss an opportunity to assert the sovereignity of their will. It is the *dilettante* American who believes it is vulgar to go to an election. It is the man who is above the vulgar crowd; who really cannot stomach it. There was a gentleman before the committee the other day who told them that they always held an election down his way next to a stable for the purpose of disgusting the high-toned, broadcloth gentlemen from attending the election and leaving it to the common, plain people.

Now, sir, I do not think anything of this kind ought to be put into the Constitution. It is a mere experiment. If we were Members of Assembly called upon to vote for a bill permitting this thing as purely and simply an experiment, a bill which could be repealed as soon as proven defective, I would agree to it; but to put it into the Constitution and have it there permanently, if it goes wrong why that would be very embarrassing and awkward. Now, I speak from my experience. I know the difficulties in a large city of getting what you call the best people, who take no interest in their government, out to vote at an election, when there is no interest in it for them. My district (and I think I may speak of it) is practically divided in two. Through the center of it runs a main avenue. Below it and near the river is the laboring man's district. Above it is the district of the very respectable people. The one thing that they mainly contribute to life is their intense respectability, and it is of a very high order. They survey the world from over high shirt collars and sometimes through their plated eye glasses, and are really satisfied that they are a superior order of men. They don't register; they don't vote; but they find fault with everything on earth, of course. That is the way they compensate themselves. (Laughter.) But below that, where they have the men in shirt sleeves, where they toil all day and perhaps don't always smell perfume, they always register and they always vote their full strength, but above Bedford avenue we always lose. If you have this separate and independent election, where you won't have the stimulus of a great and active campaign prolonged through months, you will find that the good people who live in the brown-stone front houses will absent themselves in a much larger percentage from the polls than they do at the present time. There would be no making them vote. They would emigrate first. (Laughter.)

These, Mr. Chairman, are the reasons I have for opposing this amendment. If I could be led to believe that it would accomplish the purpose of bringing these recreant Americans out to vote who shirk their civic duties, I would vote for it as often as you would allow me, and, if necessary to pack the votes I would do that too. (Applause.)

Mr. Dean — Mr. President, I dislike very much to find myself in opposition to the distinguished President of this Convention, who asked me in a very sarcastic manner a little while ago if there was anything that I did approve of? (Laughter.) I do not believe in the divisions of the elections we are going to make men any better than they are now. In the little city of Jamestown (and it is very active for its size) we elect our members of the common council for two years each. We elect two in each ward. If this provision goes into effect, we will be obliged to elect four aldermen in order to have an alternate in each ward. I do not think that the people of Jamestown want anything of that kind. I am opposed to any arrangement by which any person is absolved from his political duties at one time or the other. I believe that we should all go to the polls and vote any time there is an election. I believe further than that that we should go every time there is a caucus of the party on every proposition that involves the public welfare, and I cannot see that this is a benefit for the people in the way of better and purer elections.

Mr. E. R. Brown — Mr. Chairman, are amendments to section 1 in order?

The Chairman — A motion to strike out section 1 is before the House.

Mr. E. R. Brown — The motion to strike out the section has been withdrawn. I move to strike out a portion of section 1.

The Chairman — Will the gentleman send his amendment to the desk?

The Secretary will read the amendment.

The Secretary read Mr. Brown's amendment as follows:

Mr. Brown moves to strike out the word "numbered" every time it occurs in section 1.

Mr. Jenks — Mr. Chairman, is a further amendment in order?

The Chairman — An amendment to the amendment is in order.

Mr. Jenks — I wish to offer an amendment to section 1, if it is in order.

The Chair — It is not in order unless it is an amendment to Mr. Brown's amendment.

Mr. Jenks — It is not an amendment to Mr. Brown's amendment.

The Chair — Then it is not in order for the present.

Mr. J. Johnson — Mr. Chairman, I found in examining the statutes which have attempted the same thing in cities, notably the election of supervisors in the odd-numbered wards, that the word "numbered" had been used. The committee are not particular, and they simply followed the statutes which were brought to their attention.

Mr. Mulqueen — Mr. Chairman, may I ask if Mr. Jacobs has withdrawn his motion to strike out the first section?

Mr. Jacobs — Certainly, Mr. Chairman; I withdraw that motion if I made it.

Mr. Holls — I hope that the amendment of Mr. Brown will prevail. I think it improves the language of the first section, and, as the Chairman has stated, it makes no difference.

Mr. Spencer — Mr. Chairman, I hope that the amendment of Mr. Brown will not prevail. It was found that this term had been used in other Constitutions, and it was adopted by the committee after serious consideration. It was thought to be better phraseology; sounded better, and was clearer in every respect. It is an odd-numbered year; it is not an odd year, as has been suggested. It is an even-numbered year; it is not an even year. It would be very awkward phraseology to leave it as this amendment would leave it. I trust the good sense of the committee will approve of the report as it has been made in this respect.

Mr. E. R. Brown — Mr. Chairman, I would like to ask the gentleman if he can conceive of any case where the interpretation of the word "even" would be different from "even-numbered" or from "odd-numbered?"

Mr. Spencer — Mr. Chairman, an answer in the affirmative or in the negative, would not remove the objection which I made. I make the objection to this amendment in the cause of language and good sense.

Mr. Dickey — Mr. Chairman, answering the gentleman's question, if I may be permitted, I would suggest that leap year might well be called an odd year. (Laughter.)

The President put the question on Mr. Brown's amendment, and it was determined in the negative.

Mr. Jenks — Mr. Chairman, I now offer my amendment to section 1.

The Chairman — The Secretary will read the amendment.

The Secretary read the amendment as follows:

After the word "shall," in line 6, page 1, strike out all of the remainder of the section, and insert in place thereof, these words: "be held separate from all elections for State and national officers, and that the Legislature, at its session next after the adoption of this article, shall enact such general laws as it deems necessary for such purpose."

Mr. Jenks — Mr. Chairman, I would suggest, if it would not be too much of an imposition of duty upon the secretary, that he read the whole section as it would appear if this amendment were accepted by the House.

The Secretary read section 1 of the article as amended by Mr. Jenks, as follows:

"Section 1. All elections, except to fill vacancies, of city officers, including supervisors and judicial officers of inferior or local jurisdiction, elected in any city or part of a city and of county officers elected in the counties of New York and Kings and in all counties whose boundaries are the same as those of a city, shall be held separate from all elections for State and national officers, and the Legislature at its session next after the adoption of this article shall enact such general laws as it deems necessary for such purposes."

Mr. Jenks — Mr. Chairman, the purpose of the amendment is not far to see. Instead of putting into the Constitution anything of a legislative character which can be avoided, this amendment simply enunciates the general principle and remits to the next Legislature the enactment of such general laws as are necessary to carry out the purpose of the article. That is the whole sum and substance of the purpose of the amendment, and it seems to me that you keep the Constitution within its legitimate lines, and we intrust to the Legislature those legislative functions which belong to it.

Mr. J. Johnson — Mr. Chairman, I hope that the amendment will not prevail. It destroys the whole purpose of the article. It leaves it where it is now. It can all be done now by spring elections and spring elections in the cities at least will not call out over sixty or seventy per cent of the vote. It defeats the possibility of what we believe is a great reform, and which we believe is

accepted by the press, representing the people with a unanimity which has occurred as to very few propositions that have been submitted to this Convention.

Mr. Jenks — Mr. Chairman, I do not know what the purpose may be of which the gentleman speaks. I do not know what scheme it frustrates, or what measure it may stab in the back; but I do know that this amendment, barring perhaps the English phraseology, simply places in the Constitution that which belongs to the Constitution and commits to the Legislature that which belongs strictly to the Legislature. Why should this constitutional amendment be clotted up and encumbered so that it will be like the intrications of the metric system or the time table of a Long Island railroad. Why not initiate the principle for which the President has so eloquently and charmingly contended this morning? Do not say elections shall be in the fall or spring. Do not encumber this article with the details; but leave them to the Legislature. I have no secret motive. There is nothing behind it. I simply want to keep within the strict constitutional lines, that no legislation should be put into the Constitution, if it can be prevented.

Mr. Holls — Mr. Chairman, in answer to the gentleman from Kings, who has just taken his seat, I would state that in my opinion the term "separate election" as now used, and as used in the amendment, is somewhat the result of evolution. Separate municipal elections, in the sense of having spring elections, and elections in December, or at some other time during the year, except in November, when the State and federal officers are elected, is not a new thing in American political history. We have tried it in this State, it has been tried in nearly every State, and the result has been, generally speaking, that it is impossible to get a large percentage of the voters out for any such election, either in the spring or in December.

Now the principle for which we contend here, and which we believe would work a great improvement, is based upon this fundamental fact: that it is possible to get a large percentage of the voters out once a year, in November. It is perfectly possible, in my opinion, in any city, perhaps even without a law for compulsory voting, to get a large percentage of the voters out once a year, in November; but experience has shown that it is not possible to do so at any other time of the year.

We wish to combine the results of experience, and also the results of observation, as to the baneful effects of voting for city officers on national platforms. We have combined the two ideas in this

amendment, which provides for city elections not at any other time than when citizens are accustomed to vote, in November; but not in the same year, when they vote for national or State officers, this is essentially a new principle. It is true that under the amendment proposed by the gentleman from Kings (Mr. Jenks), the Legislature could provide for elections in odd-numbered years; but it is also true that it is very improbable that this would happen. The very thing we wish to accomplish here is to make it impossible to go on in the old stumbling way, with spring elections or December elections, in which we know there is no possibility of getting out a full vote, and which only aggravates our municipal evil. We want to get rid of all those ideas, and we wish to put it in the fundamental law that the election days of odd-numbered years shall be reserved to the people for their local affairs. I admit that the Legislature might do this. At the same time, if there is any one question upon which the people of this State are willing to see an infraction of the sound rule that as little legislation as possible shall be put into the Constitution, I think it is in reference to an improvement in our city government. If any observer would be asked to point to one single potent reason for the corruption and abuses which prevail in our city governments, he would undoubtedly say that it arose from the fact that city officers are elected upon national and State issues, instead of being elected upon issues relating to the affairs of the city. This has been so as long as the county has existed, and it will be so until we get rid of the cause of it all. The people do not want separate elections in spring or in December. The cry for separation of State and municipal affairs which is universal, as our honored President has said, is for a separation by a full calendar year, when there can be no question of the influence of one election upon another.

Mr. A. H. Green — Mr. Chairman, I do not want to debate this question, but simply to toss into the arena facts that are certified to by very high authority such as the Hon. William M. Evarts, Mr. Hand, and others of like character; and to read this paragraph: "The question of a separation of elections in the city of New York has been a fruitful source of debate and experiment. It is a mistake to suppose that the municipal elections fail to bring out a full vote in the large cities. A careful comparison of the vote cast in the city of New York at the charter elections and the general elections during all the years from 1834 to 1874, discloses the fact that in many years the number of votes cast at the spring charter election was larger than the number cast at the fall general election, and that when the elections were held simultaneously the votes cast for the

political candidates on State and national tickets largely exceeded those cast for the mayoralty candidates."

Now, as I have said I do not propose at this moment to debate this question as to what portion of the year these elections should be assigned, but to state a fact that experience has demonstrated, that where separate elections are held in the spring they bring out as large a vote and a much larger vote than ever the general elections. I think there is a very general disposition here to accept the separation of the two elections. I am not addressing myself to that point, but I simply desire to state the fact and let it have whatever weight it may have in the progress of the discussion.

Mr. McDonough — Mr. Chairman, I am rather favorable to this measure, on the whole. I do not, however, think the spring elections or the separate elections are going to make any great change. In almost all the interior cities of the State we have separate elections. They happen to be in the spring instead of in the fall. Practically, I do not think it is going to make much difference. I desire, however, to say this in addition; I observe in this proposed amendment that everything that is proposed here can be done by the Legislature. Now, consistency is a jewel. I had a very important measure here on Saturday, and the only objection to it was that the Legislature could do it all. If that is so, why not leave this to the Legislature? I do not believe in leaving everything to the Legislature that can be left to the Legislature. I think this Convention ought to provide for this very thing. It ought to provide for it. I think it is proper. But I simply want to call the attention of some eminent gentlemen to the fact that on Saturday the argument was made that it might be left to the Legislature, while to-day the argument is that the Convention ought to attend to it. I agree with to-day's views.

Mr. Holls — Mr. Chairman, I wish to answer just one observation of my friend Mr. McDonough. Not all of this can be accomplished by the Legislature. The terms of county officers cannot be changed by the Legislature. In the great cities of the State it will be readily conceded that county officers are practically city officers, really perform the work only for the city.

Mr. H. A. Clark — Mr. Chairman, I agree with the gentleman from Albany that consistency is a jewel. But on Saturday he insisted that those matters which could be done by the Legislature ought to be done by this Convention, and to-day he stands up before you and says that those matters which can be done by the Legislature should be left to the Legislature. But there is one

reason why these elections should be separated that has not been called to the attention of the Convention. They say, leave it to the Legislature to make the separation, and also at the same time that most of the cities have separate elections at the present time. That is a fact, but there are some objections to the elections being held as they are now. The city of Albany holds its election on one day, and the city of Troy holds its election just one week from the day of the Albany election. People who are not particular as to how many times they vote, and how often, vote one day in the city of Albany and the next week go over to the city of Troy. Some of them residing so near the border of the city of Troy that they are not certain in which city they reside, come to the city of Albany and cast their votes. I am told that the city of Hudson holds its election a very short time after the November election; and that the results of the November election have a bad effect on one party or the other at their city elections. It was argued before the Committee on Cities, that it would be a good thing to make the change so that all city elections should be held on the same day. Now, when we make the change and say that they shall all be held on the same day, it seems advisable to fix the day; some of the large cities like New York and Brooklyn hold theirs in November. To say they shall hold them all on the same day and leave the day to be fixed at some other time in November, would create a very large expense, without accomplishing the desired result. Evidence was brought to the Committee on Cities that it cost a million dollars a year to hold an election in the city of New York, and that the city of New York had tried spring elections and they did not work well. To require cities to hold their elections on a separate day from the general elections, and to require them to hold an extra election, incurring this great expense would be an unwise provision to adopt. It seems to me, Mr. Chairman, that after the extended discussion on section 1 here and before the committee — having been before the Committee of the Whole once before and very little objection to it found — I think the section ought to be adopted. I understand that upon this question the Committee on Cities were unanimous, after hearing many arguments in favor of different times of the year for holding the elections.

Mr. Jacobs — Mr. Chairman, may I state one fact? I desire to call the attention of the committee to one ominous fact, and that is the deathly silence of the minority in this Convention. They know their meat.

Mr. Peck — Mr. Chairman, I believe I have the misfortune to be a member of the minority. I think it is a great misfortune to this

Convention that we are in the minority. What I now wish to say is that this seems to be a discussion of the first section of the article and I desire to propose to Mr. Jenks that he shall add to his amendment its extension for the purpose which I will now indicate. It is proposed here that municipal elections will be reformed to a considerable extent, so that the attention of the citizens of cities may be directed by having separate elections for municipal matters, and in that way the municipal corporation will receive a different kind of attention from the citizens. Now, that is to be done in the cities of New York and Kings by the separation of the municipal election from the election of State officers. Why? Because it is desired that State and national politics shall be separated from municipal politics. If this section is left in its present condition it will be of benefit only to the cities of New York and Kings. It is local legislation, and according to its own provisions it should be submitted to the approval of the mayors of New York and Brooklyn. I say it is local, because it does not separate in any of the other twenty or thirty odd cities of the State, State and national elections from municipal elections. I am very sorry that there are so very few of the representatives of the smaller cities of the State present in this committee at this time. I think they will all unite with me in saying that so far as separating politics from municipal elections under the provisions of this first section, it will be absolutely worthless. In every one of those cities a sheriff is of more political consequence than a Governor, so far as the organization of the party politics is concerned. So far as the organization of parties is concerned, the county clerk is of more political consequence than the Lieutenant-Governor. And so you may go through the county officials, and if you leave them to be elected at the same time with the city officers, your amendment will be absolutely worthless in such localities, because party organization does not depend upon who sits in the executive chair in Albany. It does not depend upon who sits in the Lieutenant-Governor's seat in the Senate. It depends upon the active politicians holding office in the county, and we will have no benefit from this section. No smaller city in the State, whose boundaries are not coincident with that of the county, will have any benefit from this, except once in a while when, at odd-year elections, no county officer is to be elected.

I, therefore, ask Mr. Jenks to extend his amendment so as to strike out all of line 5 to and including the word "city," in line 6, and insert before his amendment takes effect "in counties where there is a city."

Mr. Jenks — I think, Mr. Chairman, that I will take that amendment. I accept it with pleasure.

The Chairman — Mr. Jenks desires to correct his amendment so that it will read as follows:

Mr. Jenks — I have no desire to correct my amendment, Mr. Chairman.

Mr. Peck — It is not to correct Mr. Jenks's amendment, Mr. Chairman, but to put this in previous to his.

The Chairman — That will be an addition to his amendment.

Mr. Jenks — But not a correction, Mr. Chairman.

Mr. Peck — Mr. Chairman, I see that my suggestion is going to make confusion, and I, therefore, withdraw it, and will offer it later.

The Chairman — Mr. Peck withdraws his proposition. The question is on Mr. Jenks's motion to amend.

Mr. Spencer — Mr. Chairman, I think that this debate is drifting from the question that is really of importance here. Coming as I do from one of the smaller cities of the State, I feel, sir, that I can in a measure answer the remarks of the last speaker with some authority. I do not believe that this provision will, to any great extent, eliminate politics from city elections. It is not that which has recommended this report to me. On the other hand, I believe that it will permit the citizens of a city to deal with their local and domestic concerns directly and not affected by larger and greater and outside interests. When the local and domestic concerns of a city are mixed up with national and State affairs, it is impossible for the average citizen to separate those affairs and deal with the subjects together; and my view of this amendment is that it places these several matters in separate years, and enables an ordinary citizen to deal with them separately, intelligently and unbiased by matters of greater moment and concern to the State and nation. I presume, sir, that politics will enter as largely, if this provision is adopted, into city matters hereafter as it has heretofore. I do not presume that this will interfere with the political management of parties in cities, but when measures of reform, when questions in regard to streets, parks, highways and other multitudinous matters come up in city elections and are brought before the people, they can give to those matters their undivided attention, and they will be dealt with intelligently, upon a business basis, and in a manner that will be best for the business interests of the city; and it is this thing which has given me great interest in this change. I

believe, sir, that it recommends itself to the people of all the smaller cities of the State. Further than that, under our present system of elections the expense attending these elections is of some moment. Further than that, I believe, sir, that we have too many elections. With our spring elections as to cities, with our fall elections as to State and national questions, with our intermediate elections as to schools, our citizens are constantly called upon to act in relation to this and that matter. I believe, sir, that an election every other year in regard to State matters is frequently enough; and also that the same principle applies to city matters. I, therefore, hope that the amendment of the gentleman from Brooklyn will not prevail, but will be voted down, and that the report of the committee will be accepted as it has been made, and as it stands upon this general order No. 13.

Mr. Dean — Mr. Chairman, I am entirely unable to fathom the subtle reasoning of our professional reformers. I cannot understand how a man is going to be more virtuous, more patriotic, more public spirited in November than in June. This proposition carries with it the whole scheme of biennial sessions of the Legislature, goes out into the realm of reapportionment, and all that sort of nonsense which is going to be brought up here at a future time. A great deal has been said about the desirability of divorcing this matter from politics. It seems to me that no more foolish proposition could be introduced into this discussion than that politics is in itself vicious. Politics, in its broad sense, simply involves questions of public policy. I believe that every time a man goes out and discharges his duty to the community, whether it be at a spring election or a fall election, he is doing a public duty and that he is a better citizen for it. This going on the assumption that the citizenship of this State is essentially corrupt and vicious and that we have got to surround it by all kinds of traps and machines for the purpose of reforming it, is in my judgment entirely consistent with the ideas of the professional reformers who read a magazine in the afternoon, based upon premises created out of the imagination of the author, without any reference to the practical side of the question, carried on through a maze of mere words and suggestions and brought in here and introduced and carried on at great length by every fellow who has never had any practical experience further than to practice statutory law and read his magazine in the evening. I am entirely opposed to this idea of bi-partisan and biennial elections. It is taking up the time of the State, it is simply increasing the amount of work to be done by a single Legislature every session, and it will result inevitably in disaster to the State.

Mr. Emmet — Mr. Chairman, I do not understand that the object of this separate election scheme is to remove municipal matters from politics. I understand its object to be the separation of municipal politics from State and national politics. I do not think any member of this Convention is impractical enough to hope, or to believe, that any scheme can be devised which will remove politics from the consideration of any public matter, and I for one do not consider that such a scheme would be desirable. I think that the admission of political methods into the consideration of all public matters is important and desirable. In my opinion, the existence of political parties is a prerequisite to a proper expression of public opinion. Political organization leads to a proper consideration, by the people, of the issues which citizens are called upon to settle. By means of it, the views of public thinkers are disseminated and an expression of opinion upon those views is achieved. My support of the separate election idea is based, not upon the belief that it strikes in any way at party organization, but that it strikes at the confusion of issues which is bound to result where upon one ticket there are included the names of thirty candidates and five or six issues — issues affecting different extents of territory, offices which have no connection, one with another; hopelessly, inextricably, confused. I believe that, with separate local elections, citizens could devote careful consideration to the one essential issue which should be before the minds of municipal residents during a municipal election — the local issue — which in the larger cities of our State, at any rate, is usually more important and closer knit to the individual interests of taxpayers and citizens than either the issues of State or national elections.

Now, sir, believing that in a consideration of these issues alone there should be an unclouded opportunity for each voter to use his individual judgment, uninfluenced by the consideration of other and absolutely extraneous matters, I favor separate elections for cities. The scheme will in no way detract from the essential strength of party organization in our municipalities, nor will it have any other effect than to assist intelligent voting upon local matters by the residents of cities. I am opposed to the amendments of Mr. Jenks, because I believe that while it may result, as has been pointed out, in the eventual gaining of separate elections, its more probable result will be an absolute neglect on the part of the Legislature, of the mandatory provision laid down in the scheme. The Constitution of 1846 has furnished too many examples of disobeyed demands upon the Legislature to give much hope that such an injunction as this will be obeyed simply because it is in the Constitution. I

believe that our duty now is to grant to the people this one reform which has been demanded by public opinion for many years, against which no sound argument can be brought, and to grant it in a way which will be unmistakable, and to implant it where it cannot be tampered with or taken away at the whim of a Legislature. I favor the separate election feature of the report of the Cities Committee, and trust it will be adopted.

President Choate here resumed the chair.

Mr. O. A. Fuller — Mr. President, I have received a dispatch from Mr. Acker, stating that his wife is very ill and asking to be excused from attendance upon the Convention.

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

The Convention took a recess until three o'clock this afternoon.

AFTERNOON SESSION.

Monday Afternoon, August 27, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, at the Capitol, Albany, N. Y., pursuant to recess, Monday afternoon, August 27, 1894.

President Choate called the Convention to order.

The Convention then went into Committee of the Whole, Mr. I. S. Johnson in the chair, on general order No. 13, and resumed the consideration of the amendment offered by Mr. Jenks to amend section 1 of proposed amendment.

Mr. Moore — Mr. Chairman, in speaking upon section 1 of this bill, it passes my comprehension how two gentlemen from the same city, evidently as anxious for the welfare and well-being of their city, one as the other, can differ so entirely as do the chairman of this committee and the gentleman from Brooklyn who proposes to amend it. I have looked at this section pretty carefully, as I see it, and from what information I can get, I believe that it will be unwise to amend it. I believe that if you amend it in the particulars proposed by the gentleman from Brooklyn you will literally take the heart out of the section and make it literally inoperative. You do that which we submit should not be done. I remember that at a meeting of the joint Committee of Legislative Powers and that of Cities, and of some other committee, the very question, the very difficult question around which the discussion ranged, was the fact that the city elections should be made in the fall and not in the spring, and

that, therefore, they should be biennial. If this bill is to pass at all, if it is to become the action of this Convention, I think, Mr. Chairman, that this section 1 should pass exactly as it is worded. As to the proposition made by our honored President, that it should be taken out entirely from this bill and the bill be recommitted, and the section be made a separate amendment from anything else, and so adopted it by the Convention, I regard that simply as a matter of expediency upon which I have no opinion, but I should be very apt to follow the action of the majority here. But as to the section itself, I am free to say that it is my judgment upon all the information that I can get that it should pass exactly as it is and without amendment. I shall, therefore, vote for the section as it is.

The Chairman — The question is on the motion of Mr. Jenks to strike out the words which have been read by the Secretary.

Mr. Bowers — There is no very great difference of opinion, Mr. Chairman, between the majority of the delegates of this Convention as to the propriety of separating municipal elections from State elections. I understand generally that the delegates from the interior of the State are willing to concede that to the delegates of the great cities, and the cities would be very glad to get that among other matters which are to bring home rule in some measure to them. The sole question now to be determined is how effective a relief can be given merely in the provision for a separate election. The bill proposed by the Cities Committee is to the effect that the election shall be held in odd-numbered years. That gives no relief. There is a State election held every year. The Constitution provides, as I understand it, that State officers, other than Governor and Lieutenant-Governor, hold office for two years; they were elected in 1893, and will be again in 1895, and in 1897. Now, we have had no report as yet from the committee on the Governor and State officers — or at least not to my knowledge — and we do not know whether they have made any change in the terms of those offices. I do not know why it has been held back, or what is intended to be done with it. I do not even recall whether an extension of time was given to it. But it is perfectly plain that if we pass this section as proposed by the Cities Committee, and that committee, and the Committee on Governor and State Officers make no report, or fail to make it in such form as to meet the wishes of this Convention, nothing whatever will be done to accomplish the separation of elections. Therefore, it is, as I understand it, that Mr. Jenks's amendment is offered, which, in mandatory terms, compels the Legislature to arrange for separate elections. And it was wholly with this in

view that I, this morning, suggested that we ought not to consider this section until such time as we had that report from the Commitee on the Governor and State Officers. Otherwise than that, if you defeat the amendment made by Mr. Jenks, we may end this Convention by making no effective provision whatever even under which the Legislature can arrange for separate municipal elections, unless it be for spring elections. But if you pass the amendment proposed by Mr. Jenks you do give effective relief and compel the Legislature in some form to arrange for separate elections; and then if we get a report from the Committee on the Governor and the State Officers which will be acceptable to the Convention it will give time enough to determine the precise wording of the section as now proposed by the Committee on Cities. For those reasons, and for the purpose of preserving some principle on which we can get separate elections, I advocate the amendment made by Mr. Jenks.

Mr. Nicoll — Mr. Chairman, assuming that at some subsequent time in the Convention an amendment is to be made for the purpose of accommodating the friends of the State officers to the proposed amendment contained in section 1, I am opposed to it, and for this reason: I am opposed to constitutionalizing what all persons agree is an experiment. It is proposed to separate in the larger cities the local elections from the national and State elections in order that the attention of the electors of those cities may be concentrated upon municipal affairs, and may not be distracted during the periods of municipal elections by State or national considerations; and it is believed that as the result of such separation in the course of time better government will be brought about in the cities. But, as I say, that is an experiment. It is an experiment about which men differ. There are those who believe that perhaps it may not secure the result desired, that instead of securing better government, it may in fact only put municipal government within the power of the dominant machine. Such has been the experience of other cities where the experiment of separating municipal from national and State elections has been tried. I had occasion to say in the course of my remarks upon the Cities Committee amendment the other day, that in several of the western cities where they have attained the separation of municipal from State and national elections, they have been unable to get out the vote, and that in consequence municipal affairs had fallen absolutely into the hands of the machine. Now, as between those different views, what ought we to do, as sensible and conservative men? Ought we to put into the Constitution an experiment which we can never change without

another Constitutional Convention or the submission to the people of a separate amendment? Suppose, as a matter of fact, after we have separated in the city of New York the municipal election from State and national elections, the results desired are not obtained; suppose, as matter of fact, the good citizens of that city are not sufficiently aroused by municipal considerations to go to the polls, and the elections do fall into the hands of the dominant machine in that city, how are you going to change it? How can the Legislature go back? They will be tied hand and foot to the proposition now proposed to be incorporated in the Constitution for separate elections forever, or until, as I say, another Constitutional Convention meets, or until a separate amendment is proposed to the people. Ought we do that, in view of the experience of the past, in view of the experience of other municipalities, in view of the fact that we have had separate elections in the city of New York, and have discarded them, for the very reason that they did put the municipality entirely in the control of the dominant machine? Ought we now to take up a once discarded experiment and put it in the Constitution, so that we can never change it? I am opposed to doing such a thing. I believe that we should do what is proposed in Mr. Jenks's amendment — that we should leave it to the Legislature, with a mandate to the Legislature to try the experiment, but leaving in the Legislature reserve power enough to change the law if the experiment works badly. That, as I understand it, is what the amendment proposes. That is the safe and conservative course which this Convention ought to adopt, and it ought not to tie down any of the cities in this State to a hard and fast constitutional rule which has worked badly in the past, and which may work badly in the future. Enough elasticity ought to be left to the proposition to enable the Legislature to change it if, after the experiment has been tried for a reasonable period of time, it fails to work successfully.

Mr. Choate — Mr. Chairman, I think, perhaps, the Convention has a right to hear from the representatives of the majority, if they may so consider themselves, in the great city of New York on this subject (an untirely unrepresented body of men in municipal affairs), and why it is that we consider it very important that this first article should find a place in the Constitution substantially in the form in which it has been presented by the Committee on Cities.

I am not at all surprised that my friend from New York who has just spoken and his colleague from Kings desire to have this article substantially nullified by the amendment that has been proposed by Mr. Jenks, as it would nullify it if you simply left it all to

the Legislature under a general declaration that municipal elections ought to be separated from State and national elections.

Let us look for a moment at the condition of things in the city of New York. What is the municipal government of the city of New York to-day? Is it Democratic? Not in the least. Is it Republican? Not at all. Our friends who are on the floor of this Convention representing the minority party have no more voice in our municipal affairs than we who represent the other party.

The city is not governed in any way by representation. It is simply in the hands of a little body of men who may be counted upon the fingers of one hand; and the most celebrated of these representatives from the district of New York have no more voice in the government of the municipal affairs of that city than so many babes unborn. And they know it perfectly well. If a judge or an alderman or a street sweeper is to be created, nobody would go to them and ask their influence, because they have none. (Laughter and applause.) And nobody knows it better than they.

What is the government of the city of New York based upon? It is based on the possession of the 15,000 to 20,000 places that constitute the government of that city from top to bottom, which are used purely as patronage. And that is the evil that lies at the basis of the entire failure of our municipal government.

I have said that five men — not more than five men — govern the city. I might have said, almost, that it was in the hands of a single man. If anybody wants to be a judge, he takes off his hat to him; and if he wants to be employed in the gang of veterans who pretend to sweep the streets, he applies to him. And there is no different measure applied as to fitness for a place in the whole range of offices from top to bottom. By means of a well-perfected organization it is thus that the affairs of that city are thrown into the hands of one, two or three men, who govern it to suit themselves.

Now, what remedies can be applied? What possibility is there of restoring such a state of things as that such men as those who represent the districts of that city on the floor of this Convention can be restored to their proper influence? (Laughter and applause.) That is what I wish to see, so that the brains of the Democratic party may be represented in the government of that great Democratic city. I do not hope to see it converted into a Republican city. That is far off in the millennium, which probably none of us will live to see. What I want to see is a representation of the real, dominant party, whichever it may be, in the government of that city.

Mr. Nicoll has said that this is an experiment. For one I say any experiment is better than the continuance of the thraldom under which both parties now labor and suffer in that city. There are remedies; there is a hope, and my hope is — and I think it is shared by the great bulk of both parties in that city — that there may be a change for the better; that the citizens of both parties may take an interest in the management of its affairs, and that if it is to be governed by one party only the virtue and the honor and the intelligence of that great party may take charge of its affairs.

I am sure, Mr. Chairman, that if the government of the city could be so shaped that the gentlemen who represent it on the floor of this Convention should conduct its affairs, it would be a great change for the better; or if they could be restored to a minimum of influence it would be a great step in advance. This government by one man is what I think we should all seek a way out of, if we can. It is a very singular thing, as my friend from Kings said this morning, that these three, four or five men were not originally at home in New York. They understand the art of government — that form of government — and they have succeeded in putting it in practical operation.

Now, it is true that the government of the city of New York, conducted on the most economical, honest, strictly business principles, would involve the annual expenditure of some fifteen to twenty millions of dollars. It is an enormous city; its necessities are very great, and you cannot expect to get the pay-roll of the city much below the figures that I have named. And then when you come to the expenditures upon contracts that the city is obliged to make in the conduct of its affairs, the amount is almost doubled.

Now, the proposition — the hope — of good citizens in the city, including, I think, all our associates here from the city districts, as well as their colleagues from the Republican districts of the other party, is that this vast expenditure may be simply made and managed in the interests of the city; that two men shall not be uniformly employed, as I think they are now, to do one man's work, but that every dollar that is expended shall be expended for the public good and not merely for the good of the recipients of the offices and the appointees.

There is no doubt that the complications which come about from the union and confusion at every annual election of national and State politics with municipal affairs tend greatly to this debased condition of affairs with us. There is no reason why a man should be the mayor of New York simply because he is a Republican or because he is a Democrat, or that any other municipal office should

be filled by this man or the other because he belongs to one national party or the other. The questions of national and State politics have nothing to do with the economical, the honest, expedient and prudent administration of municipal affairs.

But every time an election comes on the choice of office for municipal affairs is absorbed and swallowed up in what the great majority of men think are the vastly more important questions of State and national politics, and has to be controlled by the policy of one party or the other about the affairs of State and nations. And so it becomes about that this vast outlay of the city, this patronage, into which it is counted, this necessary expenditure of public moneys for the municipal necessities comes to be used as a great and controlling factor in our national and State politics, and it is about as injurious to the dignity and wholesome condition of national and State politics as it is to that of municipal affairs.

I think the question has been studied very carefully for the last ten or twelve years, and I believe that there is a general union of opinion throughout the State, among men of both parties, that great good will be accomplished if we can secure such a separation of municipal elections from State and federal elections by having them in alternate years; that when the only question up for consideration is the conduct of the city's affairs, the attention of good citizens, like those who represent the city districts here to-day, will be attracted, and all men who have anything at stake in the conduct of city affairs, will take an interest in the election which is to decide who is to be mayor, who are to be aldermen, who are to fill the various other offices which have to do with the conduct of the general affairs of the city.

Then there is another startling evil that will be cured by this separation of elections and that is the most corrupt and, it seems to me, degrading habit and practice of trading at these elections, where both of these important interests are involved to either, swapping of a municipal candidate for a Member of Assembly, if you please, and votes for the Member of Assembly.

I do not think that any of my fellow-delegates from the city of New York will deny that this is a great, a constant and a growing evil. There is a vast deal of it done, and I do not think the needs of this proposed reform depend upon the question as to which party is or is to be in the control of the city. If the other party were in control and managed its affairs in the same way, I should be as much opposed to any Republican boss charged with the authority of distributing the offices of the city as I am now to a Democratic boss doing the same thing.

Now, these evils very certainly will be relieved and mitigated if one year we vote for State officers and federal officers and the next year vote only for municipal officers. And I for one am in favor of giving the people of this State what they seem almost unanimously to demand — this separation, for the purpose of testing the civic virtue of the people in these municipalities. And, then, Mr. Chairman, if they are satisfied with the form of government or administration under which they exist, why let them submit to it. I do not believe that public virtue is to be created or originated by any acts of legislation or by any constitutional provision, but I do believe that it may be fostered; I do believe that when you summon the people of the city and say to them (take the city of New York, for instance): "Now, you are not content with your former government; you are not content with the people who administer your affairs; you want a different kind of a Democrat, or a different kind of a Republican, in charge of this or that particular office;" when you challange them to that I think they will come out and attend to their business or they will deserve to continue to suffer from the evils under which they now labor.

It has been said very often, and very wisely, I think, that the government of the city of New York is as good at any particular time as the people of that city deserve, and if they are not willing when the opportunity is given them to take their own affairs into their own hands and manage them as matters of business, why let them fall and continue in the hands of the destroyer, of the despoiler, where they are now.

Of course, this depends upon the willingness of the members of this Convention to adjust the election of the State and federal officers so that there shall be this possibility of alteration, each alternate November, giving the people an opportunity to vote for State officers and then in the next year for municipal officers. But, that is not to be accomplished by any such proposition as that of my friend, Mr. Jenks — simply to leave it to the Legislature to appoint some other day for municipal elections than that on which State and federal elections are held. Not at all.

It is not accomplished, either, I think, from our general knowledge of the Legislature, by leaving it to them. There is sometimes an occult and subtle sympathy between the ruling element, I was going to call it, it is hardly an element, but between the ruling authorities in New York and a large proportion of the Legislature; and I think we might wait probably until far into the twentieth century before the Legislature carried out the idea or plan of my learned friend from Brooklyn. And, perhaps, he has something in

his mind when he proposed the amendment to leave it to the indefinite pleasure of the Legislature under no mandatory provision whatever, or command to make the municipal elections alternate with the State elections.

Well we can do it, and I believe it is the duty of this Convention to see that the people have a chance to do it. Of course, the great federal elections come on what the chairman of the Committee on Cities has so aptly designated even-numbered years, and, as I have understood, the Committee on Governor and State Officers are ready to report, if they have not already reported, that the great officers of State shall be elected in the same year; and as there is a substantial identity under our form of party government between State politics and national politics, no better method than that can be devised. But it is our duty to give an opportunity for the civic virtues to be cultivated and resurrected, and to put each city government upon the people of that city every second year for them to say whether they want to be improved or not. I do not think there has ever been a time, certainly not during my residence of thirty-eight years in New York, when if the people of the city — by which I mean those who are interested in its welfare, who have a stake there as being the home of themselves, their children and their posterity, as having business there, as having property there, as being under obligation to pay taxes there — there never has been a time under any form of government since the charter of 1870 was repealed, when these citizens of both parties, such as are represented on the floor of this House by these district delegates from the city and the delegates-at-large who reside in that city, when they could not if they had this chance of a strictly municipal election, have carried things to suit themselves. They will be greatly aided; they will be helpful in their efforts for good municipal government, if they have this opportunity, when the question will not be whether a man is a Republican or a Democrat, but whether he is a fit man to administer the affairs of the city as they ought to be administered so as to make ways and means meet, so as to have every dollar spent as it ought to be spent, for the public good, and not as a matter of party patronage and party plunder. Give them that opportunity.

And so, Mr. Chairman, I, for one, hope that this amendment substantially as proposed by the Committee on Cities — I do not stand on any particular form or phraseology — but so as effectually to separate the municipal from State and federal elections, shall be adopted.

Mr. Jenks — Mr. Chairman, I was amazed at the bright flashes of silence which came from the chairman of the Committee on Cities, until I found that he had retained counsel, who held a brief for him upon this motion. I have now come to the conclusion, if the Chairman will pardon the personal allusion, that the defense of the chairman on cities to this section was to be an alibi. In the words of the classic quotation, "O, Samivel, Samivel, why wasn't there an haliby?" But I assume, that since counsel has been retained by the chairman of the Committee on Cities, he has been furnished with that second edition of Johnson's Dictionary, which he clamored for so loudly on Saturday. If he has lost his mind in the study of the phraseology of this particular section, I am not surprised that he has forgotten the plain, compact phraseology of the amendment, which I say now, that I had the audacity to offer on the floor of this House. I regard this principle enunciated here as a great honor, in the interest of good government. But, without going back too much to our Pickwick, I had made up my mind that the committee had drawn this particular resolution on the same theory with which Mr. Pott wrote his great work on Chinese metaphysics. He read up under the heading of "C" all about China, and under "M" for metaphysics, and combined the information. So these gentlemen, havind read up under the head of "O," for officers, and under "E," for elections, have combined the information. The loose recklessness with which times, calendars, and relative pronouns were jumbled together in that coterie, gave me the inducement, in my own humble, plain Anglo-Saxon way, to draw up what I thought was a plain and simple amendment. Now, Mr. Choate does me an injustice, and I may say, that he does my father's son an injustice, when he claims my purpose in offering this amendment is to defeat this principle of divorcing State and municipal elections. It is not so. The purpose of introducing this particular amendment was to express in the Constitution that which belongs to the Constitution, a cardinal principle, and to commit to the Legislature that which belongs to the Legislature, the power to legislate in accord with that cardinal principle. If we are going to doubt the Legislature, if there be any ground for it — and the gentleman knows which party expects to have the Legislature next year — if we are going to doubt the Legislature, then make the Constitution of the State, if you please, as voluminous and heavy as this book, because if you are once going to doubt the Legislature on one point, why not doubt it in all, and if we are to be afraid that this cannot be intrusted to the next Republican Legislature or to the next Democratic Legislature, why, then, what can we intrust to the Legislature? That is

the point in this particular case. I had no purpose, let me tell the learned President of this Convention, to defeat this measure. My amendment reads thus: "There shall be separate elections, and the Legislature, at the next session after the enactment of this article, shall enact the proper laws to carry it into effect." If that be not mandatory upon the Legislature, then make it mandatory; but, because you think that your next Legislature will not do its duty, there is no reason why you should encumber the Constitution with every possible article of legislation which the ingenuity of the mind of man can suggest. I do not seek any other purpose. I give the gentleman my word of honor, if it be worth anything, that my simple and sole purpose was to confine the Constitution to the subjects which properly belong to the Constitution, and not to encumber it with legislation. What do I know about this matter in New York? I do not seek to know. I do not seek to answer here, by flinging back the words, and saying that the State is under an Oriental despotism — the despotism of the Oriental Hotel at Coney Island. (Laughter.) Would that be in point? Is it in point to tell whether Mr. DeLancey Nicoll, whom I love and revere, can or cannot appoint a street sweeper in his district? Are we legislating for this party or for that party; for the next gubernatorial convention, or for the next State convention, or for the next Legislature? Are we legislating that the next mayor of New York may or may not be a Republican or a Democrat? We are here to make a Constitution, under our oaths of office, in the line of the splendid phraseology and flowing words which lifted us so high in the plane of duty as they came from the lips of him who presides in this Conventon on the day he took the gavel. I have attempted, so far as party lines and respect for mere Democratic obligations will permit me, to live up to the sentiment, revering, yea, almost loving the man, for reasons which he knows, which I need not tell — the man who gave us the inspiration on the day he spoke here, when we took our places. I do not seek, I do not desire, for the mere sake of stabbing a measure in the back with cowardice and with despicable action, to defeat this matter. I am in favor of the separation of State and municipal elections, and if the committee can draw a phrase in good, decent, homely Anglo-Saxon, which will put it in the Constitution that this is a cardinal principle, and at the same time commit to the Legislature by mandatory terms the execution of the fiat of the Constitution, then I will vote for it, no matter who votes against it, and no matter who damns or complains. That is the principle I have in this matter. And now to be told, merely because I differ with the gentleman in politics, that I stand here with the purpose of defeating this meas-

ure, is hardly just to me. I am the gentleman's equal not in intellect, not in experience, not in many things which make him great — but I say to him, with all frankness and with all sincerity, that I am the equal of the gentleman in the honest and sober purpose to discharge my duty here to the full measure of the obligations which came as soon as my hand rose and fell when I took the oath of office. (Applause.)

Mr. A. H. Green — Mr. Chairman, I have listened to the remarks of the two gentlemen who have preceded me, and who have depicted very eloquently the condition of things in the city of New York. There is much truth in what has been said with regard to affairs of the city of New York. That city is not possessed of self-government. It has been deprived of that. And I may say that the voices that I now hear in this hall are very different from those that I heard here about ten years since. About the year 1884 the measures which have brought about the condition of things, which the President of this Convention has so eloquently depicted, were urged upon this community with all the force that the newspapers and all the orators could command on the side of politics on which he acts, if he acts with any side, and those measures were to the effect that all the powers of government should be concentrated in the mayor, in order that he should have the responsibility. I was up here and was called upon (I happened to be in the Assembly Chamber at that time) to assert my conviction that that was the proper thing to do — which I repudiated then, as I do now. I do not think, and I agree with the President of the Convention, that it is a proper thing that one man should rule in the city of New York, whether he is the mayor, or whatever he may be. It is not the Democratic party that is answerable for that. I never expected, when I came to this Convention to allude to parties at all; I have avoided it, and wish to avoid it; but it has been pushed into the arena of discussion here, and one can hardly avoid alluding to it. It has been urged, as I have said before, for years past that powers be taken from the board of aldermen, that elective offices be dispensed with, and that we must concentrate power in order that we may have responsibility. The result is that we have been denuded of all responsible electoral government in the city of New York, and it is not the Democratic party which is responsible for it. We talk about getting rid of partisanship in this business. I don't believe it is intended to get rid of partisanship in New York. I don't believe they mean to let New York have legislative power — independent power, an autonomy of its own. When you take into consideration the fact that the President of the United States appoints a hundred thousand office hold-

ers, when you take into account the further fact that he is elected by the States of this Union, and that the election is controlled by the State of New York, and that the election in the State of New York is controlled by the city of New York, and that the city is very largely controlled by its patronage, any man who knows anything about legislation here for the past fifteen or twenty years knows that the Republicans will never allow the city of New York to have control of that patronage if they can prevent it, because it defeats their purposes in a broader field of political action. (Applause.) Now, sir, I have not heard from the distinguished and much-admired President of this Convention one practical word about the whole subject — not one. We have had good government men and all sorts of theorists here, and the gentlemen with stylus and pads come here and write about schemes of government, but if you ask our President to put down in writing what he wants, I think it will trouble him just about as much as it troubles anybody else, so far as the city of New York is concerned. It is a problem not easily solved. With its multiplicity of interests, franchises and powers, you cannot, in five minutes, or hours, devise a scheme here which shall not do damage to somebody or to some great interest. You cannot do it. I would like to see his great intellect employed in putting down in writing what he says should be done, that will suit the people. I have heard an old saying, which some of my friends may understand:

> "It is not so plain as the old hill of Houth,
> A man has got his belly full of meat,
> Because he talks with victuals in his mouth."

I want to see something practical. I think it is a simple thing to do, and it is the only thing to be done — constitute a legislative body in New York on a basis that will command the confidence of the people; confer power upon the legislative body, but do not hamper them by legislation, and do not hamper the Legislature so much that they cannot interfere in case it is necessary they should interfere. I believe that the Legislature of this State is the sovereign power of this State, and it is an anomaly to say that you have to take away from the sovereign power the right to interfere in the various divisions of the State which it has, and always must control ultimately. I think the remedy a simple one. It is not necessary in its details to impose limitations upon the powers of the Legislature of the State. If the local legislature is properly constituted, it will have dignity, influence and power enough to prevent any intervention on the part of the Legislature with measures they ought not to interfere with.

As to the separation of these two elections, the State election and the election of municipal officers, that is well enough, but it is not going to cure everything; it has been tried over and over again. There seems to be a very general sentiment upon this point, and I see no reason against it, particularly. In November let the State officers be elected, and let the municipal officers be elected in a subsequent November, if you will. But if that involves an election of Members of Assembly for two years, I can see no reason for consenting to that. I am opposed to that. I am opposed to directing a separation of State and municipal elections which shall relegate Assemblymen to a two years' term.

One more point, and I am done. That is this: We heard, in very eloquent terms, in the discussion of the judiciary article, the statement that it would not do for us to leave these halls with the stain of repudiation upon us. I would like to know how our friend, the President, gets along with cutting short the official terms of offices, which would not expire for a year or so after he would abolish them. There may be some judicial officers whose terms will be cut off by the section under discussion, before whom some of our friends may have their cases to plead. It may possibly be — I do not know that it is — but if it so happens, it would be rather unfortunate. I hope some means will be arrived at so that we may secure this separation of elections. I think it might be desirable to do it. I don't think there would much come out of it, but there is no harm in trying it. But if we are going to have those two-years Assemblymen running into biennial sessions of the Legislature, we cannot consent to it, because we want an annual session of the Legislature. Some people propose to have a session of the Legislature only every two years, and there are a great many people who would like to have one every ten years; they could then get what they want from one Legislature, and would never want to have the Legislature in session again at all. You had better stick to your one-year term.

Mr. J. Johnson — Mr. Chairman, the chairman of the Committee on Cities deems it a distinguished honor that he is again selected as the point of attack in discussing this great question of municipal reform. When it was first suggested that the Committee on Cities might do something that would reach down into the heart of the great cities and restore better government, at once the cry of the "cuckoo," here and in the press, was heard, and the word went out that the Committee on Cities was broken in pieces. It seemed as though there were a preconcerted sneer to the effect that some "powerful mind" was attempting that which would disorganize the

Convention and ditch the entire business for which we are here assembled. Whenever we approach a point where something is to be done, then the word seems to pass around, "if you have sneers to shed prepare to shed them now." The sneers, mis-statements, misconstructions and misquotations have been going on from then until now. And, as I said before, I deem the fact they have been concentrated on me a very distinguished honor.

When this debate opened, almost the first thing that happened (I refer not to my genial friend from Chautauqua, with whom no one could quarrel, for sometimes we cannot believe him serious), a member of the Committee on Cities, who had been present at every phrasing of this amendment, arose here and stated that it was not drawn in the English language, and when asked, begged and entreated, so far as parliamentary usage would allow, to point out a word that was not right, he struggled out three phrases. The first sneer was, "boards and officers;" it went through the Convention that that was bad English, and yet the same identical phrase went through this morning in a similar amendment, without objecton from him or from his literary confreres, and it is written in the records of the adopted work of this Convention. It came, I think, from those that understood the English language. Ah! they had sneers to shed and they shed them then. Then he took up the phrase, "city apparatus and force for preventing or extinguishing fires;" "what a phrase," and he shed a sneer. And the next day the gentleman who had shed the sneer in the amendment he introduced, adopted and presented this sentence which he had sneered at. Half a page of what should be records of reputable debate he spent in sneers over the words, "majority and minority." What did it mean, anarchists, labor, men, anything or everything? And the next day he put in a record of what he proposed to do, and he used the same identical language; and there was no sneer then; no cuckoo phrase went round that the English language was mutilated. And, now, after this section (I speak advisedly, and the written record shows it) had been adopted by the entire Cities Committee, Democrats and Republicans, and voted for by that entire committee — it was in the proposition of ex-Mayor Banks — after this section had been voted for, and after every one had said they wanted it, until they think the day has come when they will get it, now they come up, and they assault it in detail, and they assault it in principle. Sir, this minority shall not escape from this Convention without the mask torn off. They live in a city where the government is a political trust, and they are very small stockholders; they live in a city where the people have been robbed of government, and

they cry, "home rule, home rule." Why did they not give it in 1892? Why did they not give it in 1893? They want it at all times save when there is a possibility that they will get it. They wanted this amendment, and their representatives voted for it until to-day, but now, when the conscience and the intelligence, and the probity of the Convention is, as I believe, about to pass this amendment, and to write a new line, a new and living line in the history of the State of New York, they come in and swear out an alibi. They are like the horse that I remember — a horse that used to run down at Gravesend — I have never been on that course — (laughter) but the story is, that that horse could win anything, but that he would never run at the time a race was set. Again and again the ducats were gathered in on the story of what that prodigious horse could do, until it became monotonous, and even the gulls of the racetrack learned that that horse was not good for anything. And so it is with our friends of the minority. They want city reform — except when they can get it. They want separate elections, save when they are going to have them. They want responsibility undivided, between the governors and the governed, save when the apparition is that they have got to take it, and to take it now, and the day is to thrust it upon them. And now, with grammar, and sneer, and assault, with misquotations, with amendments that crucify, with suggestions that destroy, they come in here and still give you the cry, "we want better government;" but to-day that horse doesn't feel like running. He wants to prove an alibi. (Applause.)

I think, Mr. Chairman, the situation is understood. The movement that here is started (whatever the Committee on Cities or any member may or may not do) has come to stay. It is fastened in the thought and mind and conscience of the people of the State of New York. It would have been timely if they had proved an alibi to-day, and had not thrown themselves with a most prodigious devotion in front of public sentiment and in front of the movement which is to prevail.

I hope this Convention will not be distracted from the questions here. They are large, they are dignified, they are important; they are a part of the history of the State, they pertain to the dignity and honor of New York. Let us discuss them as men; and if there are any brilliant flashes of silence, or any flashes that are not brilliant from the chairman of the Committee on Cities, I beg them to come to the front and tell us whether they do or do not intend, when home rule is on, to grant it, and whether they will or will not engage in the race of the day.

Mr. Bowers — It is a very difficult thing for two delegates

approaching a proposition with an equal desire to maintain it and place it before the people of the State for their approval, to get into a very heated discussion over it. It will be recollected that on the floor of this Convention this morning an effort was made to have the consideration of this particular section of the present proposed constitutional amendment postponed until we could obtain the report from the Committee on Governors and State Officers, on which this absolutely is dependent; but that effort failed. It is an acknowledged fact in this Convention that no report has yet been made from that committee, and I do not believe they intend to make a report which they expect this Convention will adopt. The plan and proposition seems to me this morning to be to place on record section 1 of Mr. Johnson's article, and then attempt to force upon the minority of this Convention the responsibility for not getting home rule, when they presented a report from that committee which was known in advance that we could not accept. I want this done, I want this section taken in substance, and I want proper changes made in the State officers, so that we can accomplish all that the President of this Convention seeks. But I do not propose, and my associates did not propose, and do not propose, if it lays in their power to help it, to have it said that when earnestly seeking to gain the separation of elections they should be put in the position, by unfair treatment by the majority, of not doing so.

Those, sir, were the reasons which led me to favor the proposition advanced by the gentleman from Kings, because in its mandatory terms, it compels the separation of elections, and nothing that this Convention could do afterwards could destroy it. I said, Mr. Chairman, that it was very difficult for two delegates, seeking to accomplish the same results, to get into a very warm discussion. I had in mind at that moment the exceedingly kind remarks made by the President concerning the minority delegates from the city of New York. Indeed, his statement was true that we have never been politicians, and had no part in political life. The only advantage that we had over him is, that we are not seeking to-day to enter political life. We have not been seeking, and we seek not now, to take office of any kind. Our position is absolutely independent. We are not knocking at the door of any one particular man who has for his gift not only the patronage of a great city, but the patronage of a great State; but we speak our own sentiments, our own views, and are beholden to no man.

There are in the city of New York something like eighteen hundred thousand people; something like eleven hundred thousand of these people support the Democratic party, and something like six

hundred and ninety thousand support the Republican party. There is a small remnant of about ten thousand who, for the most part, spend their time in foreign climes and who gain plaudits among themselves by speaking ill of their own city of New York, from which they draw their incomes on which they live. There are some ten thousand of such people, who are unable to appreciate that it is the best governed city on this continent, with the lowest tax rate, the best health department, the best fire department, the best departments of every kind which contribute to the safety and comfort of its people; and they are always looking about to see what can be said against that city, and in time and out of time, always and everywhere, they are speaking in criticism of the city to whch they owe their all, and yet, Mr. Chairman and gentlemen, notwithstanding that class of men who are always speaking ill of the city and leaving the public at large to believe that it is not a well-governed city, the minority delegates to this Convention are perfectly ready, and, indeed, exceedingly anxious and striving to the utmost, to get some of the very things that the President of the Convention has indicated that we were not seeking. Why has this sudden outbreak come to-day? Why has this sharp criticism been made upon the course of the minority delegates upon this question at this particular time? Have we not, from the very outset, been endeavoring to the best of our ability to assist this Convention in the great work it is seeking to accomplish? Have we not striven to elevate its dignity, and to increase the position and standing of its President in order that he might go with some assurance before the public and make a claim for once in his life upon a party for party honors? What has happened? Was it the declaration made on Friday night by a single delegate to this Convention that the days of fairness have passed? Was it that an apportionment bill is coming in to-night? Was this the prelude to introduce a notice that we are no longer to be able to pass upon questions simply as to the right and wrongs of such questions? Has the President of this Convention found it necessary to change his entire attitude? And has the time arrived in which he feels that it is best for the interest of the majority delegates that there should be a change in every aspect? I trust not, Mr. Chairman. And for my own part, I say now that to the end I shall pursue the same course I have in the past, and shall endeavor simply to obtain the best possible legislation in this body, to the end that the people of the State may adopt it and have the benefit of it, if it is well that it should be adopted. No sharp attacks upon our city, no sharp reference to the honorable course the minority delegates are striving to pursue, shall change those views one iota. We stand now

for separate elections; we have no doubt we will only get them by our own earnest appeal and contest for them, and we have simply been driven by the improper withholding of a report to be compelled to ask this Convention to say that in place of section 1, there shall be a provision that separate elections shall be ordered by the Legislature. In two provisions, at least, of the cities article the Legislature are directed to do important things upon which its fulfillment depends. The judiciary article is full of directions to the Legislature. Most of the constitutional amendments that have passed this body are directory to the Legislature. It was no extraordinary thing that the gentleman from Kings made his amendment this morning. It has been misunderstood and unfairly treated by our President; but I hope that the good sense of the delegates of this Convention will stand by the suggestions which have been made by the gentleman from Kings, and when we fix and change the terms of the State officers it will be time enough to pass upon the language which is contained in the section with reference to the city of New York.

Mr. Powell—Mr. Chairman, I beg leave to suggest to the Convention that it might be well for us to come back for a moment or two to the matters which are before it. We have listened patiently to this wail of a down-trodden minority. We have heard the tale of their woes and of their sufferings, and we have witnessed the falling of their tears. We have heard their piteous cries. Gentlemen, in the name of all that is good, of all that is tender, of all that is sympathetic, of all that is holy, of all that is pure, let us take our feet off of this down-trodden minority, and let them get up out of the mud and dirt, and walk around like ordinary mortals once again. I feel sorry for the minority. I do, indeed, feel sorry for them. They have been so terribly abused, they have been so grossly maltreated, they have been so ignored, that I pity them profoundly from the bottom of my heart. But I certainly have been amused at the rapidity with which the minority right over here has passed from criticism of the language of the chairman of the Cities Committee to a wail of sorrow and to a death cry of unspeakable agony; and I have wondered what has transpired between the criticism of the Anglo-Saxon of the chairman of the Cities Committee only a moment ago, and this death-bed cry which has just gone out from my immediate presence. Let us admit that the minority are all right; let us give them a clean bill of health, and not hear their cries and wails of agony any longer; let us give them a certificate of good standing before this Convention; let us admit that they are all jolly good fellows, and that they mean to do pretty nearly what is

right — that is, as near as they can, considering the city from which many of them come; and then, gentlemen, let us, if we deem it necessary, go further than that, let us admit that in the great city of New York they have the most perfect, the most ideal, the purest, the highest type of municipal management that can be found in the world. And while we do that, let us regret that the gentleman from New York, Mr. Bowers, in pointing out the excellencies of the great city of New York, its excellent features of government, and the excellence of its departments, forgot to mention the police department of that great city. I do not know why he left that out. (Laughter.) "Non-partisan," somebody says. Perhaps it is non-partisan. The facility with which our friends on the other side cry out "partisan" and "non-partisan," the facility with which they criticise or utter wails of agony, the facility with which they pronounce one thing proper for the Constitution and another thing proper for the Legislature, are so startling that we can scarcely keep track of them.

Now, Mr. Chairman and gentlemen, the question before us is not as to the treatment of the minority; it is not just at this moment the condition or status of the government of the city of New York, but the question is whether or not we had better adopt the amendment of Mr. Jenks instead of the proposition of the committee. Let us look at that for a moment. We have tried spring elections, in order to separate our local and municipal elections from those of State and nation. The scheme has proved a failure. We have tried conducting our municipal and local elections at the same time as our State and national elections, and we are not satisfied with that. What, then, shall we do? There is only one other method that can be adopted, and that is the method which is suggested by the Committee on Cities, namely, the alternating method — one year our spring election, and then the national election or the State election, and the next year our municipal election. The virtue of the amendment proposed by the committee is that it makes either one of the old methods that have proved unsatisfactory impossible in the future. Under it we cannot go back to the old spring election scheme; under it we cannot go back to the dual election scheme; but we are held down to the one method which we have not yet tried, but which we believe will be for the advantage of the cities of our State. The fallacy of the amendment proposed by my friend from Kings is simply this (and I do not for a moment criticise his intentions; I know him too well; I know the manly honor which has ever characterized his life, and I believe that when he introduced this amendment he introduced it for what he believed to be the advantage of our city; but I think, sir, that he made a mistake, that

was all) — I say that the trouble with his proposed amendment is this: that the Legislature may do almost any number of things, and it may go back to the old scheme of spring municipal elections, or they may hold their municipal elections one week or one month before the State election, or one week or one month afterwards; and so that amendment would place it within the power of the Legislature to nullify the intention of the Convention. But the amendment as proposed by the Committee on Cities so fixes and establishes the law that no Legislature can subvert the intention of this Convention.

One other suggestion that has been made as to the superiority of the amendment proposed by the gentleman from Kings, is that it has more Anglo-Saxon words than has the amendment proposed by the Committee on Cities. I would like to ask my friend if he has gone over this proposed amendment offered by the Committee on Cities, this first section, and, if so, if he can tell me just how many words there are in it of Anglo-Saxon origin. I have examined it carefully, and I find that almost every word in this section as proposed by the Committee on Cities is a word of Anglo-Saxon origin. While I have not had before me the amendment proposed by the gentleman from Kings, so that I could subject it to a like critical examination, I do not believe that the percentage of Anglo-Saxon words in his amendment is as large as that contained in the amendment proposed by the Committee on Cities.

Somehow it has seemed to be the right thing lately in this Convention whenever we have talked about cities, to throw out some fling at Johnson's dictionary. There were some gentlemen who, just as soon as they received this proposed amendment, took down their Worcester's and their Webster's, and their Century dictionaries, and they made a close comparison of their dictionaries on this proposed amendment, and they said that Johnson's dictionary was not right. Gentlemen of the Convention, I come from the same city as the chairman of this committee, and I want to tell you that whatever you may think of his dictionary here, the people who live in that great city hold it in highest regard. There are certain noble words which have been nobly defined in that dictionary. Such words as "honor," "integrity," "civic usefulness," have been defined there by the deeds of a lifetime, for the author of that dictionary by his life has written these and kindred words upon the hearts and minds of his fellow-citizens in characters as luminous as those which Divine Power flashed upon the walls of Belshazzar's palace. (Applause.) Now, is it not time to

stop this nonsense? Is it not time even for the joint minority who seem to be constrained so far as their ideas are concerned, is it not time for them, driven at last to the piteous wails of the oppressed few, is it not time for them to cease this absolute, complete and insane nonsense of looking over this article and every once in a while finding an uncrossed t or an undotted i and then throwing out some fling or mean sneer at the chairman of this committee? I do not suppose, sir, that the Cities Committee endeavor to write odes that would compare with those of Horace, or that they have looked upon themselves as writing articles for the Spectator in Addisonian style, but they have grappled with the question of municipal government, and they did it boldly, they did it faithfully, and, if there may have been slight errors of language here and there, it is the duty of this committee to correct it; but I notice that the gentlemen of the minority seem to be confined exclusively to the picking out of petty flaws. And, as the chairman of the committee said not long ago, when brought face to face with the possibility of voting for this proposition, they take a makeshift which may mean black or may mean white, just as the Legislature happens to turn it, and they want to take that instead of straightforward and honest doctrine.

Gentlemen, I appeal to those of you who come from what are known as the country districts, and independently of what the minority may think or may not think, I say to you that the Republicans of Brooklyn and the Republicans of New York, and I believe the Republicans of every great city in the State, want section 1 of this article, but they want it exactly as it is written here; and we ask you to give it to them whether the minority may like it or not. We will take it. We will stand by it. And we will come back to you in the future with purer cities and with better municipal governments. Give it to us in the interest of what is right, of what is pure, and of what is true. (Applause.)

Mr. Mulqueen — Mr. Chairman, it has been suggested to me by some friends, whose advice I usually take, that I should not enter into the discussion on this question, and for reasons obvious to every member of this Convention; but I am here as a delegate to this Convention, representing, in part, proudly, the organization known as Tammany Hall. I am here as a Democrat, and I am going to exercise my privilege, even though some of my friends think it would be more decent not to say anything upon the subject. Now, Mr. Chairman, it is well for us at the start to consider what is the question now before the House. Members on both sides of the chamber believe that we should have separate elections, and the

only question of difference on one side of the chamber and the other is as to how we are to arrange the terms of offices so that we shall have separate elections. Now, I am one of those who believe that this outbreak to-day is a part of a scheme. You can see it all over the House that the Republicans are to be rallied together for the purpose of holding them together to pass the apportionment bill. I cannot believe that a gentleman of the ability of the President in discussing a question whether we should leave to the Legislature the change of officers or whether we should do it in the Constitution, would go out of his way to attack the great city which is his home by adoption. Now, we of New York city are proud of that city. What is its present condition to-day? It may be popular here to decry that, but let me call the attention of this committee to just the position of the government of that city to-day. No man in this Convention dares to stand and cast a single word or slur against the judiciary of our city. Every man on the bench was nominated and elected by the dominant organization of the city of New York. There is not one word to be said against it. What man will rise here and say that the equal of our fire department can be found in any city in the world? The fact remains and it is true that the insurance rates in the city of New York are lower than in any other city in the world because of the efficiency of our fire department. Now, the gentleman from Kings (Mr. Powell), has said that the gentleman from New York (Mr. Bowers) did not refer to the police department of our city. He did the other day in his speech, and at present that department seems under a cloud because it has not been able to eradicate what has not been eradicated in any city in the world. Mayor Hewitt, against whom none will dare say a word, said that he knew during his administration that that evil existed, and that he could not stop it. Outside of that they cannot attack an official of the city of New York that has profited a single dollar by that great abuse. Nay, more, in the city of New York to-day the authorities have declared that every man who has been guilty of any wrong in that connection shall be punished and put out of the police department and the trials are being pressed every day with great speed. But aside from that question what man will deny that our police department in the city of New York is worthy of praise? You hear of no highway robberies in the city of New York, you hear of no bank burglaries, except from the men who refuse to vote on election day and who sometimes handle the funds. Women to-day in the city of New York can pass through it without fear of insult. Men at night go to bed with safety and with a feeling of security, that their property, their

homes and their lives are in perfect security. I remember last winter, when there were thousands of people out of employment in the city of New York, I rode through Central Park on a very dark night with perfect security, and I could not help but say what a magnificent police force we must have, when at a time when there are thousands of men out of employment, that men and women can pass through our city with perfect security and perfect safety. I want the gentleman who is so fond of traducing the city that he owes so much to, to point to me or to the people of the State a better system of education than we have in the city of New York. I want the gentleman to point to me anywhere in the State of New York or in any other State a better system of supplying water to the citizens of the city. I want the gentleman to point to me any city in the Union that is better paved than the city of New York. I want him to tell me where in any city in the world the health rate is as good as it is in the city of New York. The percentage for the last six months is lower than any other city in the world. It is all very well, Mr. Chairman, for the purpose of uniting the Republican majority in this House, for the purpose of slandering his own city, to indulge in glittering generalities. But why does he not bring forth facts? He says that in the city of New York two men are employed to do the work of one. I say it is absolutely untrue, and I call upon the gentleman to name one single case of it and he cannot do it. He says that fifteen millions ought to be sufficient to govern the great city of New York, and yet he and all of his party have been unable to show, although they have tried over and over again, where a single dollar can be saved in the administration of that city. The present expenses of that city are forty millions a year, and if they could show that twenty-five millions were wasted, they would have a much easier time running next fall than they hope to have. As I say, Mr. Chairman, it is easy to throw mud at the city of New York, but when you come down to facts even he with all of his great ability is unable to find any. Look at its tax rate to-day. The tax rate to-day is the lowest in thirty years. Gentlemen try to sneer at that and say that that is brought about by increased valuations. Why, Mr. Chairman, the property in the city of New York is always on the increase. Valuations, as all candid men will admit, are continually increasing, and it is only right and proper that if property increases in valuation that the people should get the benefit of it. In what city of the State tell me does property remain at the same valuation on the tax list? Not a single case of it. We say that in that city the tax rate to-day is lower than it has been in thirty years, and we are willing to go before the people upon that

record. The gentleman seems to sneer at people who vote to-day. It is not new to him. He is constantly sneering at the people of that great city. Not long ago the same gentleman said in a public speech that he was tired of having this city run by a foreign gang. The point is that he has no trust or confidence in the real live people of the city of New York. I deny that the body of the people of our city are lacking in virtue, intelligence or patriotism. It is true the gentlemen with whom he associates may be better educated, may have more money, may have more of the luxuries of life, but the plain, honest people of the city of my birth possess just as much honor, just as much intelligence, just as much patriotism as do his associates.

Now, while we say we are in favor of separate elections, it is not because we fear that the people will not vote. I say it is a base slander, even upon the people whom he represents, for he does not represent the majority of the people in that city, although he does in this House, to say that even those men of high intelligence and lofty patriotism and great ability will not vote unless you have a separate election. Now, that is not true. The men of the city of New York to-day are big enough at every election to grasp the questions that come before them at each election, and it is a slander to say that a man of intelligence will become all mixed up on municipal matters if you have an election for State and national officers. It is absolutely untrue and the men are able to grasp them and do, sir; the minority of this House, recognizing that there is a sentiment for separate elections, stand in favor of it, and stand committed to home rule. But, Mr. Chairman, the majority of this House cannot escape its responsibility to the people of this State by refusing to give them home rule, by slandering one of the great cities of this State. Now, what is the condition to-day in the city of New York? To say that the men in authority in the city of New York to-day were selected by men lacking in patriotism or in honor or intelligence is to say the greatest majority ever given to a candidate in that city was given by men who are lacking in all those qualities. The present administration was put into office by seventy-five thousand majority. The gentleman himself has publicly stated that no fault could be found with that administration of the city, and he knows that is a fact; and, therefore, I say it is not for the purpose of speaking to this amendment that he made his speech to-day, but for the purpose of making this body partisan, which up to the present time it has refrained from being. Perhaps the gentleman did not include me in the list from the city of New York that he paid so much praise to, but if he did, I wish to disclaim it. I want no

praise from him or any other man that carries with it in the same sentence a disgraceful allusion to the city of my birth.

Now, in conclusion, Mr. Chairman, I want to say that we who have favored this separation of State and national elections believe that the proper way to do is to state the principle in the Constitution and then leave the details to the Legislature. The gentleman seems even to fear the Legislature. He thinks they are dishonest, and that the men from the city of New York may come up here and get them to do dishonest work, notwithstanding the fact that they are so anxious about carrying this Constitution into effect that to-day they had a gentleman here from New York to help them frame it, and the other night they had Mr. John C. Reid, the personal representative of the central committee, helping them to frame the apportionment measure that they hope to carry this fall. And yet they say in advance to the people of the State of New York, when we have carried it they will be so dishonest that we cannot trust them to regulate this plain mandate of our Constitution. Mr. Chairman, I sympathize with the gentleman who fears one-man power so much. The gentleman has read the lines, the writing on the wall, which says the gentleman who arrived from Europe yesterday shall be the candidate of his party this year for Governor. I do not blame him for feeling bitter, and having a very bitter hatred toward one-man power. But, concluding as I began, Mr. Chairman, I hope the minds of the delegates of this Convention will not be carried away on these party issues; that they will leave those issues to the stump, where they properly belong, and will keep themselves in the proper frame of mind to discuss this very important question of home rule for cities.

Mr. McClure — Mr. Chairman, if anything would induce me to favor the amendment of Mr. Jenks, it is the scene that has passed before the spectators of the doings — I will not call them deliberations, I will not even dignify them as debates — of this Convention this afternoon. It seems that we have resolved ourselves into a sort of a legislature. Readers of the papers throughout the press to-morrow will find the familiar cry about the city of New York, its corruption, dishonesty, and the need to reform it at the hands of the Republican body. Mr. Chairman, I deprecate exceedingly the condition of mind and thought and expression to which this Convention finds itself driven. I am more sorry than I can tell, that upon whomever the responsibility may rest, there has been thrown into this Convention for the first time the suggestion of majority and minority, and attacks have been made upon one party and the other; for I think the mistake is greater than will be repaired by this

Convention to the end of its sitting. There is a simple question before this body. It is not worth discussing the merits of any city in deciding upon it. It is not necessary that it shall be determined that New York is any worse than Brooklyn, or that Brooklyn is any better than Buffalo. I cannot understand why the discussion should go on, limited as it has been to the city of New York. I supposed that this question affects all the cities of the State.

Now, what is the question? Not whether the great city of New York, which, as is shown by a table which I have before me at this moment for another purpose, contributed during the last year two millions of the three millions of collateral inheritance and direct tax paid into the coffers of the State, shall have something done to it, but whether there shall be an amendment to the Constitution. What is the amendment suggested by Mr. Jenks? One, similar to many contained in the amendments proposed in this body, namely, that there shall be a separation of elections in cities, and that the Legislature shall provide the methods. Why can we not discuss that without going into the relative merits of political parties, and the relative merits of majority and minority on this floor. As one of the minority, I want to say that the minority have taken care of themselves with dignity, and so far as my influence goes, they will take care of themselves with dignity to the end. I do not come here representing any particular party or any particular hall. I come here as a representative of my district and of the people of the city of New York. I want to see to it that, so far as the cities are concerned, they shall have as fair treament as the country districts. I do not like the appeal to country delegates made to them as Republicans, to come in and support a measure because it is proposed by a Republican majority of the committee. I assert, Mr. Chairman, that it is not dignified action on the part of this body to support an amendment to the Constitution because it is proposed by a majority of the committee being Republican, and the Republicans are therefore to support it. Now, I have only this suggestion to make. It is very possible that we may find that the amendment proposed in detail, which is legislative action by the committee, may not work, and if does not work successfully, it cannot be altered except by another Convention, or by a special amendment of the Constitution. I am perfectly satisfied, and I am only repeating what I have said here many times, I do not care whether the Legislature is Republican or Democratic, I am willing to trust the Legislature, and if we cannot trust our Legislature, then we are idling away our time in making a Constitution. I believe Mr. Jenks's amendment to be the best one.

Not because it is proposed by a Democrat, not because I consider for a moment he wants to defeat the idea and the proposition of home rule and separate elections, but because it is the simplest, and the Legislature would be compelled to act upon it, and if it is found that their action is not for the best interests of the people, that action can be reversed at the next election. I hope, Mr. Chairman, we will not have any more discussion about politics in this body. I understand that there are a great many amendments to be passed upon, and I hope Mr. Jenks's amendment, being the simplest and best, and for that reason only, will prevail.

Mr. Hotchkiss — Mr. Chairman, I offer this as a substitute for Mr. Jenks's amendment.

The Secretary read Mr. Hotchkiss's amendment as follows:

"Elections of city officers and of judges and justices of inferior local courts in all cities, and of county officers in all counties containing a city and of supervisors elected in a city, except to fill vacancies, shall be on the Tuesday succeeding the first Monday in November in an odd-numbered year. The Legislature shall, at its first session after the adoption of this article, provide by law for carrying into execution the foregoing provision and in so doing shall extend or abridge the terms of such officers then in office so far as may be necessary for that purpose."

Mr. Hotchkiss — Mr. Chairman, not only do I deprecate the fact that politics have been flung into this debate, and quite unnecessarily, but I also deprecate the fact that the chairman of the Cities Committee, for whom I have the highest respect, should have lost the good nature and *bonhomie*, which have characterized him during the sittings of this Convention and during the sittings of the committee of which he is chairman; and that in losing his temper he should also have lost sight of what he would not deny to be facts touching my relations to the drafting of the original article proposed by his committee. I do not believe that he would intentionally say anything that would either harm me in the estimation of this body or hurt my feelings, but he certainly has been grievously in error in the statement that he has made touching the part which I took in aiding to frame the article as reported.

Mr. J. Johnson — May I ask the gentleman a question?

Mr. Hotchkiss — Not now, sir. Difficulties without number were suggested to the article when it was reported to this Convention, and the gentleman in his attempt to overcome them now, reminds me of Lowell's schoolmistress and the trouble she had with the hard words —

"If any tyro found a word too tough,
And looked at her, pride furnished skill enough.
She nerved her larynx to the desperate things,
And cleared the five-barred syllable at a spring."

That, Mr. Chairman, seems to be the way in which the chairman of the Cities Committee hopes to clear the manifest difficulties which have been suggested to his measure. Now, addressing myself to the substitute which I have offered, I wish to call the attention of the Convention to the fact that it eliminates what I conceive to be the main objection offered by the majority to the amendment suggested by Mr. Jenks, and that is that it is left to the Legislature to fix the time when the elections in cities shall be held. It has been suggested that instead of fixing them all in the fall, where the majority would apparently have them held, they might fix them in the spring, which would interfere materially with the affairs in many of the smaller cities, and, therefore, in preparing this amendment, I have been careful to retain the period in the section fixing November as the time for holding these elections.

But there is an amendment as it comes here from the Cities Committee which, to my mind, is fatal to it, and an objection which has not been referred to by any gentleman yet, so far as I have heard. If that section is adopted as it is drawn, it extends the time of the successor of the present incumbent of the mayoralty office in the city of New York to three years. So that when we get to the polls next fall to vote upon the adoption of this Constitution, although we are voting for a candidate for an office, which has the distribution in his hands of between thirty-five and thirty-six million dollars during the current year, we shall not know whether we are voting for a two-years' or a three-years' term. Now, to my mind, that is improper. To my mind, it will be found an impropriety to every one who looks at the question candidly; and I believe that unless that is eliminated from this section, it will go further to convince the people of this State that there is politics in this attempted separation than anything else that this majority might do.

President Choate here took the chair.

The President — Mr. Hotchkiss will be good enough to continue his remarks at eight o'clock, to which time this Convention takes recess

EVENING SESSION.

Monday Evening, August 27, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, in the Capitol, at Albany, August 27, 1894, at 8 P. M.

President Choate called the Convention to order.

Mr. Lester — Mr. President, Mr. Moore was granted an excuse this morning. The business which he intended to accomplish this morning was postponed until this evening. He was present in the Convention this morning, and desired me to ask that the Convention should transfer his excuse from the morning session to the evening session. I, therefore, move that Mr. Moore be excused for this evening session.

The President put the question on the request that Mr. Moore be excused from attendance, and he was so excused.

Mr. Cornwell — Mr. President, I have received a telegram which requires my attention immediately upon business, and I respectfully ask to be excused for to-morrow and next day.

The President put the question on Mr. Cornwell's request to be excused from attendance, and he was so excused.

Mr. Veeder — Mr. President, I am requested to ask that Mr. Williams, of New York, be excused from to-day's sessions.

The President put the question on the request that Mr. Williams be excused from attendance, and he was so excused.

Mr. Mantanye — Mr. President, I have just received information from home that makes it necessary for me to be there on Wednesday and Thursday of this week, and I ask to be excused.

The President put the question on Mr. Mantanye's request to be excused from attendance, and he was so excused.

The President — The Committee on Legislative Organization was to report to-night. Is any member of the Committee on Legislative Organization and Apportionment present?

Mr. Dickey — Mr. President, I am a member of that committee.

The President — The Chair understood that there was a report from that committee expected?

Mr. Dickey — We expect so, Mr. President, when the chairman comes in.

Mr. E. R. Brown — Mr. President, the report is prepared and is ready to present this evening.

The President — Then in order that the promise to the Committee on Legislative Organization and Apportionment be made good, and that they may make their report this evening, we will now go into Committee of the Whole and the committee will rise at ten minutes before ten. Mr. Johnson will please take the chair.

The House resolved itself into Committee of the Whole and Mr. I. S. Johnson took the chair.

Mr. Hotchkiss — Mr. Chairman, I was calling the attention of the committee, when we took a recess, to what I conceive to be a very important matter relating to this proposed first article, first section; that in its form as it now appears, it extends the time of the successor to be elected to the office of mayor to succeed the present incumbent in the city of New York; extends his term to three years. So that when we go to the polls in New York this fall to vote for our mayor, we vote for our Constitution at the same time, not knowing whether the Constitution will be adopted; we necessarily do not know whether the term of the mayor for whom we vote will be two years or three years, a very serious objection, to my mind. If there is to be any doubt of that character in a city of the size of New York relating to an officer so important as that of the mayor of that city, it should be left upon the line of a lesser term of office rather than a greater. Therefore, if we are to perform the functions of the Legislature in this amendment, if we are to fix the terms of office, let us rather fix them in the smaller term than in the larger, in this individual case, where these peculiar circumstances arise.

Mr. Chairman, I shall not take advantage of any future opportunity to address myself to the subsequent sections of this bill, and I think that I can economize time to say all that I wish to say at this time. It is only now about three weeks since the Committee on Cities reported its proposed measure for the government of cities. When it came into this Convention it was opposed, criticised and condemned by the minority, and aside from the chairman of the committee and one other person, there was, so far as my memory serves me, not one single voice raised in its defense. If there were others than the two gentlemen I have referred to who saw merit in this measure, they were certainly silent in its praise. I do not think that in the history of deliberative bodies a measure covering so important a subject, and coming from so distinguished a source, was ever received with such contemptuous indifference

on the part of those in political accord with its author as was this measure. The chairman of the Cities Committee has accused me and others of sneering at his article, and from what he said it might be inferred that he thought that I had sneered at him. Such, surely, was the farthest from my intention. I declared myself in unqualified terms in opposition to his article. I have heretofore expressed, and, if necessary, I repeat now my confidence in the gentleman's amiability upon almost every occasion and my high regard for his ability. Of the industry which he has displayed in attempting to frame an article for his committee, every one on that committee is a witness. But the article brought in from the committee, and receiving the indorsement of the majority of that committee, received then, as the second article will receive now, the heartiest condemnation so far as it lies in my power to give it. In the observations which I submitted on the first article, I took occasion to say that, in my judgment, it violated the primal principle of what a constitutional article upon that subject should be. Now, we cannot differ as to what the Constitution should contain. The primary purpose of a Constitution is to create and define a government; its next is to secure personal and political rights, and establish a few of the great and fundamental principles of government. To these may be added certain restrictions upon the administrative forces of government, the legislative, the executive, and the judicial. But such restrictions ought to extend no further than to those administrative agencies, that is, they must have behind the principle the body politic. This Convention, for better security of the people, may tell future Legislatures how they must work, not what they must do. Those are principles from which I fancy there will be no dissent; and it is those principles which the measure as reported violated, and I believe the measure now reported violates. It was certainly my understanding of the majority in this Convention, that when this article was referred back to the committee, it was referred back only that it might be amended and corrected, but it comes back with its chief evils still full upon it. There has been a re-arrangement of its sections, the provisions in respect to a State election board have been eliminated, but, with that section, the article remains substantially as it was.

My first objection to the article lies in the fact that it attempts in the Constitution to classify the cities of the State. I believe that is legislative and inexpedient, and I believe that the history of the gentleman's action with regard to his report proves what I say to be true. In his report there was a division of cities, I do not remember exactly what classes, but there was a division of cities

into three classes, within a certain amount of population to each classs. During the debate it was suggested that there should be a re-arrangement as to population. There was no reason given during the debate why the population should be re-arranged in the classes, and without reason, so far as I know, the majority of the Cities Committee has taken this article back, and has reported it again to this Convention changing simply the population into which the cities are divided, into classes. They must have found some reason for it, but the whole thing is experimental, the classification of cities; and how are we to know that three weeks after this Convention is adjourned, or a month after this Constitution may have been adopted, it may not be discovered that the classification which the majority have now incorporated into their bill is an improper and an inexpedient one. But it will then be altogether too late to correct the error. We have attempted to tie the hands of the people. We have attempted to do that which the Legislature, and it alone, ought to be permitted to do, for the Legislature can correct its error if it discovers that it has made an error, whereas we cannot. In the measure which I submitted as a substitute upon the former occasion, and the authorship of which I did not claim, as the chairman of the Cities Committee suggests, but which I ascribed to its true source, namely, the Committee of Twenty-one, the committee from the Good Government Club, and the committee of the Republican Club of the city of New York, that measure escaped the objection which I made to this, by providing simply the principle that cities should be classified and that the Legislature should arrange the classification as to them might see fit. That is an objection which is radical, and which goes to the basis of this proposed measure, and which cannot be corrected unless you abandon all of the proposition of attempting to legislate here in this bill for the people tying the hands of a subsequent majority which may sit in this Capitol; for the purpose of enacting laws for the people of this State, the majority upon this floor is to-day tying the hands of all future majorities for twenty years to come. No argument will ever convince me that that kind of work is expedient for this Convention to perform.

Another and basic objection which I make to this article lies in the fact that it conveys or grants to the city no real and substantial home rule. What is home rule? What do we mean by it? If it means anything, it means granting to a municipal legislature which is to be erected in the various municipalities the power to legislate with respect to its municipal affairs, and then leaving it to work out its own salvation. That is home rule, but this measure

does not propose anything of the sort. This measure simply ties the hands of the Legislature and throws obstructions into the path of the people in the future with respect to the subjects which are defined in this measure. It says not to the people of the city of New York: you may legislate for yourselves in respect to those matters which concern the administration of your city. It does not say that. It says simply that the Legislature of the State shall not hereafter pass any law affecting those subjects within any city or any class of cities, unless it be by a vote of three-fifths majority in such Legislature. That is not home rule. That is not what the people of New York come to this Convention seeking for and expecting to get. To my judgment, it will simply work out a continuance upon perhaps a greater scale of evil of the same practices, the same difficulties, which have beset us in the past. It will make the obtaining of a three-fifths vote a little more difficult, a little more expensive, perhaps for those who wish to effect jobbery but it will by no means prevent it.

These are by no means all of the objections which I have to this measure, but they are objections which go to the root and foundation of the measure, and which are sufficient, to my mind, to induce me to believe that this Convention will not have granted to the cities of the State what they need if they adopt what is here provided for them. I wish, however, to be understood as admitting this much, that if the scheme outlined in this measure does not effect the result which I fear and anticipate, namely, that it will make jobbery a little more difficult and a little more expensive but will not prevent it, if it does not work out that result, then possibly by tying the hands of the Legislature in respect to measures which the cities may object to, it will work some little degree of good. But it will not bring the measure of benefit and advantage which might be accomplished by this Convention for these cities crying out for relief, that could be accomplished if individual feuds would only be subordinated, and the true principles which should guide Constitution makers and those who seek home rule for cities, were to prevail.

Mr. Vedder — Mr. Chairman, I am very glad that the gentleman who last occupied the floor (Mr. Hotchkiss) has endeavored to get out of the Midway Plaisance of debate as exhibited here this afternoon with its oriental pomp and splendor, its wild, weird music, its strange sights and sounds, away from the sullen, fierce roar of the tiger's own city, and the triumphant scream of the eagle which is supposed to own States, back into the transportation building where we can make some progress. I wish to ask the gentleman, the chairman of the Committee on Cities, whether this scheme includes

the necessity of electing Members of the Assembly for two years — I mean the first section.

Mr. J. Johnson — This section, as is known and understood, treats not at all upon that subject. That is a subject which I do not understand is touched or affected at all by this section. I apprehend that when it comes up it will be considered on its merits.

Mr. Vedder — Then I understand, Mr. Chairman, that if this section should pass substantially as it is, it would not necessarily follow to make it harmonious or to give it effectiveness that we should pass a resolution or an amendment that Members of the Assembly should hold office for and be elected every two years.

Mr. J. Johnson — That would be for the judgment of the committee.

Mr. Vedder — Mr. Chairman, there seems to be in this proposed amendment reported by the Cities Committee seven distinct propositions, neither of which is dependent upon any other; each one of these seven different propositions could exist without the other. There might be some of these seven that the Convention would object to very seriously and that the people might object to more seriously when they come to vote upon it. I think the suggestion made by our distinguished President this morning is full of wisdom, as I understand it, and that is, that some means should be taken so that at least this first section should stand before the Convention as an independent proposition. I think that a way can be found by which that can be done. I think that if the committee will think of it for a moment, we might in our report to the Convention on this proposition make a motion to strike out the first section, and in the same motion that the section be referred to the Committee on Cities, with instructions to report it as a proposed amendment. I think that could be done, and I would suggest to the friends of this measure whether or not that is not altogether the better way to proceed. Let us have one thing at a time, and let us have the first proposition first, as an independent proposition, standing or falling upon its own merits. I think that method could be adopted, and a proposition reported at once. If that should be agreeable to the chairman of the Committee on Cities, the father of this measure, I would make a motion, at his suggestion, to effect that purpose.

Mr. Maybee — Mr. Chairman, I exceedingly regret that any partisan feeling has been injected into this discussion, but I am glad that the first firebrand of partisanship that has been thrown into the arena of this debate has proceeded from the camp of the Republican majority. When this Convention assembled, upon the

eighth day of May, the excellent inaugural address of our distinguished President, for whom many Democrats voted, was full of beautiful sentiments, breathing the spirit of patriotism and non-partisanship. But the vigor of the war has not come up to the sounding phrase of the manifesto. Immediately afterwards, when the large Democratic minority of this Convention asked the privilege of nominating to one of the vice-presidencies the distinguished ex-minister to France, the scholar and the publicist, whose name is known the world over, and who always rises above the plane of mere partisanship to the higher plane of patriotism and love of country, that boon was denied to the minority. And ever since, the only members of this Convention from whom non-partisanship has even been expected have been the Democratic members. Now, Mr. President, the Democratic members have manifested a spirit of non-partisanship during the entire time that this Convention has been in session. With two or three exceptions, so far as my observation goes, all the members of the Democratic party have endeavored to sink partisanship, and have endeavored to study the good of the people in carrying out the work of this Convention. And when the history of this Convention comes to be written, its brightest page will be that which records the non-partisan spirit, the unselfishness, the patriotism of the minority. I, Mr. President, individually, have absolutely sunk my party affiliations. I voted to seat the Republican contestants from the city of Buffalo, and so did many other Democrats. I voted to seat the Republican contestants in the county of Kings, and so with three exceptions did all the Democratic members of this body. I have voted with the Republican leaders of this Convention upon all the vital measures that they have presented for our consideration. But when partisanship is injected here, when under stress of party necessity, under the party whip and spur, party measures are endeavored to be carried out as a part of the work of this Convention, we come to the parting of the ways; and for my part, and I speak for myself alone, my support is not to be gained for any of the measures that the Republican majority undertake to put before the people as a part of the work of this Convention, by wanton and unjust attacks upon the great party to which I am proud to belong, or by unjust personal attacks upon its representatives upon this floor. Something has been said, Mr. Chairman, about the handwriting upon the wall in which appeared the doom of Belshazzar and his bacchanalian lords. The real handwriting upon the wall is that which will write the doom of the work of this Convention if partisanship is to control here. If a gerrymander of the senatorial

districts of this State is to be put through this Convention under party whip and spur, if partisan measures are to be put through here as partisan measures, then the work of this Convention will be repudiated by the people at the polls, and the very name of "Constitutional Convention," as the New York Sun of to-night well says, "will become odious in the ears of the people."

Mr. H. A. Clark — Mr. Chairman, I do not rise to make a political speech for I am not given to speaking on politics when at home or away from home. I have just listened to a speech from a gentleman in the Convention, while the subject before the Convention is the first section of the article on cities, and I failed to hear him mention the article in a single syllable that he pronounced. He spent all his time over a question of partisanship, injecting partisanship into this Convention. Certainly it never has been injected into this Convention by the majority and it has hardly been referred to by the majority, and the debates will show whenever it has been referred to it has been referred to by the minority members of this Convention.

Now, Mr. Chairman, I fortunately or unfortunately was made a member of the Committee on Cities. I had little or no experience in the matter of city government, and went into that committee with the desire to perform my duty to every part of the State of New York. I have heard home rule talked, that the cities desired home rule, and the members of the Committee on Cities sat in the Assembly parlor week after week attempting by united effort to work out some scheme whereby to give the large cities of this State what they seemed to be demanding, "home rule." They listened to committees from the different cities which appeared before them; gentlemen from the good government clubs of New York and Brooklyn and Buffalo appeared and gave us their views upon the subject. We heard many arguments from different sources, and the members of those clubs differed materially as to their views of home rule; in fact, very few of them agreed. The first idea was to confer upon legislative bodies of cities the powers of local legislation to give them the right to control unfettered by the Legislature, their municipal affairs; but certain members of the same clubs appeared and advised the committee that it would never do; that the result would be that our State, our sovereign State, would be divided into several sovereignties; that the State would lose its control over its cities, while the cities would still continue to rule the State. The argument was used before the committee that the counties had home rule and that the cities had not. Now, the home rule that the counties possess is a very different home rule from that which has been

asked by the cities. The only authority that the counties possess is that given to the boards of supervisors, and that is conferred upon them by the Legislature and can be changed at any time. The suggestion was made that the same kind of authority be given to local legislative bodies in cities, powers conferred by the Legislature which might be taken away at any time. This appeared unsatisfactory to the committee, who were nearly all from the different cities of the State, and was most unsatisfactory to many of those who appeared before the committee, and I dare say that it would be unsatisfactory to this Convention. However, I believe it to be the only safe and proper way. The committee continued its work and concluded that the only way that home rule could be worked out under the circumstances was by limiting the powers of the Legislature in relation to city affairs, and that the Legislature should not pass special acts, except as those acts were first after being passed, before they became laws, submitted to local authority for sanction. On this theory this article was drafted, and fourteen of the members of the Committee on Cities took part in drafting it, took part in the construction of every sentence that it contains, aided in making up its language, criticised it when they saw fit before the committee, and then the language was changed in accordance with their suggestions and after assisting and helping make this article and preparing it, as it was to be laid before this Convention, then they came into this Convention, and attacked the very language and the very sentences that they had assisted in framing. The only section now before this committee, as I understand it, is section 1. That section was considered by the committee until it was understood that it was satisfactory to every member of the committee who took part in its work save three. Afterwards when we came to take the final vote in committee, they reserved the right to attack the article on principle, but claimed that they were satisfied in every respect with section 1. Furthermore, they have made a minority report and placed it before this Convention, and nowhere do I find in that minority report a single reference to section 1, indicating that they are in any way dissatisfied with that. Now, Mr. Chairman, in the work of that committee, everything ran smoothly in relation to section 1. There seemed to be no difference of opinion as to the divorcing of elections; there seemed to be no difference of opinion as to the manner in which the section should be arranged. The different sections were considered, construed and passed upon until we came to the article in relation to the police, and then we found a different sentiment. We found certain members of the Committee on Cities who claimed they were in favor of home rule in

favor of divorcing the elections, in favor of everything that might be suggested before the committee, but when we came to the section where the State proposed to put its hand upon the police, so as to see that those elections were carried on properly, then there was a change of sentiment; then the minority, as they called themselves, began to object, began to withdraw from the work of the committee, and from that time until this, they have not been so much in favor of home rule. One more word in relation to this section. Before the report was finished Mr. Banks, a member of the Cities Committee, proposed an article for the cities. It was read and discussed in committee, and that article, as proposed by Mr. Banks, was voted for, I believe, by every member of the minority who has signed the minority report; and that proposition of Mr. Banks, which was brought in there by the minority and proposed as a section to the cities article, contained the same matter as section 1 which is now before this Committee of the Whole. Now, I cannot quite understand the position of the gentlemen who oppose section 1. They helped frame it. They helped construct each sentence in it. They produced before the committee a section just like it in principle, containing its language almost word for word; voted for it, stood by it, and now, when the majority come into Convention in Committee of the Whole and favor it, they turn around and criticise it and oppose it. We wish they would tell us what they would like. They say they want home rule. Why do they not present us something in favor of home rule? They say they want divorced elections. Why do they not present us something that will operate in that way? Conferring the power on the Legislature to separate elections does not guarantee the divorcement of elections. It merely operates to kill this section, and nothing more. Mr. Chairman, while some of the speakers have seen fit to discuss this whole article, I feel that it is only proper that I should confine myself to this section, and when the other sections come up, I hope to have something to say in relation to them. But I only wish to say here, that after the minority have proposed this same section in substance to the Committee on Cities, and voted for it, they ought now to stand by it.

Mr. Vedder — Mr. Chairman, I move the committee now rise, report progress on this bill, and ask leave to sit again.

The Chairman put the question on Mr. Vedder's motion, and by a rising vote it was determined in the affirmative, ayes 56, noes 41.

The committee thereupon rose and President Choate resumed the chair.

Mr. I. S. Johnson — Mr. President, the Committee of the Whole have had under consideration proposed constitutional amendment (printed No. 451), entitled "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 that fact to the Convention, and ask leave to sit again.

The President — The question is on agreeing with the report of the Committee of the Whole, and granting leave to sit again.

Mr. Nicoll — I call for the ayes and noes on that question.

Mr. Roche — Mr. Chairman, I happened to be out temporarily when the vote was taken on the question of the committee rising. I do not know what the purpose of the committee in rising is.

The President — It is to get leave to sit again.

Mr. Roche — That is very true I presume, and it is the form, but if it means that the committee is to rise for the purpose of reporting this proposition separately in accordance with the proposition by Mr. Vedder, that, I think, should be considered by this Convention before the vote is taken by ayes and noes. If this in effect means that all we are to have of home rule is a simple proposition for the separation of elections, then it seems to me that it should be carefully considered by this Convention.

Mr. Putnam — Mr. President, I rise to a point of order. There is no motion now before the House.

The President — There is a question before the House, whether it will agree to the report of the Committee of the Whole and give them leave to sit again. The ayes and noes have been called for, and the Chair holds that this is debatable.

Mr. Nicoll — Mr. Chairman, I beg to withdraw my request for the ayes and noes.

The President — Mr. Roche has the floor.

Mr. Roche — Mr. President, I think it is very much easier to criticise this proposition of the Committee on Cities than it is to construct a new proposition. For one I am not disposed to criticise. I would rather be helpful to the committee in framing a useful and practicable proposition, which would confer on the great municipalities of this State some of the rights and some of the benefits of self-government. I have been taught to believe as a Democrat that the people can be trusted with power in their several localities, and that they should be given large measures and powers for their own government. I believe, Mr. Chairman, that this amendment is a step in the right direction. It may not accomplish

all that it is expected to accomplish but the separation of local elections from State and general elections, or national elections, has been thought generally to be a wise and necessary step in the direction of better municipal government. We have a proposition on this subject before the Convention. I hope that it will be adopted in some form. I believe in the substance of things, and not alone in the form of them. It may be that this amendment does not very clearly and intelligently express the object which is sought to be accomplished; I will not say that it does or does not. In reference to the objections which were raised by Mr. Hotchkiss in regard to the coming election in the city of New York, I desire to say that the people in that city will vote upon the question of who shall be the next mayor with their eyes open. If this Constitution is before them with knowledge that it may be adopted, they will vote upon that and upon the question of who shall be the mayor, with reference to the fact as to whether his term shall be a two-years or a three-years term; and it may be that the citizens of New York and the political parties of New York will be much more careful in regard to who shall be the candidate or candidates for mayor, if the person elected is to be installed for three years rather than for a two-years term.

Now, Mr. Chairman, this has got to be put in some form, and it seems to me that the object at which we should all aim is so important that it should make substantially no difference if, in fact, it results in the next mayor of the city of New York, being elected for a three-years term instead of for a two-years term. I know it is said that this is legislation in the Constitution. Well, what is all our Constitution but legislation in some form, either affirmative or negative? We have put it in the Constitution that the Legislature shall pass laws upon certain subjects, and we have placed it in the Constitution that the Legislature shall not pass laws upon certain other subjects. It strikes me that we may go a little astray in regard to this business of legislation in the Constitution; that we may perhaps be in favor of a legislative Constitution when it happens to be in harmony with our views or ideas upon certain matters, and that we may be opposed to legislation in the Constitution when it is not in harmony with our views upon some particular matter. The man who was asked if his horse had the glanders said he did not know what the glanders were, but if he was any the better for them he had them a plenty, and if he was any the worse for them he didn't have the glanders at all. Now, it may be a good deal like that in reference to this matter of legislation in the Constitution. I am asked if we can trust the Legislature to do this thing right, to

obey this mandate. I have a great deal of respect for the character and the learning of the distinguished gentleman from Kings (Mr. Jenks), and if the majorities in the Legislature were composed of men of his knowledge and experience in municipal affairs, accompanied with his high character and ability, I should say yes, and would be satisfied with putting in the Constitution a mere mandate that the Legislature should enact laws of this character, in the hope and belief that they would be enforced. But, Mr. Chairman, if we are to be guided by the experience of the past, I say to you Democrats who are sincere and honest in your professions and desire for home rule, let us have home rule here in plain, concrete written form, and not take it at plain mandatory provisions to the Legislature. The Constitution now contains plain mandatory provision to the Legislature on subjects which it has been pleased to ignore time and time again. We know that the Legislature of this State got into a quarrel with the Governor of this State in regard to the constitutional mandatory provision for an enumeration of the inhabitants of the State, and that it disregarded the Constitution. We know that the Legislature of this State quarrelled with the Governor in regard to the calling of this very Convention, and that the constitutional provision for its assembling was defeated year after year for five or six years after this Convention should have assembled in accordance with the provisions of the Constitution. The experience of the past tells us that we cannot be too careful, as against political, willful, ignorant or corrupt action upon the part of Legislatures, and that men who sometimes take an oath of office to obey the Constitution and laws of the State find excuses, and excuses of the most trivial character, for refusing to comply with the mandatory provisions of the Constitution.

Now, Mr. President, I believe in home rule, and I believe in it in such form, and am so anxious to have it secured to the cities of this State that I want to see it put in this Constitution in such shape, that no Legislature, whatever may be its political complexion, can deprive the municipalities of the State of the boon and benefit of local self-government. But does this proposition for separation mean that all we are to have is simply a provision for separate elections? Does it mean that gentlemen who are not really in favor of home rule for the great cities of this State, but desire that the legislative power and the legislative authority shall be asserted on any and all occasions even to the hiring of a clerkship in a public office, or the question of whether a municipality may build a bridge across a stream, and that they shall have to come to the Legislature for matters that are purely subjects of municipal rule and regulation.

Does it mean that gentlemen want to assert the power of the Legislature over the municipalities in order that they may force power and patronage and a dispensation of favors from either political parties or from the municipalities as the price of granting legislation? Does it mean that these gentlemen propose to leave us here with a single proposition for the separation of elections, or does it mean that we are to have some constitutional safeguards against legislative interference and legislative tinkering such as we have seen time and time again?

Mr. President, I think that there is some home rule in this proposition, but I think it can be improved upon. There may be no home rule for the city of New York; the members from New York city know best about that. I think there is. I know that there is in regard to many other of the cities of the State. We can add to the number of subjects to be treated upon in this article if they are not sufficiently covered; but I do hope, Mr. Chairman, that this question which has occupied so much of the time of this Convention will not end in this way; that it will not mean and that it does not mean that we are to have simply a separate proposition from the Committee on Cities, as suggested by the gentleman from Cattaraugus, and that all the other provisions, that are intended to give us something of the semblance as well as the form of home rule, are to be cast aside and sent adrift and kept out of the sight of this Convention for the remainder of the period. I hope, therefore, Mr. Chairman, if that is really what is meant by this proposition to rise, that the Convention will not adopt the report of the Chairman.

Mr. Vedder — Mr. President, I do not quite understand the gentleman from Rensselaer, who is in favor of this proposition and yet hopes that the Convention will not grant leave to sit again on the very proposition that he says he is in favor of.

Mr. Roche — Mr. President, may I suggest something to the gentleman? It lacks an hour of ten o'clock. Why can't we go on to-night with the discussion of this matter for the remainder of the evening? Why do we hear the suggestion that this thing now shall be cut to pieces and that it shall be reported back from the Committee on Cities with simply a provision for section one? What is the meaning of it? Why can't we go on and act upon this matter, section by section, and adopt it here to-night and for the rest of the time until it is completed? I have heard no answer to the suggestion, if Mr. Vedder will pardon me, that this thing really means that everything is to be cut out of this provision relative to home rule for cities except section one; that that is to be adopted, and we are to go adrift in regard to the rest of the article.

Mr. Vedder — Mr. President, I do not know from whom the gentleman from Rensselaer could have heard any such story as he has just detailed, that it was all going to be cut out except the first section, for there has been no such suggestion from me, nor from any one to me. I made a suggestion a short time ago, when we were in Committee of the Whole, which I supposed was acceptable to the majority of the Committee of the Whole and of the Convention, that these seven distinct items in this one proposition might be considered independent of each other, standing as single isolated propositions. There are those who are in favor of the first section of this bill who are not in favor of some of the other sections. Section one is an independent proposition which is to divorce business elections of cities and elections for State purposes or national purposes and to separate them; to have a divorce between those two different classes of elections for different classes of officers. One is a business proposition to regulate the affairs of the city and the other to regulate the affairs of the State or the affairs of the nation in the case of a presidential or a congressional election. Now there has been so much mystery and so many rumors connected with this matter that have got in the ears of those friends who are panting to vote for this whole proposition, or any part of it, that I will say I moved progress on the bill and asked leave to sit again upon the theory that if leave was granted to sit again — and it would be if everybody was in favor of the proposition, as they seem now to be — that then I would make a motion that the proposition be referred back to the standing Committee on Cities, with instructions to strike out the first section, the balance retaining its place on general orders, and to report the first section as an independent proposition and bring it into the Committee of the Whole, side by side with the others; so that if one section failed, all would not fail, and all would not be lost. Those who are in favor of all the seven propositions and are so eager to vote for them, ought to consider this, that there may be those who are not in favor of each of the seven propositions; and I ask those who are in favor of the seven propositions, and of each and every of the seven, whether they would not be content to take one or two of them if they could not get all? Now, then, Mr. President, I shall not make the motion. Those who are in favor of this proposition as a whole, by voting aye will grant leave to sit again, and in five minutes or less we can be in Committee of the Whole. But let them understand that in their fierceness to get all, they may possibly not get any of it.

Mr. Roche — Mr. President, may I ask the gentleman a question?

Is there any reason why we should treat this article section by section any differently from what we treated the judiciary article?

Mr. Vedder — Yes, exactly. The judiciary article was a complete, matchless, peerless whole, and you could not take any part from it without destroying the whole of it. It was so symmetrical in all of its proportions that you could not violently disturb any of it without disturbing the whole of it. There were not seven different propositions in the judiciary article, independent of each other, each hinging upon the others as a system. Here are seven distinct propositions; first, to enumerate some of them, that there shall be a divorce between municipal elections for business purposes, for cities, and State and national elections; second, that in all the election machinery of the State there shall be an equal number of those who represent the two great parties as determined by the votes at the then last gubernatorial election; the next proposition is that the Governor shall have power to remove the police commissioners of cities and appoint their successors during the term of the then present mayor; another proposition is in regard to proportional or minority representation in cities; another proposition is that a mayor of any city in the State of New York shall be equal to three-fifths of the Legislature of the State of New York in nullifying the acts of the Legislature of the State; and none of these is dependent upon the others. But as I say, I am not dying to have these propositions separated. Let the friends of this whole measure take the consequences, and let those consequences be on their own heads, if they wish to club them all together. I think the true friends of reform, of those principles of reform which are in the bill, will take one if they can get no more; if they are not willing to lose all in their greed to have all.

Mr. Bowers — Mr. President, it is very difficult to perceive why the same course of procedure should not be had upon this bill as was had upon the judiciary article. I thank the gentleman for his statement that the judiciary article was matchless and peerless, and I beg at this time to call to the attention of the chairman of the Cities Committee the fact that the two most serious criticisms that have been made upon his report have not come from the minority. We did not make a reference to Johnson's dictionary, nor did we compare it as it has now been compared with the judiciary article. Are we now to understand from the declarations made by the gentleman from Cattaraugus (Mr. Vedder), that all the measure that this Convention proposes to give to cities is separate elections, and no part of the home rule which has been so much discussed.

Mr. Vedder — No.

Mr. Bowers — Then, Mr. President, why separate, and why not proceed as we did with the judiciary article? And if you do not like the amendment made by the gentleman from Kings (Mr. Jenks), defeat it, and we will bow, as we have always bowed, to the majority.

Mr. Vedder — If the gentleman will permit me, I will answer him. For one, Mr. President, who may be in favor of and probably is of some of these propositions, I wish to separate them because I do not believe that if these are all put in together, when we come to vote that we will get a single Democratic vote in this Convention for all of them put together.

Mr. Bowers — Mr. President, the gentleman is quite right, if he proposes to give power to the Governor of this State to rule the city of New York and its police department, that he will never get a Democratic vote. But at the same time, it is within the power of this Convention to so amend that article as to strike out the provision which proposes to give to the Governor power to remove and appoint for three years the head of the police of New York; and with that amendment stricken out, as I believe a majority of the delegates in this Convention will agree to do, there is no difficulty in properly amending this cities article, and providing some reasonable proposition as to home rule. If it is meant that we are to take separate elections alone, we shall accept that. But it is impossible now for us to perceive any reason why the whole article should not be gone through, section by section, properly amended to meet the wishes of the delegates of this Convention, and then adopted. We make these propositions now, because we are quite willing that the Committee of the Whole should sit again upon this article; but we are aware that when that motion comes to be made it may be made with restrictions and in such form that we cannot debate and present our views. Why should a different course of procedure be taken. We ask to go on for the rest of the evening, as we did for three days and a half on the judiciary article. We ask leave to consider this section by section, and not have it turned back again to the committee, because there is criticism on the very first section. Why, we will go on at this rate forever. Is it proposed to-night to recommit the first section, with instructions to report back in a certain manner, or are we to sit again?

Mr. Vedder — Mr. President, will the gentleman permit me? I thought I distinctly stated, I intended to, at least, that the question

is now upon granting leave to sit again. I shall make no motion to separate. There will be no motion made to separate. Let us consent to it, and go into Committee of the Whole immediately and commence debating the bill.

Mr. Bowers — Mr. President, we all agree to that.

Mr. Vedder — All right.

Mr. Bowers — What was the purpose of the motion, may I ask the gentleman? What brought us to this situation? Was it child's play?

Mr. Vedder — Mr. President, I very frankly told the Convention what I intended to do, but there has been so much said about it, and such a consuming desire to vote upon the proposition altogether, to have it altogether and to debate it altogether, that I say I will not carry out my original purpose of making a motion, but if leave to sit again is granted, we can go right into Committee of the Whole and proceed with our work.

The President — Is the call for the ayes and noes insisted upon?

Mr. Nicoll — That is withdrawn, Mr. President, in view of the explanation.

The President put the question on granting leave to the Committee of the Whole to sit again, and it was determined in the affirmative.

Mr. J. Johnson — Mr. President, I move that we now go into Committee of the Whole on this proposition.

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 resumed the chair.

The Chairman — The Convention is in Committee of the Whole. What is the pleasure of the Convention?

Mr. Holcomb — Mr. Chairman, I would be very much obliged if the Secretary would read the proposition as before the House. I was not so fortunate as to be here this morning.

The Secretary read as follows: Substitute for section first offered by Mr. Hotchkiss. "Section first: Elections of officers and of judges or of justices of inferior local courts in all cities, and of county officers in all counties containing a city, and of supervisors elected in a city, except to fill vacancies, shall be on the Tuesday succeeding the first Monday in November, in an odd-numbered year. The Legislature shall, at the first session after the adoption of this article provide by law for carrying into execution the fore-

going provision, and in so doing shall extend or abridge the terms of such officers, then in office, so far as may be necessary for that purpose."

Mr. Holcomb — Mr. Chairman, I would be very much obliged if I could hear the proposition presented to the Convention by Mr. Jenks, of Kings county. I have not heard it.

The Chairman — The Secretary will read the amendment.

Mr. Jenks — Mr. Chairman, will the gentleman give way for a moment? In order to meet the suggestion of one or two members of the Convention I have added a word or two to the amendment as proposed by me, and with the consent of the Convention, I will send it to the Secretary as it now stands.

Mr. J. Johnson — Mr. Chairman, may I ask if that is the same amendment in effect that was made before?

Mr. Jenks — Yes; I will read the amendment to the House. The article as it now stands, with my amendment, is as follows: "All elections, except to fill vacancies, of city officers, including supervisors and judicial officers of inferior or local jurisdiction, elected in any city or part of a city, and county officers elected in the counties of New York and Kings, and in all counties whose boundaries are the same as those of a city, shall be held separate from all elections for State or national officers, except as otherwise provided in this Constitution, and the Legislature at its session next after the adoption of this article shall enact such general laws as may be necessary for such purpose."

The Chairman — Does the Chair understand that this is to take the place of the former amendment?

Mr. Jenks — The way it now stands; yes, sir.

Mr. Cochran — May I ask the chairman of the Committee on Cities a question for information? Do I understand that this article now proposed by the Committee on Cities, in so far at least as the first section is concerned, is not dependent at all upon the reports of any of the other committees, so far as the separation of the State elections is concerned?

Mr. Johnson — I did not say that I understood myself to say so.

Mr. Cochran — I understood you to say so this morning.

Mr. Johnson — Mr. Chairman, I understood myself to say what I intended to say, that the business of Assembly, of State officers, everything that is interrelated with this should and will be taken up when it is reached in order as an independent proposition, entirely unaffected by this.

Mr. Cochran — But that this proposed amendment was not dependent upon the others?

Mr. Johnson — I did not say so.

Mr. Cochran — Well, I desire to call the attention of the chairman of the Committee on Cities to the report of the majority of this committee, Document No. 33, page 5, which reads as follows: "This section of the article is tentative; it will not be pressed unless met by supplementary provisions from other committees." I ask the chairman of the Committee on Cities if we have received those other supplementary provisions from the other committees which would entitle the chairman of the Cities Committee to now press the further consideration of this question?

Mr. Johnson — Mr. Chairman, there is such progress made in the other matters, as was stated in the debate when it opened, stated with the assent of the committees having the other subjects in charge, as makes it absolutely and entirely proper, indeed necessary, to ascertain the sentiment of the Convention on this subject. It would be quite absurd, sir, for the Committee on State Officers and for the Committee on the Legislature to go further than they have gone, until the purpose and thought of the Convention is ascertained on the proposition as to elections in cities. There are two different propositions, and one or the other must go first. This is naturally first, and naturally here, and when it is adopted it leaves the other subject to be considered in due and proper time, and then the Convention will act on that as it does on this, with an independent judgment.

Mr. A. H. Green — Mr. Chairman, it seems to me that there is a difficulty here and some embarrassment about the matter. If the suggestion that was orally made in the discussion, that the report of the Committee on State Officers had been before us, we would have had their mind on the subject as well as the mind of the Committee on Cities. Now, this proposition, in the first section, is to divide the State elections from the municipal elections. That involves necessarily the election of Assemblymen for two years. There are gentlemen here who do not believe that that should be done, and if we adopt this section now, and the Committee on State Officers comes with a proposition that they will elect Assemblymen for one year, it destroys all the effect of this. This is a proposition, as I say, to hold the election for State officers in one year, and the election for municipal officers in another year. That, I believe, to be the fact. Now, if you postpone the election of municipal officers for every other year, you necessarily leave out the Assemblymen, and if you

wish to elect the Assemblymen for one year, you have got to provide that they shall be elected among the municipal officers. The chairman of the committee thinks the mind of the Convention should first be ascertained upon this proposition. I think the mind of the Convention would probably be better ascertained if the proposition of both committees were both before the Convention. I think the proposition as originally made when we begun this discussion was that the committee should have its report before the Convention before this matter is acted upon, and I think that would be a very wise thing to do.

Mr. Johnson — Mr. Chairman, the objection here made, I was about to say, was a surprise to the Cities Committee, but it is not. Nevertheless, I feel bound to say to this Convention that to-day is the first objection I have heard from any member of the Cities Committee. Possibly two days ago one gentleman spoke to me about the mayoralty term; excepting that, it is the first objection I have heard from the Committee on Cities to the adoption of this proposition. More than that, we have every affirmative proposition printed and before our committee in the same language. More than that, we have their answer to our report; an original proposition, in which, while objecting to much, no objection was taken to this. It would seem to the Committee on Cities, it seems now, that in the judgment of this Convention the best course would be to pass this article as it is, and as every one connected with its framing had agreed to, and move on to something else; then the way is clear and the other subjects cannot be taken up. But to balance between whether we shall go to the right or the left, and so not go at all, halt in this career which all assent they are for, because there is a question as to which we shall do first, it seems to me is not at all appropriate to the deliberations of the Convention. This can be passed precisely, practically, as the minority and majority agree, and then we will take up, in good heart, when it is reached, the other proposition, and progress will be made. Otherwise, we simply halt between two opinions, and the time of the Convention goes on, and nothing is done in the matter which we believe to be so essential.

Mr. Hotchkiss — Mr. Chairman, will the gentleman allow me to ask him a question? Is it not a fact that I retired from the subcommittee appointed to frame this first section?

Mr. Johnson — If the gentleman says so, I would not disagree; and I will now ask the gentleman a question.

Mr. Hotchkiss — Did I not inform the chairman of the committee

that I did retire from that sub-committee, and would not become further responsible for this first section?

Mr. Root — Mr. Chairman, I feel bound to raise a question of order as to whether this is of any consequence to this Convention or to the performance of its duties, whether any member of the Cities Committee did or did not do this or that.

The Chairman — The Chair rules that the gentleman is out of order.

Mr. Hotchkiss — Mr. Chairman, the question would not have been raised ——

Mr. Root — Mr. Chairman, may I inquire what is the question now before the committee?

The Chairman — The question is on the amendment offered by Mr. Jenks.

Mr. Jenks — Mr. Chairman, in justice to myself, I want to say that I should not have suggested that subject were it not for the assertion which was made by the chairman of the committee during the course of his remarks.

The Chairman put the question on the adoption of Mr. Jenks's amendment, and it was determined in the negative by a rising vote, 42 to 70.

Mr. Peck — Mr. Chairman, I now again offer the resolution which I offered this morning and withdrew, which is to the effect that in the counties of the State containing cities other than the great cities of New York and Kings, the elections of county officers shall also be separated from those of municipal officers. The purpose of the amendment is to make this reform, if it be a reform, extend to all the cities of the State and give them all the benefit which is given to the large cities, and that the act shall be consistent within itself. And if the Convention is consistent with itself, I think this aid will be granted to all the cities.

Mr. J. Johnson — Mr. Chairman, I hope the amendment will not prevail. It is simply bringing a new matter in here in no way considered, save in two counties, where the county officers and city officers are practically merged.

Mr. Lincoln — Mr. Chairman, the report of the Committee on Legislative Organization is to be made at this session, and I understand the chairman of that committee is ready to submit his report. I suppose it will be necessary that we go into Convention and out of the Committee in order that the report may be received, and for

that purpose I now move that this committee rise, report progress and ask leave to sit again.

The Chairman — The Chair understands that that report is not ready at this moment, but will be in ten minutes. With that statement, does the gentleman press his motion?

Mr. Lincoln — If it is not ready yet, I withdraw my motion for the present.

Mr. Becker — Mr. Chairman, the report of the committee is ready now.

Mr. Lincoln — Then I renew my motion, Mr. Chairman.

The Chairman put the question on the motion of Mr. Lincoln, and it was determined in the affirmative; thereupon the committee rose, and President Choate resumed the chair.

Mr. I. S. Johnson — Mr. President, the Committee of the Whole have had under consideration proposed constitutional amendment (printed No. 451), entitled, "To provide home rule for cities," have made some progress in the same, but not having gone through therewith, instructed the 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.

The President — By special order of the Convention, the Committee on Legislative Organization and Apportionment was to report at this evening's session, in connection with an assurance given to the minority of that committee. Is Mr. Becker ready to report?

Mr. Becker — I present the following report, Mr. President.

The President — The Secretary will read the report.

Mr. Cochran — Mr. President, I would like to inquire if this is the one that was published in the morning papers? It would save the trouble of reading it.

Mr. Becker, from the Committee on Legislative Organization, to which was referred the proposed constitutional amendment, introduced by Mr. E. R. Brown (introductory No. 176), entitled, "Proposed constitutional amendment to amend article 3, relating to apportionment of Senate and Assembly districts," makes a written report of the same, as follows:

To the Constitutional Convention:

The Committee on Legislative Organization reports herewith to the Convention a proposed amendment of article 3 of the Constitution, which provides:

First. For an increase in the number of Senators from thirty-two to fifty, and of Members of Assembly from 128 to 150.

Second. For a new apportionment of the Senate and Assembly districts.

Third. Rules governing all future apportionments which insure, in the opinion of the committee, equality and fairness, and guard against the inequalities and unfairness, which have heretofore obtained.

In proposing a new apportionment of the Senate districts and fixing the number of Members of the Assembly in each county, your committee follows the precedents established by the Constitutional Conventions of 1821, 1846, and 1867, and remedies the gross inequalities and injustice of the apportionment act of 1892.

The provisions of the amendments reported by your committee are in substance: First. That an enumeration of the inhabitants of the State shall be taken in 1905 and in each tenth year thereafter, under the direction of the Secretary of State, and when taken shall be taken during the months of May and June. The Secretary of State is named for the reason that much conflict has heretofore arisen, and may arise again between the legislative and executive branches of the State government as to the officer who should have the direction and the management of the census bureau. If it is thus settled in advance, and before it is known what political party will be in power at the time that the census is taken, upon what department of the government this duty shall rest, one of the most serious sources of conflict and difficulty in taking enumeration will be removed. The power of the Legislature to control and regulate the expenditure necessary to make the enumeration is still preserved. The provisions that the enumeration shall be taken in the months of May and June will insure fairness to both the rural and city districts.

Second. In the formation of Senate districts it is provided that no town or block in a city shall be divided, and that no district shall contain a greater excess in population over an adjoining district in the same county, than the population of a town or block therein which is so situated that it can be put in either of the two adjoining districts. As the population of a town or block is not apt to exceed 2,000, and probably never exceeds 5,000 citizens, this will reduce to a minimum the opportunity to create any great inequality between the districts. Heretofore there has been no unit of population in cities; without the establishment of such a unit your committee can discover no practicable rule for equality, which will be more definite than the existing provisions of the Constitution, which the

Court of Appeals has pronounced inadequate. The further provision that an additional Senator shall not be apportioned on less than one-half the ratio is so manifestly proper that it demands no explanation. Your committee have also deemed it wise to incorporate a provision that an additional Senator shall not be apportioned to any county on less than the full ratio (obtained by dividing the total citizen population of the State by the whole number of Senators), when the average number of inhabitants, including aliens, in all the Senate districts in such county would not otherwise exceed by one-tenth the full ratio. The working of this principle may be illustrated as follows: If seven Senators are apportioned to the county of Kings, there would be a remainder of 58,264 citizens, being just in excess of one-half the present ratio, which is 115,817. If an additional Senator was apportioned to that county, each of the eight adjoining Senatorial districts in that county would have to contribute so many of its citizens that each would have less than said ratio, but under the plan proposed by your committee, each district would have only 8,323 more than the ratio. According to the plan of your committee, there will be in no other part of the State, except Kings county, eight districts in block, each one of which is below the ratio, and it is not thought either wise or just, where so many Senators are apportioned to a single county, to permit the average representation in the Senatorial districts to fall uniformly below the ratio. The inequality necessarily arising from the rule preserving county lines would operate with great harshness upon those counties of the State which are too small to be entitled to a Senator, and which must be combined in the formation of Senatorial districts, if counties entitled to a large number of Senators were permitted to have a representation on less than the ratio. We have under our amendment proposed that New York shall have twelve Senators, Kings, seven Senators; Erie, three Senators, and Monroe, two Senators. These four counties have approximately one-half of all the Senators apportioned, and unless some such rule as that suggested by your committee is provided in the Constitution, it may easily happen that the rest of the State will on the average have a smaller representation in the Senate than those four counties. Inasmuch as every Senator from a county in a broad sense represents the entire county, our proposed rule can never work any real injustice. The rule regarding county lines makes inequality as between the rural counties of the State and the city counties of the State inevitable to a certain degree, and we think that this inequality should not be increased as against the rural counties and in favor of the counties of the State embracing the great cities which are

incorporated entities, unified in interest and with a small area of population.

Third. As to the apportionment of Members of the Assembly, your committee have recommended rules which will make this apportionment hereafter a matter of strict mathematical calculation, and which it is believed will approach more nearly to equality of representation than any other apportionment that has ever been made in this State. The principal difficulty in reaching absolute equality arises here also from regarding the county lines as controlling. But with 150 Members of Assembly the ratio is 38,606, and the inequalities are not considerable, except in the few cases arising under that provision of the Constitution which provides that every county, no matter what its population, shall have a Member of Assembly. Your committee has not deemed it wise to attempt to change this rule, which has been so long established, but has attempted to formulate new rules by which the loss of representation occurring in those counties having one or more ratios must be equally borne by both the rural and city counties of the State. We have hereto annexed tabular statements showing the three classes into which the counties are divided for the purpose of an apportionment of Members of Assembly. From this it will appear that while the original ratio for each Member of Assembly is 38,606, the last or highest ratio in apportioning Members of Assembly in the ten largest counties of the State is only 40,566. As appears by Assembly exhibit 3, hereto attached, the average population in the Assembly districts having one or two Members of Assembly, by reason of having one or more full ratios is 39,273. The same rules requiring equality in population among the districts in counties having more than one Member of Assembly are applied by your committee to such Assembly districts as are applied as heretofore stated to the Senate districts; and it is specifically required that every Assembly district shall be wholly within some Senate district. Having formulated the foregoing rules to insure equal representation in both Senate and Assembly districts, your committee have deemed it advisable to increase the number of Senators from thirty-five to fifty, and of Assemblymen from 128 to 150, in order to effectuate a more complete representation of the whole people of the State. The present number of each House of the Legislature was fixed by the Constitution of 1821, when the population of the State was 1,372,812. The total citizen population of the State is, under the census of 1892, nearly five times greater, viz., 5,790,865. If Senators are to have any sense of locality, and to intelligently represent the interests of their several districts, it is of the greatest import-

ance that the rural districts should be confined within reasonable territorial limits. Under the apportionment of 1892, the largest Senatorial district in population, as well as in territory, outside of the city of New York, is the Twenty-first, composed of the counties of Washington, Warren, Essex, Clinton, Franklin, Hamilton and Fulton, containing a citizen population of 229,905. This district is much larger in territory than the average Senatorial district of the State. When the Senatorial districts were but eight in number, the controlling reason for the change made by the Constitutional Convention of 1846, from eight Senatorial districts, each electing four senators, in thirty-two Senatorial districts, each electing one Senator, was that the Senators from the eight large districts could have no close relation with all the people of their districts. Our proposed number of fifty Senators will substantially restore to the people approximately the same representation that they had under the Constitution of 1846, the additional eighteen Senators going to the great centers of population. The opportunity for any selfish or corrupt interest to obtain control over a body composed of fifty members will, undoubtedly, be much less than to obtain control over a body of thirty-two members. As we propose, the most popular body, the Assembly, is increased to 150, which is three times as large as the Senate, thus preserving a fair proportion between the number of members of the two bodies. Your committee, believing that municipal elections should be separated from State or national elections, under the plan proposed by the Committee on Cities to this Convention, requiring the municipal elections to be held in the odd-numbered years, and the State elections in the even-numbered years, has also recommended, in order to bring this about, that the terms of Members of Assembly shall be extended to two years. It is necessary if these elections are separated that this extension should be made, or biennial sessions should be provided for, and your committee has chosen the former method. For the purpose of securing obedience by the Legislature and by the local boards to the constitutional mandate preventing gerrymandering, your committee have recommended that the action of these bodies should be reviewable by the courts, and that all actions and proceedings relating to apportionment should have precedence over all other actions and proceedings on the calendars of the courts. This is no innovation, for the courts of this State and of other States have repeatedly held that they had power to review the action of these bodies relating to apportionment. In preparing their proposed amendment your committee have received much valuable assistance from the amendments proposed by Messrs. Lauterbach (No. 32),

Vedder (No. 13), Cookinham (No. 48), Mantanye (No. 83), Porter (No. 229), Veeder (No. 92), Jacobs (No. 97), Dean (No. 132), Davies (No. 280), Peck (No. 359), and have embodied in our proposed amendment the salient features of Mr. Brown's proposed amendment (No. 404). It has received much assistance, also, from the arguments and suggestions of these gentlemen concerning them, which we here respectfully acknowledge. Your committee have proposed that in all cities comprising an entire county, some of which have no board of supervisors, the duty of erecting the Assembly districts should rest upon the common council, and in all other counties upon the board of supervisors. In the county of Kings and the city of Brooklyn, which are in the process of reorganization and where the board of supervisors is to be abolished after December, 1895, and the city boundaries made coterminus with the county boundaries, this duty has been devolved upon both the board of aldermen and board of supervisors in joint session.

The exhibits hereto attached show the practical working of the apportionment recommended by your committee, on the basis of the citizen population — shown by the State census of 1892. This census having been taken by election districts and not by blocks, the districts in New York county have been laid out according to election districts as they existed January 1, 1892.

Respectfully submitted,

TRACY C. BECKER,
Chairman.

The President — The report is referred to the Committee of the Whole.

Mr. Bowers — Mr. President, is not the proposed amendment to be read? We have been waiting three months and a half for it.

The President — The amendment has been read by title, as usual, and referred to the Committee of the Whole.

Mr. Bowers — We have been waiting three months and a half to find what they propose to do.

The President — Mr. Becker, does this amendment differ from the one already on general orders, except that the blanks are filled?

Mr. Bowers — The filling of the blanks is of considerable moment, Mr. President.

Mr. Becker — I think, Mr. President, that it does differ in some respects which are material, as well as in reference to the subject-matter of the amendment as to the filling of the blanks for the districts.

The President — It had better be read. If the Convention desires to hear it read they will have to extend the time of the session by order.

Mr. Durfee — Mr. President, I think that is hardly advisable. I think we can get at it better by seeing it in print, and I, therefore, move that the reading of the amendment be dispensed with and that it be ordered printed, and the report also.

Mr. Veeder — Mr. President, I rise to a question of privilege. The chairman of the committee has seen fit to give me credit for some thoughts that appear in his report. I should like to have it distinctly stated wherein I am entitled to credit, before any document goes to be printed, that I may disclaim it if I am not entitled to it.

Mr. Osborn — Mr. President, as this is the first opportunity I have had to hear this highly interesting document, and as it emanates ——

Mr. Bowers — Will the gentleman allow me a question? Are you a member of the Committee on Apportionment?

Mr. Osborn — I have been a faithful member in the sittings of the committee.

Mr. Bowers — And you have not heard this report until to-night?

Mr. Osborn — I have not heard it.

The President — Mr. Osborn has the floor.

Mr. Osborn — And while I have listened to its rhetoric with the greatest interest, it has seemed to me there are some statements in it which I am not wholly prepared to agree to, and before it is printed I shall ask leave to have my name placed upon it as dissenting from it.

Mr. Giegerich — I make the same request, Mr. President. I have not seen it.

Mr. Bush — Mr. President, I also ask to be reported as dissenting.

Mr. Cochran — Mr. President, may I ask if the majority of this committee have signed the report?

The President — The Chair is not informed.

Mr. Cochran — I submit, Mr. President, that it is very important that we should know. This report is disclaimed by three members who say they have not seen it, and I submit that it is a pertinent question to ask the chairman of the committee whether the report has been approved by the majority of the committee.

The President — It is not pertinent to the motion now pending, made by Mr. Durfee, that the reading be dispensed with and that the amendment and report be printed and laid on the desks of the members.

Mr. Cochran — I think, Mr. President, that my inquiry goes to the pertinency of the question whether we should order it printed or have it read.

Mr. Root — Mr. President, if this delightful by-play, evidently arranged by these gentlemen ——

Mr. Cochran — The gentleman is in error.

Mr. Root — Evidently arranged ——

Mr. Bowers — On which side?

Mr. Root — By men who delight in calling themselves the minority, and whose conduct will probably keep them in that happy category, is finished, and they have made sufficient display of anxious desire to hear or see a document which has, in all its substantial features, been in print and upon their files ever since the ninth day of August last, I move the previous question upon Mr. Durfee's motion.

Mr. Holcomb — Mr. President, I ask that the ayes and noes be called.

The Convention here adjourned until ten o'clock Tuesday morning.

Tuesday Morning, August 28, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, in the Capitol, at Albany, N. Y., August 28, 1894.

President Choate called the Convention to order at 10 A. M.

Prayer was offered by the Rev. John McIsaac.

Upon motion of Mr. O'Brien the reading of the minutes of the proceedings of yesterday was dispensed with.

The President — The subject before the House at the time of the adjournment was Mr. Durfee's motion to print the amendment offered by the Committee on Legislative Organization, and dispense with the reading of the amendment.

Mr. Dickey — Will the Chair allow me permission to ask to be excused from attendance Friday night and Saturday to enable me to attend to a matter of business which requires my personal attention?

The President — Will Mr. Dickey make his motion a little later, after the pending question is disposed of?

Mr. Bowers — Mr. President, I think we are entitled to have this proposed amendment read. What we wanted last night was to hear the amendment.

The President — I think that it is the right of the gentlemen who desire it. It will now be read by the Secretary, the amendment as it is finally offered by the Committee on Legislative Organization.

Mr. Holcomb — Mr. President, would it be in order to inquire of the chairman of the Committee on Legislative Organization whether that report had been adopted at a meeting of that committee or not. I understood several members of the minority last night to say that they had had no opportunity to see the report, and I should be pleased to have the information whether it had been adopted at a meeting of the committee. I think I have a right to have the question answered.

The President — Yes. I do not think that the reading of the amendment should be displaced by that. Perhaps the chairman will be in by the time the reading is concluded.

Mr. Holcomb — May I have the favor of one more word? The reason I ask for the information is this, that if that report has not been adopted at a meeting of the committee, then I have the right to object to its being received in this Convention. That is the reason for my question. I think it should be adopted by the committee itself before it can come out of the committee and come into this Convention.

The President — The rule is that upon the request of any member an amendment that is offered may be read. We are proceeding under that rule. The Secretary will proceed.

The Secretary proceeded to read the amendment offered by the Committee on Legislative Powers, entitled "Proposed constitutional amendment to amend article 3, relating to the apportionment of Senate and Assembly districts."

Mr. Holcomb — Now, Mr. President, may I interrupt a moment? I see that the chairman of the committee is here, and I would like very much to have my question answered.

The President — The reading of the amendment will not be interrupted unless the House so orders, for any questions.

Mr. Holcomb — Then, Mr. President, I move that the reading of the report on the proposed amendment be interrupted until we can have an especial statement from the chairman of the committee as

to whether that amendment ever was considered in the committee before it came into this House.

Mr. McMillan — Mr. President ——

The President — One moment. Now, let the Chair state what he understands to be the situation. The report was read last night. The question pending when we adjourned was on having it printed. A motion had been made to dispense with the reading of this amendment. Its reading, however, was demanded by Mr. Bowers, and the Chair has ordered it to be read in pursuance of that request. Mr. Holcomb desires to interrupt the reading in order that he may catechise the chairman of the committee, and the Chair holds that that is not permissible, except on the order of the House. The question is on Mr. Holcomb's motion to suspend the reading of the amendment until Mr. Holcomb has satisfactory opportunity to catechise the chairman of the committee.

The Chairman put the question on the adoption of Mr. Holcomb's motion, and it was determined in the negative.

The President — The Secretary will proceed with the reading of the amendment.

Mr. Holcomb — Mr. President, before the reading has begun, I think I have the right to object to the use of the word "catechise," in respect to what I had to say, or what I did say. I have not the slightest intention to catechise the chairman of the committee or anybody else. I simply want to know whether this report was ever considered by that committee before it came thence into this House; and I have the right to that information, and I wish my objection to its being read here, or being considered by this Convention, unless we have that statement, to be entered upon the record. I ask that, sir.

The President — Mr. Holcomb having now enjoyed his opportunity of objecting, the Secretary will proceed with the reading of this amendment.

Mr. Holcomb — I protest again, Mr. President, against your remark.

The President — The gentleman's protest will be entered upon the record, and the Secretary will proceed.

The Secretary resumed the reading of the amendment.

Mr. McMillan — Mr. President, I raise a question of order here. The motion last night, as I understand it, was to suspend the reading of the report, to order it printed, and upon that Mr. Root moved the previous question. That motion was before the House when

we adjourned. It is a proceeding that it seems to me is properly before the House now. The Convention has the power to suspend by its action the reading of this report, and to order it printed; and upon that I believe the previous question has been ordered.

The President — Mr. Root's motion was not put. The Secretary will proceed with the reading, unless the House orders otherwise.

Mr. McMillan — That motion was pending, Mr. President. He moved the previous question. That motion had not been put when the Convention adjourned. That is the question, it seems to me, that is before the Convention this morning, as to whether or not the main question should now be put, whether or not the reading should be suspended and the report ordered printed.

Mr. Holcomb — And, Mr. President, on that I demanded the ayes and noes prior to adjournment.

The President — The Secretary will proceed with the reading of the amendment.

Mr. McMillan — I move you, sir, that the reading of this report be now suspended and that it be ordered printed and placed on the files; and upon that I move the previous question.

Mr. Bowers— I raise the point of order, Mr. President, that the gentleman cannot interrupt the reading of a report which has been ordered by the Chair, to make any motion whatever.

The President — The Chair so holds. The Secretary will continue the reading.

Mr. McMillan — Mr. President, I appeal from the decision of the Chair on that proposition.

Mr. Holcomb — I move, Mr. President, to lay the appeal on the table.

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

The Secretary resumed the reading of the amendment.

Mr. Becker — Mr. President, after consultation with the minority members of the Committee on Legislative Organization, I have deemed it best to ask unanimous consent at this time to interrupt the reading, in order to move that this matter may be printed which has been reported by the committee, placed on the files of members, and that the consideration of this proposed amendment be made a special order for next Tuesday, a week from to-day.

The President — Does any member object ——

Mr. Bowers — I am willing that the reading should be dispensed with.

The President — Is unanimous consent given to dispense with the reading of the amendment?

Mr. Holcomb — I object.

The President — The Secretary will proceed.

The Secretary concluded the reading of the report, after which it received a second reading by title, and was referred to the Committee of the Whole.

The President then put the question on Mr. Root's motion for the previous question, upon the motion previously made by Mr. Durfee, to have the report of this committee printed and laid upon the desks of members, and it was determined in the affirmative.

Mr. Holcomb — Mr. President, what becomes of my request for the ayes and noes on Mr. Root's motion of last night that the Chair has just put, as to whether or not the main question should be put? I withdraw it. I did not hear the Chair make any reference to it; I simply desired to know what became of it?

Mr. Kerwin — Mr. President, inasmuch as the printing of this report has been called for, I would like to ask if, under the rule adopted on Friday, June eighth, there is any way in which we can force the printer to live up to that rule?

The President — This is a different subject-matter, Mr. Kerwin. The question now is on whether this report of the Committee on Apportionment shall be printed.

Mr. Kerwin — I should like to have a vote taken on my proposition.

The President — Yes, but your suggestion is out of order and is not open to debate, the previous question having been ordered.

The President then put the question on the motion of Mr. Durfee to have printed and laid upon the desks of members the report of the Committee on Legislative Organization, and it was determined in the affirmative.

Mr. Becker — Mr. President, I now move that the consideration of the amendment proposed by the committee be made a special order for next Tuesday morning's session.

Mr. Bowers — I offer as an amendment, Mr. President, provided the printed amendment proposed is put upon the desks of members to-morrow morning.

The President — The Secretary tells me that it probably can be

printed to-morrow morning, though it may not be until the afternoon. It is rather ——

Mr. Bowers — If we do not receive the printed report until Thursday morning it will leave rather a short time ——

The President — I think it will be received some time to-morrow, anyway.

Mr. Bowers — Well, will the gentleman accept my amendment?

Mr. Veeder — May I ask, Mr. President, what becomes of the minority report?

The President — The minority report, if it ever appears, will, under the rules, be printed and laid upon the desks of members, and can be made the subject of amendment in Committee of the Whole.

Mr. Veeder — Go into the same Committee of the Whole on the same special order as the report of the majority?

The President — It will be upon the desks of members for any member to move any part of it by way of amendment ——

Mr. Veeder — But does it go as an independent matter into the Committee of the Whole?

The President — It does not go; it is always there and everywhere for such action as may be desired with regard to it. The question is on Mr. Becker's motion.

Mr. Holcomb — I understand, Mr. President, that an order was made the other day to the effect that after the consideration of the cities proposition should have been concluded, it should be followed by the report of the Committee on Education.

The President — That was so.

Mr. Holcomb — So that I suppose, if the Convention be not through with the report of the Committee on Education by next Tuesday, this will have to wait until that is disposed of?

The President — That is the opinion of the Chair.

Mr. Holcomb — Is that the order of the Convention now? If not, and I be in order, I would move that the consideration of the report of the Committee on Legislative Organization come before the Convention after the Education Committee's report shall have been disposed of.

The President — It will take that course. It is set down for Tuesday morning unless the educational matter shall have been previously finished, which is not at all likely.

The President then put the question on the motion of Mr. Becker, making the report of the Committee on Legislative Organization

a special order for Tuesday morning next, and it was determined in the affirmative by a two-thirds vote.

Mr. Becker — Mr. President, I have a further report from this committee.

The Secretary read a report from the Committee on Legislative Organization, to which was referred the proposed constitutional amendment, introduced by Mr. Hill (introductory No. 131), entitled, "To amend section 8, article 3, of the Constitution, relating to the eligibility of persons to a seat in the Legislature," in favor of the passage of a substitute thereto (printed No. 131 — 455).

The President — The Secretary will read the substitute as recommended by the committee.

The Secretary read the proposed substitute, after which the same received its second reading by title, and was referred to the Committee of the Whole.

Mr. Becker, from the Committee on Legislative Organization, to which was referred proposed constitutional amendment, introduced by Mr. Marks (introductory No. 16), entitled, "To amend section 6 of article 3, as to the pay of members of the Legislature," reported in favor of the passage of a substitute which accompanied the report (P. No. 16 — 456).

The Secretary read the proposed substitute, which thereupon received its second reading by title, and was referred to the Committee of the Whole.

Mr. Morton — Mr. President, I desire to have my dissent to the report on this last proposition entered upon the Journal.

The President — A communication from the Comptroller will be read by the Secretary.

The Secretary read the following communication (No. 27, Doc. No. 66, in response to resolutions 17 and 181):

STATE OF NEW YORK, COMPTROLLER'S OFFICE,

ALBANY, *August* 24, 1894.

To the Secretary of the Constitutional Convention:

DEAR SIR.— In accordance with the resolution of June 21, 1894, I beg to submit to the Convention a list of property exempt from taxation in this State, as reported by the local assessors of the several cities and towns therein, with the exception of the town of Ulster, in Ulster county, the towns of Fayette and Varick, in Seneca

county, and the city of Utica and towns of Ava, Bridgewater, Forestport, Verona and Westmoreland, in Oneida county, which we have been unable to obtain.

Yours respectfully,

WM. J. MORGAN,
Deputy Comptroller.

The President — Referred to the Committee on State Finances and Taxation.

Mr. Kellogg — I move that it be printed.

The President — Mr. Kellogg moves that this communication with the table annexed to it, one sheet of figures, be printed.

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

Mr. Hotchkiss — Mr. President, I ask to be excused from the close of this morning's session until Friday morning, on account of family reasons.

The President put the question on excusing Mr. Hotchkiss, as requested, and he was so excused.

Mr. Holcomb — Mr. President, I desire to ask the privilege of the floor for Hon. John Connolly, of New York, a former Member of Assembly.

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

Mr. Dickey — Mr. President, I will now renew my request to be excused, made earlier in the session, for Friday night and Saturday.

The President put the question on excusing Mr. Dickey, as requested, and he was so excused.

Mr. Durfee — Mr. President, I beg to request the favor of leave of absence for Wednesday evening and Thursday of this week.

The President put the question on excusing Mr. Durfee, as requested, and he was so excused.

The Convention thereupon resolved itself into Committee of the Whole, on consideration of general order No. 13, and Mr. I. S. Johnson resumed the chair.

The Chairman — The House is now in Committee of the Whole on general order No. 13. The question is on the amendment offered by Mr. Peck.

The Chairman put the question on the adoption of the amendment offered by Mr. Peck, and it was determined in the negative.

The Chairman — Are there any further amendments to this section?

Mr. Jacobs — I offer an amendment.

The Secretary read the amendment offered by Mr. Jacobs, in the language following: Add to section 1 the following: "In every city wherein exist by law commissions or boards composed of appointees of the mayor, the official terms of such appointees shall terminate with that of the mayor making the appointment, and the mayor of such cities may for cause remove any and all members of such commissions or boards upon written charges and after an opportunity to be heard. The Governor, for cause, and upon written charges, and after an opportunity to be heard, may remove the mayor of any city."

The Chairman — That relates to the amendment to section 1?

Mr. Jacobs — Yes, sir; that is what I propose to add to the end of it. Now, Mr. Chairman, I am informed by the title of this article — and otherwise I should not probably recognize the fact, that this measure is intended to provide home rule for cities. In the committee's report which accompanied its first emanation, and afterward was pulled in for repairs, there was quite a large portion of the report devoted to the lamentable condition existing in the city of New York; and it was very pointedly stated, and I think demonstrated, if there was any doubt upon the subject, that the city of New York was really a bureaucracy governed by commissions, whose terms of office have extended beyond the memory of man, and who can tell where they end? At least for a long term of years; no mayor of New York could put his hand upon any of these commissions, either to remove them or change their personnel. They lap over him by a number of years. If that is the case, then the government of the city of New York is not in the hands of the people, nor even of the mayor, but, on the contrary, is in the hands of an almost endless bossism that does not seem to be responsible to any one; so that the people of New York city might unanimously elect a mayor for the purpose of reforming all these administrative boards, and who nevertheless would be unable to accomplish anything. They would simply elect a mayor who, by law or by the courtesy of his colleagues, if they saw fit to invite him, might attend the meetings of these boards, vote yes or no on questions before them, and that would be the end of his influence in the matter, while the other members of these several boards outvoted him. Now, that is not my idea of government; it is simply a great solemn pretense; and if the purpose be to provide home rule for the cities,

let us then place the power back with the people who support the government, who pay for it, and who ought to constitute the government. Now, let us look at the language of this report. I do not propose to go over all the details of the report, and I question no statement of fact contained in it. "In New York city," say the committee, "the power of local legislation has almost disappeared from the frame work of the city government;" and then, after stating of how little effect the voice of the people is in their government, of how little consequence the authority of the mayor really is, the committee continue: "It is undoubtedly the truth, * * * such government is not government by the people; it is not representative government. It is difficult to imagine a system based at all upon the elective principle where there is so little actual responsibility of the official to the people." Then the committee took very high ground; it became, indeed, a sort of an alarm bell — I believe that is a favorite expression of the chairman of the committee, and I do not say that with any view of ridiculing or of commenting upon him — and told what this convention must do, rise up heroically, strike the evil and provide adequate and commensurate remedies. I read further from the report: "But whether the system is good or bad, your committee is convinced that the time has come — come to this Constitutional Convention — to do something to change it." Well, I have looked through all these several reports of the committee and I have not found that they propose a single change in the structure of the government of the city of New York. They have restricted the Legislature; they have tied the hands of most every one else, but they leave the people of the city of New York as powerless over their home government as they were when the committee first put out its hand to do something, because of the great necessity for doing something. Now, my amendment provides that the people shall have some powers. They shall elect a mayor, and that mayor shall be a living force in municipal government; he shall have the power of appointment; he shall have the power of removal, and terms shall not overlap his term, but himself and his administration shall be a unity. He shall represent the will of the people of the city that elects him, and the terms of office of those he shall appoint shall begin with his term; they shall assist in carrying out the policies that it is intended to carry out, and the terms of office of all shall terminate with the termination of the mayor's term, so that an incoming mayor shall have some power and have some force, and so that something like representative government shall be restored to New York city and to every city, and that they may have popular government through

their elected representatives, he making the appointments to carry out the details of executive policy. I was and am surprised that the chairman of the committee, with his large experience, did not, in view of the language used by him, incorporate such a living force into this amendment. You will see at once that while this proposition does not restore legislation to cities (and in this there may be cause for congratulation to the people of New York city) it does give some authority and power to the mayor; it puts the power back into the hands of the people, through the man they have chosen for the purpose of governing them, and it restores a system that will be responsive to the popular will, and will not be thwarted by hostile and obstructive boards of commissioners and by departments hostile to that popular will. Why, suppose the Republicans shall elect the next mayor of the city of New York — and I think that is undoubtedly probable — to do something to reform the administration of that city. His hands would be tied for the entire two years that he will hold the office. So far as these commissioners are concerned he will not be able to do anything except to answer to his name at roll-call at such commissions as he may attend. He will not be able to remove anybody; he will not be able to appoint anybody; he will not be able to enforce his will or the will of those that he was elected to enforce. Why, he could not even remove or interfere with this non-partisan police board; and the only reason, by the way, that I can conceive for its being called non-partisan, is that no one can ever tell whether it is addicted to virtue or to vice. Therefore, this proposition which I offer, as I said before, confers upon the mayor the power of removal, and I go no further than that. Now we propose to make the mayor a constitutional officer; we provide for that office in the fundamental law, and we say what the term shall be, that it shall be two years, and if it be a correct principle to remove the police commissioners through the Governor, because Governor Flower once removed a sheriff, it is also correct to place the same power in the hands of a Governor with respect to the mayor, and permit him to remove a mayor for gross misconduct in office, and thereby hold over such mayor the restraining provision that some day some Governor upon some charge may snap off his official head. Then this will be symmetrical. Now I do not like this separate election arrangement. I am fearful of the consequences; but if we are to have it, let us have it with as few dangers as possible, and if the scheme should go wrong there may be appeal then to the central government to save us from the hands of our friend, the chairman of this committee, who, with-

out wicked intent on his own part, is unconsciously handing us over to misrule.

Mr. Jesse Johnson — I would like to inquire whether the gentleman makes that an amendment to section 1? It seems to me it should be made an amendment to section 4.

Mr. Jacobs — I will withdraw the amendment for the time being, but I cannot withdraw my speech. I will move it as an amendment to section 4 when we reach that section.

Mr. Johnson — You can repeat your speech then.

Mr. Jacobs — No, I won't repeat it. It is good as it stands.

Mr. Johnson — Mr. Chairman, I move the three following amendments which I ask to have the Secretary read in their order.

The Chairman — The Secretary will read the first amendment.

The Secretary read the amendment as follows:

Section 1, line 2, strike out the words "except to fill vacancies" after the word "election," and insert the words so struck out before the word "all," so that the line shall read, "except to fill vacancies, all elections of city officers."

Mr. Johnson — Mr. Chairman, if in order, I ask for a vote upon that question. It merely transposes some words and is the way it was originally drawn, but was changed in the copy.

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

The Chairman — The Secretary will read the second amendment.

The Secretary read the amendment as follows:

Section 1, line 3, strike out the word "or" between the words "inferior" and "local."

Also strike out the word "jurisdiction," on lines 3 and 4, and insert in lieu thereof the word "courts."

Mr. Johnson — That is to make the language as to local courts correspond with the language used in the judiciary article.

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

The Chairman — The Secretary will read the third amendment.

The Secretary read the third amendment as follows:

Add at the end of section 1, line 11, page 2, the words "this section shall not apply to any judicial office except judges and justices of inferior and local courts."

Mr. Dean — Mr. Chairman, I am satisfied that this article ought to pass without any further consideration. It has received the sanction of Mr. Johnson and of Mr. Becker and of the various other gentlemen who come under the designation of the "majority of the committee" without any very definite idea of individuality. Why any one should question its propriety is beyond my comprehension. It is true, of course, that it contains propositions which no man of practical common sense could indorse ——

The Chairman — The Chair is unable to see what the gentleman is talking to; what proposition?

Mr. Dean — I am talking to this amendment.

The Chairman — Your remarks are not germane to the question, as the Chair understands it. The question is on the amendment of Mr. Johnson.

The Chairman put the question on Mr. Johnson's third amendment, and it was determined in the affirmative.

Mr. Dean — Mr. Chairman, I move to strike out the first section.

The Chairman — Mr. Dean moves to strike out the first section.

Mr. Dean — Mr. Chairman, I am satisfied this article ought to pass without any further consideration. It has received the sanction of Mr. Johnson and Mr. Becker and various other gentlemen, who come under the general designation of the "majority of the committee," without any very definite idea of individuality, and why should any one question its propriety? It is true, of course, that it contains propositions which no man of practical common sense would indorse, but it is necessary that the Constitution which we propose to the people should be symmetrical, and with the exception of the judiciary article, which we may bring back and remodel by adding a couple of judges to be elected by cumulative or minority representation, this article is in complete harmony. What could be more symmetrical, for instance, than the mechanical, patent-rights article of last week, in conjunction with the bi-partisan election fad which was railroaded upon us yesterday morning in defiance of every rule of parliamentary law, and without even having been printed so that the members might know for what they were voting? What could be more euphonious than to couple with the compulsory voting proposition of Mr. Holls the referendum of Mr. Johnson? What could be more touchingly beautiful than the scheme to make an educational qualification for voters and the "common council of one or two bodies" which we find in this article? We have made the law of 1894, which has never been in operation, a constituent part of the fundamental law of the State,

and it only remains now to introduce a few sections of Gilbert and Sullivan's "Mikado," with Mr. Becker in the title role gaily singing:

"My object all sublime,
I will achieve in time,
To make the punishment fit the crime,
The punishment fit the crime."

To have a complete and harmonious whole, with that evidence of continuity of thought so desirable in an article of this kind. If the people of the future need any elaboration of the opera, we can furnish them Ko-Kole-Ko Cochran, who —

"I'm sure would not be missed,"

and we could supplant him with Mr. Holls, the Poohbah of reform, and with Nankipoo Towns, who is said to sing with great effect "A Wandering Minstrel I."

We should be willing, Mr. Chairman, to serve the public weal; we ought, for and in consideration of the ten dollars per day afforded us by the State, to be willing to amuse the people, and this ought not to be marred by any old-fashioned notions of principles, or any consideration of what belongs to government. I trust, therefore, that any gentlemen who have been laboring under the impression that they were discharging a solemn duty, and that they were called upon to regulate the affairs of State, will disabuse themselves of this hallucination, and hereafter devote their energies to developing a harmonious instrument, to ——

"Make each prisoner pent,
Unwilling represent,
A source of innocent merriment.
Of innocent merriment."

(Laughter and applause.)

Mr. Blake — It is greatly to be regretted, Mr. Chairman, that anything has occurred to mar the harmony that has hitherto characterized the deliberations and proceedings of this body. Until yesterday we had dwelt in peace together, as brethren should dwell, and any stranger entering this chamber would have fancied that all the gentlemen of this Convention had but one thought, and one mind, and one purpose, entirely to formulate provisions of the fundamental law that would meet the approval of the people of this State. And gentlemen on both sides of this House (if I may use the word "sides" for the occasion) have mingled very freely together, and they have learned to respect one another. They have, more than that, formed bonds of attachment and friendship which it is to be hoped even the occurrences of yesterday will not sever.

They have learned to know that all the intelligence and all the patriotism, and all the virtue are not to be found in the ranks of one party. I shall not attempt, sir, and it would boot very little to attempt to fasten the blame for the occurrences that transpired here yesterday. Possibly there are gentlemen upon both sides of the House who are somewhat too impulsive or manifest too much readiness upon the slightest provocation, to resent and to give the taunt and indulge in innuendoes and philippics that will be sure to arouse resentment and tend to strife. Perhaps it would be better if we would quit posing and attutidinizing before the public and address ourselves to the questions before this body. Suppose we stopped for a while playing to the grand stand, and possibly there would be less unseemly and undignified wrangling, and the discussion would be placed upon a loftier plane than it is now conducted. Certainly, it was most ungracious and unkind in the gentleman from Cattaraugus (Mr. Vedder) to speak of the "howl of the Tammany tiger." He knew well that that was unworthy this presence; that it would necessarily brand every gentleman who is here, who in everything that makes true manhood are, at least, his peers. Those unkind thrusts and offensive epithets are not calculated to produce harmony or expedite the work of this Convention, or to promote the interests of the people. If we must differ, let us honorably differ, but let us not forget that we are gentlemen; that we are engaged in the discharge of the greatest and most sacred trust that the people can repose in its citizens.

Now, sir, while I am on my feet (I am suffering somewhat from a cold, and I must husband my voice), I shall say a few words upon the main question. If there has been one question, Mr. Chairman, that more than another is calculated to engage the attention of this Convention, that has aroused deep and widespread interest through the entire length and breadth of the State, it is the question now under consideration, the question of home rule for our cities. More than that, it has commanded the attention of our people in every city throughout our State; it has occupied very largely the public mind; it has invited discussion, and it is of more vital concern to the citizens of our cities than any other subject. This feeling and this interest are reasonable and just, Mr. Chairman. They would have their ample justification in the natural instincts and impulses of the people who are inspired to obtain, and will, if possible, obtain that which they instinctively feel will contribute to their material prosperity and well being. But beyond that, and more than that, they rest their claims upon principles of justice and upon right, reasons that satisfy the consciences of the people that they have

an inalienable right to that measure of self-government that is compatible with the interests and the rights and the dignity of the larger governments of the State and nation, and any measure of self-government, anything less than this, is a wrong and injustice. Anything less than this is in derogation of the rights that belong to every people. Now, I do not place the question upon that ground (I ask you, gentlemen — I cannot address this Convention with the hum of conversation surrounding me — I think I shall have something worthy the ears and interest this Convention) ——

The Chairman — Let there be order.

Mr. Blake — I say I do not place the question upon the ground, sir, although it would be quite sufficient that such a measure of legislative and governmental control will necessarily and essentially contribute to the material and moral well being of municipal population, but I place it upon the loftier plane of justice and inalienable rights. These are its firm and sure foundations. Just so and in the same degree that all men are created free and equal. So, also, the aggregation of individuals constituting the cities are free and equal in natural rights and justice. This is so self-evident a truth, and especially among a free people, that if the contrary be proclaimed anywhere in this broad land of ours, it would meet with instant and universal condemnation. So, sir, it has come to pass that this truth has impressed itself upon the minds of our people, so that throughout the length and breadth of our State there is but one sentiment in the community all the while, and that is home rule for the cities of our State. Nowhere throughout this entire State, nowhere from Niagara to the sea, has a single dissenting voice been raised. No discordant note has been sounded to mar the universal harmony. All hearts are in sweet accord. All voices are blended in one grand refrain, and that refrain is none other than "home rule for the cities of our State." Along by the shores of our placid lakes upon the north, and echoing along the streams that wind their silvery way to the sea, and from every home and every hamlet nestling on our mountain heights, the sound has come, and every one has heard it. The farmer has heard it; the mechanic on his bench; the laborer in his trench; the merchant in his store; the banker in his counting house; people in all the ranks and walks of life; in every field of industry the sound has come, and all men bow their heads in approval. To the earnest prayer coming up from the cities of our State, all men have uttered a profound Amen.

Now, sir, since this is the disposition of our people, the wonder comes to me why this right has been so long postponed. At another time, but not now, it might be a subject of curious interest

to inquire what motives, what causes have influenced previous Conventions and Legislatures, year by year, to turn a deaf ear to the voice of the people demanding in thundering tones this right and this inalienable, self-evident right. But it boots little to press this inquiry here. Suffice it to say that many years back, so long that the "memory of man runneth not to the contrary," unless it be that of the illustrious nestor of this body, the distinguished gentleman who has given a half century of his life to the service of the State — I mean my very distinguished colleague, Governor Alvord — at any rate longer than the most of us can recollect, the cities of this State have been practically ruled from this Capitol hill, and many of them with great wrong and injustice. One of them, New York city, I know has suffered a great deal of oppression by reason of unjust legislation. No Roman dependency — I might say — under the empire ever felt the lash of Caesar's authority cut more deeply than have the people of the city of New York. They have felt the swish and play of the whip that was wielded in the legislative halls at Albany. The interests of that city have been bartered and sold. They have been made the football of party politics and party exigency. Our people at times ceased to hope to be able to throw off their oppressors, and the best and grandest citizenship of our city has cried out almost from the depths: "How long, O Lord, how long?" In their deep despair they have turned rather to their Maker than to the wise and incorruptible statesmen at Albany. But now the evil is known to all men. Now the public conscience has been aroused and stirred more than it ever has been before. But the friends of home rule must beware. It is true that the people demand this measure of reform and justice, and the time is ripe for reform and justice, but let us not delude ourselves. The danger is not past; the danger is not at all past, and the friends of reform and home rule in this body have never so much need as now to be true, to be brave and to be watchful; to see to it that no man shall hold the "word of promise to the ear and break it to the hope." Let us not rejoice until we have cause to rejoice. Let us not rejoice until our aspirations are realized; until the "hope deferred which has so often made the heart sick gives some promise of fulfillment." Would you accept for your meed that dead body without animation, without vitality, without the principle of life, for the strong, vigorous, lusty, glorious reality that alone will satisfy your rightful expectations. Where is the chairman of that committee? I want to address myself to him. I see him. Sir, I say to you we have asked you for bread and you have given us a stone. We have asked you for fish and you have given us a serpent. And yet we are told — and it is so written in

the Manual and he does not deny it — that he hails from one of the twin cities by the sea. Beautiful, great, magnificent in all that makes for municipal power and prosperity and grandeur, across the narrow barrier that nature has seemed to interpose to separate two loving hearts, across which the people of those cities have erected a wondrous bond of union that is deemed one of the marvels of this age, so they have clasped hands, I might say, almost like wooing lovers :they have with soft eyes looked love to eyes that spoke again. They are like Parthenia and Ingomar of cities:

"Two souls with but a single thought,
Two hearts that beat as one."

And to-day they yearn and they long as never before to rush into each other's arms and upon each other's breasts, there to rest in everlasting embrace and rapturous bliss. And yet you, sir, have lived for so many years in this proud city by the sea, the second in importance in this land, and you know so little of her wants and ours that you needs must play such pranks as these. What can be the motive of such extraordinary behavior on your part? I confess, sir, I know not. This only I know, that it is not the banquet to which we have been invited. It is not the banquet to which the people of New York and Brooklyn have been invited. It is something worse than the play of "Hamlet" with the mad Prince left out. It is a cheat, a fraud, an imposture. It has not even the merit of dead sea fruit which at least is fair to the eye though it turns to ashes on the lips. That deceives the traveler, but this deceives nobody. It is an open and potent cheat. It is a fraud as clear as the sun in the zenith. It is born of deceit. DeTocqueville, I think it is, or Jefferson (I know not now which), has said that the world was too much governed, and I think that every student of history and the science of government will assent to that proposition. Sir, I think for my part that the old-fashioned New England town meeting furnished the best example of self-government, of popular government, of which we have any knowledge. I think that all men, if not agreed, should be agreed at least that every political and civil division of our State, no matter how small it may be, if it be a political entity, that is, every town, every city and every hamlet should have control, and full and complete control, of its own local concerns. That seems to me is a general statement of a principle which admits of no dispute and no question. Horace Greeley said, when the question of specie resumption was a live, burning issue with the people, that "the only way to resume is to resume." Now, the only way to grant home rule, is not to grant something spurious,

that will be labeled home rule, but to grant home rule itself, the genuine article. These words are not difficult of understanding. They are, it seems to me, easily comprehensible to the ordinary intelligence. If the chairman of this committee has not yet lost the faculty of blushing (I trust he has not), he says he has not, — then I say that he cannot stand in this presence and look this Convention in the face and make a declaration that this amendment is an adequate, just and proper measure of home rule; that it is such a measure of home rule that the cities of our State demand and have a right to expect. And, gentlemen, you cannot plead ignorance. Ample light has been shed upon the subject. They have had hearings from distinguished men who understand the subject and it has been the subject of debate in this body at great length. They have incubated this bill for months, and it cannot be said of this amendment as MacDuff said of himself, that it was from its mother's womb untimely ripped. The period of gestation has been sufficiently long to have begotten a healthy, strong and lusty child, and not this misshapen, disfigured abortion. The gentlemen knows what the city of New York wants, and, therefore, I assume, and I have a right to assume, that this is a deliberate attempt to betray the interests of the city. It is a sop to Cerberus. It gives but a half-hearted measure of the justice which the cities have a right to expect, and which I think, sir, they will not willingly consent to receive. Perhaps the gentleman desires to make his measure so obnoxious that the people perforce must reject it. Well, I tell you if that be your purpose the people of the cities have pretty long memories and they will know how to single out and visit their wrath upon the guilty men, those who have betrayed their trust.

Sir, I am in favor of the largest possible decentralization of power. I believe that the largest possible grant and distribution of powers to the uttermost limits of our State which is consistent with the safety of the people. The solution of this question does not call for a discussion of the larger problems that engaged the attention of Jefferson and Hamilton. Let me content myself — I know that you are tired of discussing this amendment, and I suppose it was rather an unhappy thought for me to arise at this hour — but I desire to say in my judgment the more decentralization that you have, consistent with this qualification that I have pointed out, the more widespread and the more effectual will be the practical application of home rule and the enjoyment of home rule by our people.

Now, sir, just one word further and I shall have done for the present, though I might have much to say upon other sections of

this amendment. I want to say this; I read the remarks of our illustrious President this morning (I had not the pleasure of hearing him yesterday. It is always a pleasure to hear him, whether one agrees with him or not). I had the pleasure of reading his remarks to-day, and I want to say of the city of New York, that great metropolis of which I am proud to be a resident, that, say about it as you will, criticise it as you will, I challenge any man upon this floor to point me to a mayor of New York possibly since the foundation of that city, that could not be intrusted with all the interests of that great metropolis. Sir, the nation and State are proud of that metropolis. Our illustrious President himself thought it was a good place to come to. He and the distinguished leader of the opposition (Mr. Root) and that other brave and liberal-minded champion of every good cause (Mr. Lauterbach), they can all say that it is a good city in which to live. It is mightier and grander to-day than ever was ancient Rome, with its Coliseum and splendid temples and marble palaces; prouder and grander than Thebes, with its hundred gates, or Babylon, with its hanging gardens, that were the glory of the olden world. In everything that makes for the advance of civilization and refinement; in everything that contributes to the happiness, prosperity and well being of its population in every walk in life; in its unrivalled and splendid schools; in its vast treasury of art and science; in its magnificent charities for the relief of the suffering and distressed, that dot Manhattan Island as thickly as the stars that are strewn in the blue firmament over our head; in all that goes for the betterment of its population, New York city has no superior in municipalities. No, sir; it has no equal in all the western hemisphere. (Applause.) And, sirs, permit me to say to the gentleman from Cattaraugus (Mr. Vedder), although I do not wish to inject the word "politics" in this Convention any more than I can avoid — it is a popular word, but I will not inject politics — but permit me to give him a retort courteous and say that the Tammany tiger is at the helm, and should a New Yorker go abroad through the earth and visit all the cities thereof, and view with his own eyes their untold wonders, beauties and treasures, yet when he comes back, when he sails up our beautiful bay and views in the distance the statue of liberty enlightening the world, and catches a glimpse of the Brooklyn bridge, one of the marvels of the age, when he sees that great metropolis lying before him, teeming with industry, wealth and population, the first thought in his heart and the first words upon his lips are "after all there is but one New York." That, sir, is the universal sentiment. You

find that to be the sentiment, there is after all but one New York. And I ask you, gentlemen, to give that city of New York its full and just measure of home rule, that which will enable its people to make it what is destined to be the greatest city on the earth, and its population will bless you, and you and your children and your children's children will rejoice at its growth, at its prosperity, at its unrivaled splendor. (Applause.)

The Chairman — The Chair rules that Mr. Dean's motion is not in order, as it amounts to a division of the question. The question is on the substitute offered by Mr. Hotchkiss.

Mr. J. Johnson — Before that is put, I would like to make a verbal amendment, which has been suggested by Mr. Marshall, who has so much skill in drafting articles. In lines 5 and 9, on page 2, strike out the words "except as herein provided," and insert in place thereof the words "under existing laws."

The Chairman put the question on the motion made by Mr. Johnson, and it was determined in the affirmative.

The Chairman — The question is now on the substitute offered by Mr. Hotchkiss.

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

The Chairman — The Secretary will read the second section.

Mr. J. Johnson — I move that the second section be passed. The principle was practically disposed of in the amendment adopted yesterday.

Mr. Cochran — Then we will strike it out.

The Chairman — Is there any amendment to the second section?

Mr. Bowers — What has been done with the first section?

The Chairman — Amendments have been proposed to the first section; the substitute has been defeated, and the first section stands.

Mr. Bowers — At present.

The Chairman — Yes; at present. Are there any amendments to the second section?

Mr. Cochran — I move to strike out the second section.

Mr. Veeder — What do I understand that the chairman of the committee desires to do with the second section. Withdraw it?

The Chairman — Pass it.

Mr. Johnson — I move that the second section be stricken out.

Mr. Cochran — That was my motion.

Mr. Veeder — I want to ask what you mean by the words "pass it?" Are we to consider ——

Mr. Root — Mr. Chairman, I rise to a point of order. It is that the motion to pass the resolution having been ruled out of order by the Chair, and withdrawn by the mover, the gentleman now upon the floor is not speaking to any question before the House. I desire a ruling upon my point of order.

Mr. Veeder — I desire to know this ——

Mr. Root — May I have a ruling on my point of order?

The Chairman — The point of order is well taken, and the Chair will not explain what the meaning of the words is.

Mr. Veeder — In section 2, line 12, I move to strike out the words "for the purpose of securing fair elections."

Mr. J. Johnson — Mr. Chairman ——

The Chairman — Mr. Veeder has the floor.

Mr. Veeder — I do not understand the necessity for those words. What is the possible purpose of their being in the section? What is their purpose in this provision of organic law? Why should we declare a purpose of this kind in the Constitution? It says, "for the purpose of securing fair elections." It must be considered as an intimation that heretofore we have never had fair elections, but now desire to have fair elections. Is this my friend's invention, so that at this time we can tell the people of the State that hereafter we are determined to have fair elections? I submit that such an expression has no place in our Constitution. I, therefore, move to strike it out.

Mr. J. Johnson — Mr. Chairman, I am opposed to any amendment to section 2, because I consider that it would be trifling with the time of this committee. The principle was adopted yesterday, and I hope this motion will be voted down, and that then I may be allowed to make a motion, if I can obtain the floor, to strike out section 2.

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

Mr. Johnson — Now I move to strike out section 2.

Mr. Cochran — What becomes of my motion to strike out that section?

The Chairman — The motion is on Mr. Johnson's motion to strike out section 2.

The Chairman put the question on the motion of Mr. Johnson to strike out section 2, and it was determined in the affirmative.

The Chairman — The Secretary will read section 3.

The Secretary read as follows:

"Section 3. No law shall be passed conferring the power to appoint the head of the police force of any city or any city officer, except the mayor, or the mayor, with the consent of the common council. The Governor may remove the official or officials or any of them constituting the 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 any official so removed, and said successor shall hold office until the expiration of the term of office of the mayor of said city holding office at the time such charges are preferred. Nothing in this section contained shall in any manner interfere with the power of the mayor or other officer to remove or appoint the head of police or other police officer, as such power is or may be conferred by law; but such power shall not extend to the removal of any person appointed by the Governor as herein provided."

Mr. J. Johnson — Mr. Chairman, what I desire to say upon this section has already been said as well ——

Mr. Bowers — I make the point of order that there is no motion before the Committee of the Whole.

The Chairman — The point of order is well taken.

Mr. J. Johnson — Mr. Chairman, I move that we agree to section 3.

The Chairman — The Chair holds that motion out of order.

Mr. J. Johnson — I have no desire to discuss it if you will simply pass it.

Mr. Blake — Mr. Chairman, I offer an amendment.

The Chairman — The Secretary will read it.

The Secretary — Mr. Blake offers this amendment:

"Section 3. No law shall be passed conferring the power to appoint the head of the police force in any city or any city officer, except the mayor, or the mayor, withe the consent of the common council. The mayor may remove the official or officials or any of them constituting the 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 or officials sought to be removed, and opportunity afforded him to be heard in his defense. Upon such removal the mayor may appoint the successor of any official or officials so removed, and such successor or successors shall hold office during the unexpired term of office of the officer so removed, and until their successor or successors shall be appointed."

The Chairman — Do you offer that as a substitute or as an amendment?

Mr. Blake — As a substitute.

Mr. Holcomb — I sent an amendment to the Secretary's desk, and would be pleased to know the situation of that. I thought I had the eye of the Chairman.

The Chairman — The Chair did not recognize the gentleman.

Mr. Holcomb — When will my amendment be in order ? Can I reserve the right to present it immediately after Mr. Blake's?

The Chairman — I suppose the gentleman can present an amendment at any time when it is proper. There is one amendment offered to section 3. The Chair holds that if Mr. Blake's proposition is a substitute, that the section must be perfected before the substitute is put.

Mr. Blake — Then I offer mine as an amendment.

The Chairman — If it is an amendment and does not go to the entire section, it will be considered.

Mr. Blake — It goes to the entire section.

The Chairman — If it goes to the entire section, the Chair will hold it to be a substitute.

Mr. Blake — I offer it as an amendment.

The Chairman — As the Chair understands it, it goes to the entire section, and in fact strikes out the entire section as now presented, and inserts what the gentleman moves as an amendment.

Mr. Blake — I beg pardon. It strikes out only a portion. It is precisely like the first part of the section, and strikes out the last part of the section. It is, therefore, an amendment.

The Chairman — The Chair will rule in a moment.

Mr. Blake — I will say that it merely substitutes the word "mayor" for the "Governor" in the fore part of the section.

The Chairman — The Chair will hold it to be an amendment, and Mr. Blake may proceed.

Mr. Holcomb — Now, will Mr. Blake give way so that I may present my motion?

Mr. Blake — I do not wish to yield my rights.

The Chairman — Unless it is an amendment to the amendment offered by Mr. Blake it is not in order at present.

Mr. Blake — Now, Mr. Chairman, a few moments only, because I do not wish to trespass again upon your patience, for you were very kind when I addressed you before. I simply wish to call the attention of this Convention to the character of this amendment. It substitutes the word "mayor" for "Governor." It appears to me that if there be one provision in this amendment more obnoxious and more pernicious than another, it is that which gives the right to the Governor to remove the head of the police department over the head of the mayor. Under what principle of home rule do you grant such a power to the Governor? Does it not violate the most essential principle of home rule, the *sine qua non*, without which there is no home rule, without which you have nothing left but the emasculated dead body, which, according to the gentleman from Cattaraugus, should be removed as speedily as possible from this chamber. Why should you give the Governor such power as is contemplated in this amendment? Does he know more of the needs and wants of the people of the cities than does the mayor himself? Why, sir, let me ask you to suppose that the President of the United States were given by law the power to go over the head of the Governor of this State and remove the sheriff of Kings county, or of Greene county, or of Herkimer county, what would you think of that as a home rule measure? And yet it is justified by the principle of this bill. Let us not give to the Governor (a partisan Governor, if you please, because Governors may be partisan), the power to come down to the city of New York, or to any other city, and just before election remove the head or the heads of the police department because, forsooth, they have a different political faith from him; and to do so for partisan and political ends. That is the power you propose to place in the hands of the Governor. It is true he cannot remove such official except for cause; but he is himself made the sole judge of the cause, and you know very well that a politician will not have to go very far to find a cause when he wishes to decapitate the heads of his political enemies. No man knows so well as the mayor what is best for the people of the city. He is the best judge whether any head of a department has violated his duty, or has performed his duty, or has betrayed a trust. The mayor is responsible directly to the people of the city, and they would scrutinize his actions and would hold him to strict accountability if he makes an error or mistake. But the people of the city are not the entire constituency of the government. They

only form a small part of his constituency. What do the people of Schoharie county know or care for the Governor's action in removing the head of the police department of Syracuse, Buffalo or Brooklyn? What do they know whether such removal is just or otherwise ? Let us, therefore, not give to the Governor any such power as this. I appeal to the gentlemen upon the other side of the Convention. Sirs, let me say a word to you, and I am done. Especially do I appeal to you in respect to your action upon this amendment. We have relied upon your intelligence and upon your fairness. You have never failed on important questions to show your independence and your freedom of thought and action. Many times since we commenced our labors here we have seen evidence and proof of your independence. You have the leadership. In the main it has been just, wise and patriotic. Leaderships are good sometimes, but on important questions you have shown your independence of leaderships. Upon these noble characteristics of American manhood we of the cities rely. Some of you are from cities, and we rely upon you. We base our hopes upon that reliance. That is our sole trust. Upon this side of the chamber, to you of the Republican faith, I say that there has been less restraint. There has been no restraint. You have shown marked exhibitions of independence and freedom of action. I do not know whether it is so or otherwise, but we find no pressure of leadership. There must be some pressure, I suppose, and some of you gentlemen on the other side can answer that question better than I. At any rate, we have not felt the pressure, for we have had no leader. Every man is a sovereign on this side of the chamber, and has voted, since the eighth of May last, as best agreed with his judgment and conscience. You have observed this. You have seen evidences of it. Therefore, you have always had Democratic support for every just and wise measure you offered which seemed to be in the interest of the people. May we not, in turn, count upon your sense of fairness and justice? We do count upon it, gentlemen. We ask you Republicans who come from cities, and we ask you Republicans who come from the interior to do justice to the great municipalities of this great State. If you give this power to the Governor you know that you will stab home rule to the death. You know that you will kill the living principle of home rule. I might say much more, but will not abuse your patience and good will. I make this last appeal to those who differ with me in their political belief, to do justice to the great cities of Brooklyn, New York, Buffalo, Syracuse and other cities of this State. Do us justice. If you are

willing to give us home rule, then give us the full measure of home rule, that our people may thank you for it and bless you.

Mr. Francis — Mr. Chairman, I desire to discuss this question calmly and dispassionately, and so I begin by asking the question: home rule; what is it?

We have a republican form of government, but it must have its definitions and limitations. Safety to the State, protection for the people must be assured to answer the purpose of a just government. Sovereignty, where is it lodged? If it is applied in an absorbent manner to every locality, town, county and city, so that each may exercise the powers of government independently of relationship to the others, to the State at large, or to the Union itself, we have a dissipated government, the organization of towns, counties and cities within States, and States within the Union absolutely without any responsible head, each exercising its powers without limitation for itself alone. Such conditions every intelligent mind, every student of political philosophy may see would lead to confusion, to anarchy, to the dissolution of all controlling forces that constitute the guarantee of common civilization. Such divergent and multiplied sovereignty, each equipped with powers to act for itself without regard to relationship with others, would inevitably destroy all adequate government of the people for the people; it would involve us in a revolutionary chaos. There must be a recognized sovereign power in all essential matters relating to the protection of liberty, the rights of property and the immunities of citizenship to assure safety to the State, safety to the republic, safety for our common civilization. We cannot have a government split to pieces in hundreds of parts; there must be a supreme magnetic force to assure unity of the whole when emergencies require united action. This we may define as a supreme sovereignty; not supreme in the sense of encroaching upon local authorities in matters of strictly local nature, but supreme in the paramount object of maintaining the rights of the people and the just privileges of citizenship. If we are to carry the idea of home rule so far respecting the government of cities as to abrogate therein the sovereignty of the State, we plant ourselves upon the ground of the old southern heresy of State independence of federal authority. We cannot afford to concede to cities, towns or counties entire release, full fredom from State control in matters wherein are concerned life, liberty, good order and wholesome republican government. This would be to set up supreme powers within the State, the same as was attempted, on a larger scale, to enforce by rebellion this principle as applicable to the southern States of this Union. Carried out in practice as insisted upon by

some advocates of so-called home rule, it would involve the State in perplexities, dangers and probable future calamities. Why, all these sections or parts of the body politic derive their powers from the State. The policy of our government from the beginning has been to maintain the sovereignty of the State, while according limited powers, with a view of local conveniences and efficiency, to the subdivisions thereof — the cities, villages, towns and counties. To quote the simile of the late Judge Parker in his discussion of an important question before the Constitutional Convention of 1867 and 1868:

"You cannot sever these interests. If the city of New York is the great heart and center of the commercial body, these limbs which spread out in each direction cannot be severed without sapping its strength and perhaps taking life. The streams of commerce that run into this central heart like the veins of the system, we must remember, are counterbalanced by corresponding arterial returns of commerce to the country itself. You cannot sever a limb at any point without affecting the vitality of the whole system."

If this be true as applicable to our great commercial metropolis, how much more is it a dominating principle when applied to the State at large? The power that gives life to the whole has created all, and has given it head, heart and limbs. We can have no proper or safe home rule for our cities unless these cities are placed in correspondence with the State, receiving of its life blood, as the limbs of the body obtain vitality from the ebb and flow of the life-giving element from the heart. We must have honest elections guaranteed by the State; we must have a police power held to the strictest accountability to the State as a basis, the very foundation for home rule. Limitations may not be so exacting in regard to other departments connected with municipal government; and still, in all things, I would have a reserve power in behalf of the State, so that in cases of monstrous abuse or usurpation, the brakes may be applied by State forces. This has been provided for in another section of the report of the majority of the Committee on Cities, so that a three-fifths vote of each House of the Legislature, with the approval of the Governor, may be interposed as an authoritative agency to baffle and defeat notoriously dangerous and unjust local legislation. Held within legitimate limits, I would have home rule accorded to our cities in the fullest practicable measure. But in the matter of police, it is absolutely necessary that this power shall be held to strictest accountability to the State. In section 3, now under consideration, it is seen that while the appointment of the

head of the police force is conceded to the mayor, or the mayor with the consent of the common council, State authority is interposed as a remedy for maladministration of this all-important department of municipal government. The Governor may remove the officials, or any of them, constituting the head of the police force, for cause, "upon charges preferred by him; but such official is to be accorded the opportunity for a full hearing and defense." This for the protection of the people against gross abuses and outrageous excesses, such as have occurred under corrupt partisan control. Then upon such removal, the Governor may appoint the successor of the official removed, "and such successor shall 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." To this extent, and no further, State sovereignty is interposed to protect the citizens of cities in the enjoyment of vital rights. It appears to me there ought to be no partisanship, really no difference of opinion among fair-minded men, as to the propriety, the justice, nay, the necessity, of this interposition of State authority. The State really divides authority with the municipality, but still holds the latter under check. And in view of what has occurred, what has been demonstrated by irrefragable proof of police abuses in New York city and elsewhere, this accountability seems absolutely necessary. Many would prefer a larger and more extended police power under the supreme direction of the State; but a majority of our committee, with a view of avoiding just objections, has conceded to municipalities the appointing power right in the line of home rule, only exacting responsibility to the State in what seems to be the fair manner prescribed in this section. To do less than this would be to betray the law-abiding and order-loving people of cities, and to relegate them to the mercy of pernicious partisanship, which, as we know, too often wields the power of the dangerous classes, and gives to the slums preferment and ascendency over decent citizenship. I need not here refer to recent revelations in New York city, nor evidence, so fresh in the public mind, afforded by the city of Troy. But I may say that when a police power becomes so debased, if not criminal in intent and practice, that when a great crime, the crime of a deliberate murder, is perpetrated at a polling place on election day, and it fails to do its duty, it is time it was brought unrelentingly to book. Bear in mind in the case under consideration the police and police officers were so distrusted by the prosecution that none of them was called as a witness, nor did any of them volunteer to aid in bringing the guilty to punishment. This of itself tells its own story, rendered

all the more impressive from the fact that the prosecution was intrusted to reputable and able lawyers who belong to the same party with those recalcitrant officials, but who could not be made agencies for the condonement of abhorent crime.

And so I say the State must exact accountability in cases of police maladministration; and here it is provided for in a straightforward, non-partisan way. It is not a supposable case that the Governor of this State is for all time to be of one party; we have seen that in this respect there are changes from one to the other, though for many years past we have had only Democratic Governors. But of whatever party the Governor may be, the deterrent influence on police excesses and crime would be great and wholesome with this right of appeal on the part of a mis-governed people to the chief magistrate of the State for relief when the law is violated and justice trampled under foot by the power appointed to execute law and enforce justice. We are only asking that which is now accorded with reference to the sheriff (who is himself in a large sense a police officer), the district-attorney, clerk and treasurer of a county. The Governor removing any of these officials on proven charges fills the vacancy created for the period intervening until the next general election. In the section before us it is provided that the chief magistrate shall, in case of a removal of a police official, fill the vacancy for the unexpired term of the mayor upon whose authority and action the convicted official was appointed, or has been retained in service, so practically delegating to the Governor a similar authority to that exercised by him in the case of the county officers named.

The only difference is that vacancies with reference to the latter are filled by him until the people can vote upon the choice of successors; while in the case of the police official, as he receives his appointment from the mayor, the Governor fills the vacancy for the unexpired term of that chief officer of the city. Now if the Governor was simply authorized to remove the offending official, and not empowered to fill the vacancy as described, the mayor could re-appoint the removed officer or select in his place one equally offensive, and so there could be no reform, no deterrent influence in the premises. The removal and appointment by the Governor must go together to secure the desired results. Separated, with the mayor's power retained to fill the vacancy at once, all may see the whole business will be reduced to a farce. Usurping and criminal police authority must be made to feel from the absolute conditions of their situation that imminent danger confronts them of removal and disgrace for their misdeeds. This is the stronghold

of the State, as the section defines, for the assertion of its sovereign power to protect the people of cities from such outrages and crime as have so recently stained our municipal records; to protect the people from intolerable misrule, and in the enjoyment of "life, liberty and the pursuit of happiness." So much as this we require, nay, demand, as the very basis of home rule. Without it, home rule is a snare and a delusion, an opening way to anarchy and chaos; with it, we may appeal to a Governor, whether he be a Democrat or Republican, for justice, for self-preservation. If we cannot have this, I, for one — and there are others whose opinions accord with my own — would vote to continue existing conditions, and to give the State, through its Legislature, all the authority it now exercises. We want home rule with safety. If safety, under the proposed changes, cannot be accorded us, we would have the home rule as it exists to-day, with no enlargement of powers to municipalities; least of all the conferring of power to appoint the police force with liberty to exercise the authority as dictated by partisan bosses in utter violation of law. Good citizenship can never endure this. Much has been said against State commissions, but we know that those organized under municipal authorities and unrestrained by the power of the State, as with police organization, are infinitely the more dangerous. So I repeat; a fair measure of home rule I would have with appropriate checks and balances for the protection of the people of cities. But to give unrestrained control would prove an unmixed calamity. We must have fair and honest elections, with a police authority subject to State responsibility to give to home rule harmony, unification and success. We must not have a recognition of the "pestilent heresy of State rights as applicable to the cities — the political ulcer of the republic — which, after festering for seventy years, ripened into secession, and burst into open rebellion, which cost us four years of bloody civil war to extirpate."

This I said in the expression of my views in the Convention of 1867 and 1868. I repeat the sentiment now with all the solemnity of earnest and confirmed conviction, and say to you, my fellow-delegates, that we must have this power of the State to restrain municipal and police excesses, or unutterable calamities will ensue. Our cities will be like the ancient cities, not a part of the State, but each city a whole State, and the agricultural districts their tributaries and subjects. Let us do what we can and all we can to relieve the Legislature from the congestion of municipal legislation, relegating what may safely be accorded to the cities for their disposition as local interests may seem to demand. But

still let us build upon the broad foundation of that sovereignty which grants these just rights of home rule without danger to the integrity of the State.

To reiterate in a few words the deliberate opinion expressed twenty-seven years ago, I say to you, gentlemen of the Convention, "it is a marvel to me in view of the record of the past, the exigencies of the present, and the necessities of the future, that any good citizen, whatever his party predilections, can be found to favor a system of municipal police control by which the safety of vital interests would be constantly imperiled, and the worst criminals be encouraged to ply their vocations with the assurance of old-time immunity from punishment. And here I may say, so far as we have proceeded in that direction, the way has been opened for crime and criminals, and through police toleration to bring upon us the most fearful evils that can menace the life and liberty of any people."

I add to the argument I have endeavored briefly to present, a suggestive quotation from the latest issue of Harper's Weekly, a journal that has heretofore given earnest support to the candidates, the national candidates especially, of the Democratic party. This ably conducted paper approves most heartily the proposed amendment of the Constitution as reported by the majority of our committee for the government of cities. On this section relative to police organization, Harper's Weekly says:

"The section of the amendment concerning the police, giving the Governor power "to remove the commissioners, superintendent, or other head of the police force of any city for cause, upon charges preferred before him," has called forth some hot contests. We think a constitutional provision of this kind very desirable. The exercise of the police power in our large cities should not be considered as a strictly and exclusively municipal function. Not only the inhabitants of New York city, but the people of the State are strongly interested in the question whether the police in our great metropolis or in the other large cities is, in point of character and efficiency, what it should be. A good or bad police in the great centers of business is so serious a concern to the people of the whole State that the correction of evils in its composition or conduct should not be left exclusively to the sweet will of the local politicians It can well be imagined that the police force of a city, serving as a political machine to the politicians in power, may find protection for the most outrageous misconduct of its members at the hands of its patrons in possession of the municipal offices. In such a case there should certainly be a remedy outside of that municipal government, and that remedy should be pro-

vided for in the manner proposed in the amendment, or in some other way equally effective."

Mr. Bush — Mr. Chairman, I am not a representative from any city, in this Convention; yet, nevertheless, it seems to me that this proposed amendment is of such great importance, and the fact that it is being looked upon here as entirely a matter for State rather than municipal action, the control of cities, that I venture to express a few words in reference to the matter. This proposed amendment is entitled, "An act to provide home rule for cities," but I insist, Mr. Chairman, that the title should be amended so as to read "An act to take away from cities the little home rule they now have." (Applause.) Mr. Chairman, if the delegates in this Convention see fit to adopt this article, and it should be adopted by the people, a man might as well live in the wilds of St. Lawrence county as in the city of New York, or in any other great city, so far as having anything to say with reference to municipal control. It does seem to me that the attitude of the members of this Convention in discussing city affairs and city government is entirely unrepublican and undemocratic. It would seem that every member of this Convention who has discussed this matter on the side of the majority, secretly and at heart, does not believe in the control of majorities or in popular government. If that is true, why not come out openly and say the people cannot be trusted, and it is wrong to place any power in their hands; that they do not know what they do; that the few only are wise and intelligent, and that the many are, of necessity, ignorant. That was the theory of Greece in ancient times, that was the theory of Grecian philosophers, that of necessity only the few can be wise, that the many must of necessity be ignorant. That seems to be the sentiment that prevails in this Convention now. From the first day I came into this Convention I have heard nothing but distrust of the Legislature, distrust of local and municipal boards, hints that the people are corrupt, that corrupt politicians govern the people, that the people do not know how to vote. One man proposes that they be compelled to vote; another proposes that elections be separated, so that in case a man has to vote on the tariff question he will not be so entirely benighted as to vote his clean party ticket, assuming all the while if he voted his party ticket he would be doing something radically wrong; that the great parties of this State have not within their own bodies men of sufficient intelligence and integrity to govern the localities in which they reside; that elections must be separated and divorced from each other; that the *dilettante* reformers who live in these great cities, when they come up to the polls to

vote for a candidate for mayor, must not be disturbed by the question of whether tariff protection or free trade is also to be decided. That seems to me radically wrong, and that the theory of this Convention is wrong; that republican government is on trial by the delegates in this Convention, at least in principle. I do not care who makes the laws for the government of a municipality so long as I have the enforcement of them. It does not matter what the laws are so long as some particular individual can enforce them or not enforce them as he sees fit. Where is the autonomy of any municipality of this State if the Governor of the State of New York at any moment may remove the officers who execute the laws? Why is it that, in the hundred years of government in the great State of New York, nobody has heretofore thought that it was necessary to give the Governor of that State not only the power to remove corrupt officials, but the power to fill vacancies? It is a nice scheme of government which the majority are bringing forth in this Convention. First, by one of the most iniquitous gerrymanders that was ever placed on the statute books they propose to control absolutely the Legislature of the State of New York; second, they propose to give the Governor power to remove at will the police official in any city, and to fill the appointment. Now, it is true that it is alleged that that may be done only upon charges, but just let me show you the practical working of this beautiful scheme. And I ask any gentleman in this Convention if there is a city in the State, if there ever has been a city in the State or ever will be a city in the State where, for instance, a disorderly house will not exist. Now, then, permitting the existence of any such thing as that in cities would be cause for removal on the part of any Governor, who wanted to obtain control of the police force in any city. He is the sole judge of whether or not the cause is sufficient for removal. There is nothing but the public conscience back of him to deter him, and we know how little that interferes with any politician when his party interests are at stake. Now, if a Governor cannot only remove the head of the police department but fill the vacancy and tie the hands of the mayor so that the mayor cannot remove that official, so that even the Legislature cannot remove him, then I ask what is left of home rule for any city in this State? It is true that you provide here that in passing general laws for cities, they shall not become laws unless three-fifths of the Legislature approve. Now, what does that amount to? Any party having a majority in the Legislature can at any time get a three-fifths vote if they want it. All they have to do is to institute contests enough to make up three-fifths in the

start of every session of the Legislature, and the members whose seats are contested must vote with them or else they are unseated and their antagonists put in their place, and it is very easy to get a three-fifths majority, particularly when the great and wealthy city of New York with its twenty to thirty millions of patronage is the prey which they seek. I have been in this Legislature four years in succession, and I have seen men coming here from the remote rural districts into this body and passing laws, and proposing laws for the government of the city of New York with the express purpose and the only purpose of going down to the heads of departments there and saying: "I will press this bill unless you give me such and such appointments." Why, the city of New York is full of appointments of countrymen in the various departments. They simply levy blackmail upon the departments of the city, and I know whereof I speak. I have been in the Legislature a good many years and have seen it often. That is bad enough, but you must give the Governor power to remove the police and power to pass laws by a three-fifths vote. You say you make general laws for the government of the State, but your three-fifths can entirely override it. Where you can find any home rule in this bill I do not know. I do not think that there is a man in this Convention who will vote from his conscience, who will vote for this article and say to the resident of any city: "We have given you home rule." On the contrary, if his conscience direct him at all, he will have to say that city government, local city government is a dead failure in the State of New York. We have said so in the Convention, and we will hereafter govern you from Albany. Mr. Chairman, I detest and despise hypocrisy. I despise this professed attempt to give the cities home rule, when in reality you are taking away from them every vestige of home rule that they ever had. I want the delegates to understand first what they are voting for. I want the people of New York to see just exactly what we propose to give them.

Mr. Smith — Mr. Chairman, it is not my purpose to engage the attention of the Convention for any considerable length of time, but I will ask the Convention to be consistent in making a Constitution. Consistency is a jewel. And now what does this third section propose to do? Does it propose to establish a system, built upon consistency? Or does it propose to interject irregularity and to make a system that has no logic in it? If this third section had provided that the Governor might remove the mayor of the city of New York, or of any city, for want of the proper administration of his office, the mayor being the official who

appoints the heads of police, that might have been said to be consistent. It would have been the exercise of authority from above, downward in regular order, like following the steps of a stairs from the top to the bottom. But when the mayor is clothed with authority to appoint the police board, and the police board with authority to appoint the superintendent and the sergeants and the patrolmen, then to be consistent, if you are determined to confer authority upon the Governor to interfere at all, it should be first to remove the mayor and appoint another, and then for the mayor to remove the police board, and the police board the superintendent, and so on down to the bottom of the ladder. The learned gentleman from Rensselaer (Mr. Francis), has referred to the authority of the Governor to remove the sheriff and appoint another. I was glad, indeed, that he mentioned that circumstance, because it gives me the opportunity to show his inconsistency. This, in principle, is not like authority to remove the sheriff by the Governor, but it is like authority to remove a deputy sheriff by the Governor, and to appoint another deputy or an under-sheriff, leaving the sheriff in office. There would be no consistency in that. You may take the entire system of government, not only in this State but in the United States, and you will not find anywhere in operation a system by which the highest officer leaves an intermediate officer and goes down and removes the lowest officer. Take the Secretary of the Treasury. He appoints something like five or six thousand subordinates. Is there a case, or could there be a case where the President would intervene and remove a treasury agent appointed by the Secretary of the Treasury? And yet the United States system is one, so far as relates to the executive department, that is all under the control of the President. Now, you may take all the details of government in this State, or in the country, I care not what or where, and you will not find this want of consistency anywhere.

Now, Mr. Chairman, I wish to say in all kindness to every delegate in this Convention two or three words of a fundamental character in respect to the way we should act, in respect to the way that we should form opinions and act upon them. One of the first great rules that was given to me for the guidance of my life I will now give to this Convention, and that is this: that every opinion taken up without investigation and held without knowledge is mere prejudice, and should be guarded against with all the diligence in our power. Why this prejudice against the city of New York? Why is it that gentlemen are disposed to organize into law prejudices against the city of New York? Instead of principles, you are

disposed to organize prejudices into the law, and the highest law of the State. Why, the truth is that ever since I was old enough to read anything, I have heard the Democracy of New York denounced because they governed the city. Those denunciations have always been largely the result of prejudice. They were not specifications of evil-doing, but they were general denunciations, and those denunciations, originating in that way, without specification, have resulted in a vast prejudice. Those prejudices have been molded into opinions, and the opinions that are now governing this Convention are largely molded from the prejudices of the past. Is that the way to make a Constitution? Suppose these denunciations of New York had never been heard, and you were to meet here, free from all these prejudices, then how would you proceed to make this Constitution? Why, gentlemen, would say, following up the argument of the honorable gentlemen from Rensselaer (Mr. Francis), just following out the very theory that you are designing to carry into effect, "we want the Governor to have a supervising control over the city of New York." How shall we put that into practice? We will give the Governor power to remove the mayor of the city of New York for any dereliction of duty on his part, and we will give the mayor of the city of New York power to remove subordinates for dereliction of duty on their part, and so on down, and that would be logical and that would be consistent. But would a Convention assembled without prejudice and without any party or political design construct a system that has no harmony in it, and that in fact accomplishes just the reverse of what its title professes to accomplish? I appeal to you gentlemen to do whatever you are determined to do in a logical and systematic way. If we in New York are to be executed, if we are to be oppressed, let it be done with order and consistency; let it be a symmetrical system. Everything that we observe when we look out on the face of nature is done by a system of order. Nature itself is a great order with manifestations of force; appearances of force that always conform to the order; no breaks, no want of logic, but consistent and beautiful and symmetrical. Do what you do, no matter how bad it is, in a logical and orderly way, and not by any irregular bounds like this. (Applause.)

Mr. Nicoll — Mr. Chairman, I consider it very unfortunate that the principle contained in section 3 of the proposed amendment should have found its way into any measure which, in its title at least, is designed to give home rule to cities. The effect of incorporating this particular section in this alleged home rule measure is to give a species of better local self-government in one hand,

and to invade with the other every right of local self-government which the people of this State now enjoy. It strikes a deliberate blow at what we call home rule in cities. I am opposed to it, Mr. Chairman, first, because it is reactionary; second, because it will be demoralizing to the cities and contribute to disturb their good order; and third, because it is unjustified, unjustifiable, and unnecessary, from anything that we know by our experience with cities.

Now, I say it is reactionary, by which I mean that it is a recurrence in this day and generation to a system of governing the police of cities which in this State we threw away twenty years ago. Every one familiar with this subject knows that prior to the year 1857, the police in cities, heads of departments were appointed by the mayor, or the mayor and the recorder, or in New York, if I recollect right, by the mayor and recorder and the city judge. Complaint was made that the police force was inefficient, that riots took place, and on that account, that system of appointing by the mayors and recorders and city judges was discarded, and instead thereof we erected in this State the proceeding of appointing police through commissions existing under acts of the Legislature. In the year 1857, we divided the State into what were known as districts, the cities of New York and Brooklyn being the metropolitan district; commissioners were appointed under an act of the Legislature and those commissioners appointed the police officers of the city. That system went on from 1857 down to about 1873, and then it was discarded, because the effect of it was that the mayors of cities who, by their charters, were charged with the enforcement of the law and the preservation of order in their respective localities were unable to accomplish those objects while the police force was controlled by another and different and independent power. The effect was seen at once in the great cities of the State. Disorder reigned, crime was more frequent. The police force, not obedient to the chief magistrates of cities, looking only to the commissioners who controlled them, were indifferent to his mandates. It was felt to be unjust that the millions of dollars raised from the taxpayers of the city for the support of their police force should be expended by officers not elected or appointed by the cities themselves; and as a result of that feeling, finally about twenty years ago the commissioners were wiped out and there was substituted in place thereof the present system, which is this: the mayor is charged with the appointment of the police commissioners, but the Governor is empowered to remove the mayor, and it is now competent for the Governor in this State to

remove the mayor of any city in this State, upon charges; in fact, upon charges that he neglected to remove persons who were improperly exercising functions of police commissioners. And that is the system, the system of removing the head of the domestic corporation and not one of its subordinates, which has existed in this State for the past twenty years. It is a system which is founded upon a long and hard experience. It is a system which experience has taught us is necessary to the good government of cities, because under this system, and under it alone, are the police of the cities obedient to the mayor and diligent to execute his mandates. And what is now proposed? It is deliberately proposed, after twenty years, to go back to the system which we discarded twenty years ago; and in fact to take the fifteen thousand men, or more, who are now police officers in cities, and put them immediately under the power of the chief executive of the State, without any control of the mayor over them at all. I say it is reactionary; I say it is dangerous, because how can you expect the mayor of a city to be responsible for its good order, for the enforcement of its laws, and for the preservation of peace and quiet, if the police commissioners and the police officers shall say to him when he issues an order, "we are not responsible to you; ours is a different and a higher authority? The Governor has the power to remove our superior officers. We take our mandates, not from the chief magistrate of the city, but from some other source." I assure you, gentlemen, from long experience in these matters, that nothing would be more dangerous to the preservation of life and property and the good order of our cities than the recurrence in these latter days to a discarded principle of administration. Why not put it into the Constitution, if it is desired, that the Governor shall have the power to remove the mayor of any city; that he shall have the power to remove the head of the domestic corporation and not one of its subordinates? Isn't that all that is necessary? How quickly would the mayor of a city act upon a suggestion from the Governor, if in the Constitution was lodged the power in the Governor to remove the mayor for cause. Now, I say that it is not only reactionary, not only demoralizing, destructive of good order in the cities of the State, but I say also that it is entirely unjustified by any experience that we have had. In fact, the only suggestion at all for this return to an abandoned method of administration, is that the police have interfered with elections in cities. I had the honor to state to this Convention, on the occasion of my remarks some weeks ago upon this subject, what I conceived to be the reason for that complaint, and that was that in certain cities we had destroyed the non-partisan

character of our election boards, and made them partisan, and that under our election laws the police officers were really at the polls, the subordinates of the election officers, and that you could expect nothing else from a partisan election board than a subordination on the part of police officers, charged with the duty of preserving order at the polls, to the election officers themselves. Now, that was the cause, but that cause has been removed. It has been removed by this Convention. It was removed by the Legislature of 1893. We have now incorporated into the Constitution of the State a declaration that hereafter all boards of election officers shall be non-partisan. Why, then, insist upon that which was prompted only on account of that cause? Why return to a system which we have once tried and abandoned forever, when the cause which suggested the return no longer exists? Nothing, in my opinion, will be received with greater indignation by the cities of the State than this attack upon their internal affairs, by this unnecessary and unjustified departure from a system of administration which we have tried for twenty years, which has worked well, and with which the State, as a whole, is well content.

I suggest to the distinguished chairman of this committee, instead of insisting upon this proposition, the only effect of which will be to create a feeling of indignation against the other wholesome provisions of his article, that he gallantly withdraw from this situation, and incorporate an amendment in the Constitution of this State to the effect that the Governor of the State, for cause, after an opportunity to be heard, shall have the power to remove the chief magistrate of any city.

Mr. H. A. Clark — Mr. Chairman, I seem to get the impression from many of the speakers who speak in opposition to section 3 that they are impressed with the idea that when you pass north of the city of Yonkers there are nothing but barbarians left in the State, and that we are only trying to amend the Constitution in relation to the cities of New York and Brooklyn. Nearly every gentleman who has seen fit to speak upon this subject has taken as his illustration the great city of New York. And it is a proper illustration, for it is a great city and a beautiful city. It has more population than any other, or any other two cities within our State. It has more magnificent buildings, it has more education, more ability. It has more frauds committed within its territory. It has more disgrace upon its history than any other part of the State. It has more corruption within its borders than any other part of the State of New York, and I need go no further for this proof than to refer them to the evidence taken before the Lexow committee. I do not

wish to say anything disrespectful of the city of New York, or of any of its inhabitants, for I believe, as has been said upon this floor, that the majority of the people of the city of New York are intelligent, enlightened and honest people. But it is a fact that you cannot take any portion of our State and have a sewer of ignorance and corruption flowing in upon it from foreign lands for years, that settles down in its midst, without giving it a population that is beyond its control.

Mr. Holcomb — Mr. Chairman, will the gentleman allow me to interrupt him a moment?

The Chairman — When the gentleman has finished his remarks.

Mr. Holcomb — Does the gentleman decline to be interrupted, Mr. Chairman?

The Chairman — The Chair declines to allow the interruption until he has finished his remarks, when questions may be asked.

Mr. Clark (resuming) — They attack section 3, by saying that it should be changed so that the Governor should have the power to remove the mayor instead of the head of the police department. They refer again to the city of New York as their illustration, but they fail to remember that in the other cities, or in many of the other cities of this State, the head of the police department is not appointed by the mayor, but by the common councils of these cities. Suppose that the heads of the police department appointed incompetent men to positions, would you advise that charges should be brought against the mayor for that reason, when the mayor has no control over the police board? Take the city of Rochester as an example; the mayor has no power over the police board. It is appointed by the common council, and yet the gentlemen who have spoken before me suggest that the mayor be tried and removed from office because the common council has seen fit to appoint an incompetent police board. The gentleman from New York (Mr. Smith) compared the sheriff's office to that of the ordinary policeman or to that of the mayor. The common council occupies the position of the legislative body, the mayor that of the local governor. Now, whatever is done by the common council, the mayor should not be held responsible for. By this section we strike right at the root. Whoever appoints this police board gives them power over all the police of the city. If that police board does not see to it that the police perform their duties, we give the Governor of the great State of New York, by this section, the power to remove that board and appoint a board in its place that will perform the duties. Mr. Bush said we had taken the power away

from the mayor. I beg to differ with him. If he will read section 3 through, he will see that no power is taken away from the mayor in appointing a police board; but if he appoints incompetent men, men that will not perform their duty according to the law, then on charges being made to the Governor, that board may be removed from office and a new board appointed. They claim it is unfair. Why is it any more unfair that the Governor should place his hand upon one of the cities of this State than it is that he should place his hand upon one of the counties of the State? He is given the power to remove the sheriff, who is the great peace officer of the county; he is given the power to remove the district attorney, if he does not perform his duties; he is given the power to remove county treasurers, and he appoints the successors of all these men when removed. Why should he not have the same power in connection with the cities that he has in connection with the country districts? If they are not satisfied with his merely having the power to remove the police board, I would suggest the addition that he also have the power to remove the mayor in connection with the police board. Very often we hear it referred to here that at the head of this article is contained the term "home rule." I regret very much that that term was ever placed at the head of the article. It was an error. We do not claim that that article gives home rule to cities pure and simple. There is no claim that it cuts those cities into thirty-six or thirty-seven principalities and sovereignties. There is no claim in reference to that article that New York city shall be a government by itself and the State have no control of it, or that Brooklyn or Buffalo shall have such a right. What a spectacle it would be for the cities of New York and Brooklyn and Buffalo and the other cities of this State to have absolute control over the territory within their boundaries, and yet at the same time send members of the Legislature to Albany to govern the rest of the State. They say we have home rule in the country, but we have no such degree of home rule as is given by this article. There is nothing given to the country districts, or to the counties of the State but what the Legislature can take away. The Legislature has conferred powers upon boards of supervisors. The next Legislature that meets in this State may take away those powers. That is all the home rule there is in the country; that is all the home rule possessed by any county. If the cities want that class of home rule I would favor the bill. I would favor giving them just such home rule as is given to the country and to the counties; but nearly every member of this Convention who hails from a city is opposed to that measure. Many of them seem to desire to be cut loose

from the great State of New York, and I wish to say, Mr. Chairman, that if such a proposition was raised in this Convention, I would not only oppose it in the Convention, but I would oppose it from this day until election time, if passed. The only consideration which the smaller cities have for making the great change in their local self-government that this proposition will make, is the fact that the State of New York shall hereafter control the police. Take that away, and many of the smaller cities would be opposed to this measure. You take away the reserve power that is given by that section to the State of New York, and I will use every effort I can to defeat every measure contained in the article.

Mr. Schumaker — Mr. Chairman, may I now ask the gentleman a question?

Mr. Clark — You may ask me a question. I can't say whether I can answer it or not.

Mr. Schumaker — In the county of Tioga there was an election held in 1892, where it is stated that more fraudulent votes were cast on election day — and I think it is true — than were cast on Coney Island and that McKane got. You have been speaking of corrupt influences in New York and vicinity.

Mr. Clark — That is not so.

Mr. Schumaker — You have heard of it, haven't you?

Mr. Clark — I never heard of the matter before. I never heard such a charge made.

Mr. Schumaker — It was in the McCarthy election case, and was proven in that case that in the county of Tioga, on election day, in 1893, there were more votes cast illegally than there were at Coney Island.

Mr. Clark — Will the gentleman refer me to the contested election case, and what it was?

Mr. Schumaker — I have not got it here, but it is contemporaneous history.

Mr. Clark — Mr. Chairman, there was no contested election case in Tioga.

Mr. Schumaker — I don't say it was. I say it was the contested case of McCarthy in the Senate, where they proved that the fraudulent votes cast were as many and more in the city in which he lived and the county of Tioga than were cast in Coney Island. Was that in your ward?

Mr. Clark — Mr. Chairman, it was not in my ward, nor in my county. I could tell the gentleman, from information that I have

received, just where the whole corruption fund went to, that Tammany Hall sent into that county.

Mr. Schumaker — I thought you never heard of it.

Mr. Clark — It did not get to the voters at all. It was pocketed by certain leaders to whom it was sent in the county.

Mr. Schumaker — That is not the question.

Mr. Holcomb — Will the gentleman from Tioga allow me to ask him a question? I understood the gentleman from Tioga to make some reference to a sewer of people that was casting its contents into the city of New York by way of immigration. I would like to ask him whether he stands there and is prepared to assert before this Convention, and before the people of this State, that all the immigration coming into the city of New York is a sewer?

Mr. Clark — Not all of it, Mr. Chairman, not anywhere near all of it; but it is true that our unlearned population come to us from foreign shores.

Recess was taken to three o'clock in the afternoon.

AFTERNOON SESSION.

Tuesday Afternoon, August 28, 1894.

The Constitutional Convention of the State of New York met at the Capitol, at Albany, N. Y., Tuesday afternoon, August 28, 1894, at three o'clock P. M.

President Choate called the Convention to order.

Mr. Goodelle — Mr. President, I request that Mr. Alvord may be excused for the day, on account of illness.

The President put the question on the request that Mr. Alvord be excused from attendance, and he was so excused.

Mr. T. A. Sullivan — Mr. President, believing as I do, that one of the greatest duties of the citizen is that he attend his caucuses, and assist in making up the ticket for which he expects to vote, I desire to be excused for Friday and Saturday of this week, in order that I may go home and attend the caucus in my ward.

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

The Convention resolved itself into Committee of the Whole, with Mr. I. S. Johnson in the chair.

The Chairman — The Convention is still in Committee of the Whole on general order No. 13.

Mr. Becker — Mr. Chairman, the proposition before this Convention, when divested of all extraneous conditions and circumstances, is simply this: shall or shall not a Governor of this State have not only the power of removal, for good cause shown, of the heads of the police departments in cities, but shall or shall he not also have the power, in case he exercises the constitutional power of removal, after such charges have been heard and passed upon by him, of appointing the successor of the person so removed, during only the term of the mayor in which that head of the police department is an officer? In addition to that, the question is further presented as to whether that power shall be conferred upon the Governor, to remove, exclusive of the mayor, or should it be simply vested in him as the Committee on Cities has reported, to remove, in case the mayor fails to exercise his power of removal? The latter proposition I do not think will be seriously debated. I think there is no one in the Convention, as there certainly was no one when the matter was presented in the Committee on Cities, who joined in making a report, who believed that the Governor should have the power to remove exclusive of the right of the mayor to remove, and, therefore, the members of the Convention will find in that article a careful expression that all the rights now existing in the mayor to hear charges preferred against the appointees in the police department, and to remove them, are preserved. In practice, it seems to me, that the provision will work for good. It seems to me that the effect of it will be simply this, that where a wrong has been done in the police department, the charges will first be made before the mayor. He will have the opportunity to act upon them, and if he fail to act, then what is practically an appeal can be made to the Governor. This is in line with the existing provisions of law, as to the city of New York, at least; for under the charter of that city, as it now stands upon the statute books, the mayor cannot remove the heads of the police department without the approval of the Governor. So that we are forced in considering this question, it may be said, to look at it solely from the standpoint as to what is, what should be, the policy of the State with reference to this matter. Do you or do you not concede that the police officers of the cities of this State stand upon the same footing in the eyes of the law as the police officers of the counties? Can there be but one answer to that question? What are police officers? They are denominated in the Code of Criminal Procedure "peace officers." As such it is their duty, not only to preserve the property of the citizens in safety from the attacks of the criminal classes, but it is their duty under well-defined, long existing provisions of the statute

law, to defend the right of every citizen to approach the polling place on election day, and to cast his vote untrammeled, uninterfered with, unobstructed by any other citizen. Every elector casting his vote on election day will cast it sooner or later for not only the officers of the city and the officers of the county, but the officers of the whole State. Such being the case, the plain, practical question is presented to all of us in disposing of this question: Shall not the State, through its chief executive, have power to interpose safeguards and checks upon the exercise of the tremendous authority and power and discretion vested in the police in reference to preserving order at the polls, seeing to it that every citizen can cast his vote without interference or obstruction? Once you concede that power as you have conceded it as to the county, where a sheriff is the police officer, and it is his duty to preserve that order, then it follows as matter of course, as a legitimate consequence of that concession, that the right should somewhere be reserved in the State to see to it that those officers vested with that power should perform their duty and should not step outside the line of their duty. Hitherto, Mr. Chairman and gentlemen, until within very recent years, it may have been a question undetermined in the minds of our people as to whether the necessity existed of placing those safeguards and checks around the exercise of this great police power over the election.

Mr. Choate — Will Mr. Becker allow me to ask a question for information?

Mr. Becker — Certainly.

Mr. Choate — What I want Mr. Becker to explain is this, when he comes to it in the course of his argument, whether any particular emergency has occurred in any of our cities which has suggested the necessity of vesting in the Governor the power of reappointing during the term of the mayor. It is a very important question; I think we are all open to conviction upon it. These cities have existed now a great many decades without any such power, and have got along very well. It may be, however, that something that has occurred in Troy, or Brooklyn or Buffalo, has pointed out the importance of that part of this provision.

Mr. Becker — Mr. Chairman, I was approaching that branch of my argument, and I preceded it by making the practical statement, which is involved in the question of the President, that it may have been that hitherto such exigencies had not occurred, had not been brought home to our people, which have since occurred, which

require that this provision should be placed in this article in the form in which it has been placed there by the Committee on Cities.

Now, let us view this step by step, in the line of legal argument, briefly expressed, as we would approach the consideration of a legal question. Who has the power of appointing the police officials? In whom has the power of removal been hitherto vested, and in whom is it still preserved by the provisions of this article? One and the same officer and person, the mayor of the cities. He who has created and made this head of a police department an officer, has also the power to remove him. The first question then to be considered is: Is it wise, is it right, is it proper, that the person who has created, who has made this officer, whose creature this officer is, who in the exigencies of party politics and the control which by the police (as we all know, without citations, but which I shall demonstrate by citations), has been exercised, and can be exercised by these police officers over the elections; is it right that this official, this officer who has the power of creating the police officer, of controlling his action, of dealing with him in the various aspects of all official life, shall alone have the power to remove him? If it was the case that these police officers did not come in contact with the rights of all the citizens of this State, I should say, yes; leave the power of removal right where it is; do not change it; do not confer it upon any one else, however exalted his station, however serious his responsibilities. But such is not the case. It is a matter that is as well understood as anything can be, that the police must by the very performance of their official duty at election times and at other times in this State, come in contact with the rights of the whole people of the State.

Now, the first question that we have to answer is, conceding that to be the fact, should this power of removal be solely confined to the power of appointment? We all know what human nature is, Mr. Chairman. We all know how it works. Every father loves his own child. He can see no wrong in him. The subject of the appointment of the heads of these departments, police departments throughout the State, is always before the mayor, or mayor and the common council in the cities where the common council acts with the mayor. Various persons are candidates for the place; some are appointed, some are not. It involves the question of choice; it involves argument; it involves entreaty and persuasion on the part of the friends of the candidates, and after that the power of the mayor, the appointing power, finds its exercise in the appointment of some particular person. The press has criticised or commented upon his appointment. It is his child. It is his creation.

He is the author of the being of that police official. Now, then, confront that mayor later on with charges against his child. As well might you ask a father to say that his son had done wrong. The tendency of every mayor of any city, no matter how exalted his personal standing may be, or his social standing; no matter how honest and Christian and noble-minded a man he may be; no matter how devoted he may be to the interests of his municipality, will necessarily be, when these charges are preferred, to stand by his man, to stand by him to the last extremity. He cannot approach the consideration of the question unprejudiced. He cannot act on it in an unprejudiced way. More than that, the times when charges are likely to be preferred by citizens against the official are election times, when partisan spirit runs high, and it may be claimed that the effort is made to remove the police official, not because he did wrong, but because he failed to do the bidding of others than the mayor. The mayor himself may be a candidate for re-election. His friends may be candidates, and we are liable to find a case existing where every condition, every circumstance, every argument that could possibly be brought to bear to produce an unjust judgment by the mayor upon the question of removal will surround him when charges are preferred against the man that he has made. Now, having these conditions in mind, and it being conceded, as it practically is here, that the mayor should have this power of removal, but that he should not have it exclusively, you then come to the practical question as to whether, if you give the power to remove to the Governor of the State, representing, as he does, all the people of the State, all interested in this question, whether or not that power of removal conferred upon him is worth the paper it is written on, unless it is coupled with the power of appointment. I say that in practice the working effect of these provisions will be that the mayor will first be appealed to. No Governor would undertake, except in an extreme case, and then it would be infinitely dangerous for him to do it, to interfere with the affairs of a city, unless the charges had first been preferred before a mayor and had been acted upon by a mayor. Having failed to act, then the proposition comes up: what good on earth will it do the Governor to act and remove, if the mayor could turn around and assume, before the ink placed upon the paper constituting the Governor's signature in removing this man, is dry, to reappoint the same man or one equally objectionable to the whole body of the citizens who made the charges? I say to you that I personally do not consider that the proposition in this article vesting the Governor with the power to remove is worth a picayune, unless it is comple-

mented and completed with the proposition that the Governor who does exercise this power of removal may in turn appoint for the period of office held by the mayor who had appointed the commissioners; and such are the provisions of this article. The theory of the article on that point is this: the mayor has appointed. His term is fixed by law. We should not give to the Governor the appointment of a police commissioner to hold during good behavior; we should only give it to him for the length of time that the mayor is in office. Then, when he has gone out of office, and the people have passed upon the question as to who shall be his successor, that successor should have the right to reappoint or to appoint, if you please, a new commissioner, or head of a police department. But it is said and argued that there is no necessity for this. It is suggested in the question of the President to me, it has been suggested to me outside. What facts are there which justify violating, as they say, the principle of home rule by vesting this great power, and it is a great power, in the hands of the Governor? What dangers may flow from it, they exclaim?

I will first consider very briefly what facts justify the exercise of this power, what exigencies have occurred in its history with which we are all familiar and upon which the whole people of this State have had an opportunity to pass, and, thank God, have passed on it at the ballot-box at the election of last November. In the city of Buffalo, and I commend what I shall have to say to the attention of my friend, Hotchkiss, who seems to be a great deal troubled about Buffalo, we had a police department there under a Democratic mayor, a man who had been elected by seven thousand majority, or upwards of seven thousand, by the people of our city. The police commissioners are three in number. The head of the department is appointed by the police commissioners. Election time was approaching. One of the election officers was about to go out of office. His successor was about to be appointed by the police board. Under our charter, which we struggled and fought for for five years, finally succeeding in getting it almost by main strength at the hands of the Legislature, the power of appointment was vested in that police board. I speak now of the head of the police department. And the power in turn of appointing the police board, or appointing the member of it who would control the balance of power, was vested in the mayor. It was known that Mayor Bishop, of our city, good, honest gentleman that he is, would never permit, and never had permitted the police of that city to be used for election purposes. So it was deemed desirable by some who wished to control, and afterward did attempt to control the election,

that the power of appointing the police commissioner who would hold the balance of power in appointing the head of the police department should be taken away from the mayor, and vested in another body or person, no matter whom. What happened? As soon as the new board was organized they turned out of office the police superintendent who had held his place for years and had the entire respect and confidence of our people. No complaint was made against him in the papers. No complaint was made against him to his superiors, not a word, not a syllable. Then they put in another man. What was the next step? The police captains were changed from precinct to precinct in the city. What was the next step? Subordinates were changed from precinct to precinct in our city. What was the next step? When the election was held in the fall, around some of the polling places where it was thought that the voters could be controlled, where there had been as found by your committee, and their report is in this volume, a fraudulent registration of over a thousand votes, for the purpose of carrying out a gigantic conspiracy to elect some people and to defeat others, at that polling place on election day, as found by your committee (I hold their report in my hand), Captain Regan and some ten or more policemen in uniform appeared with Kennedy and the deputy sheriffs. When they approached the door of the booth they immediately took possession of it. William Miller, one of the prize-fighters, stood in the door, with his arm across it, and the other officers were within the booth or outside, as they saw fit to be, and for several hours no one was permitted to enter the booth except those to whom said Kennedy and Kilcourse and the prize-fighters saw fit to allow the privilege. A line of honest voters had formed there three hours before the polls opened. No disorder existed in that line, no one has ever claimed so; the brief of counsel for the sitting members did not claim there was any disorder. These policemen marched up there to drive the voters away, they took possession of the polls, and they let in a gang of thugs and repeaters and corrupt and purchasable voters that they had brought there to prostitute that election. Your own committee has reported upon it, and on the heels of their report, by a vote almost unanimous, you have unseated five delegates and seated five in this Convention. So much for Buffalo!

When you come to Troy, we have had a recent investigation of what has been done in that city. You are all familiar with the facts as to the killing of Ross. I do not refer to it to harrow your feelings, but it was at that election at that time and under those circumstances that the events took place which are narrated

by the sworn testimony before the "Lexow Committee," which I hold in my hand, excerpts from which I propose to read. "Officer Cahill and Dutcher kept back the regular voters, shifting them about and threatening to break their heads, and let repeaters in under the officers' arms."

Mr. Becker then proceeded to read at some length extracts from testimony taken before the Senate Mullin Committee, July 10 and 11, 1894, concerning police interference with the elections in Troy in November, 1893, at which Robert Ross was killed.

Now, I ask you whether, after the testimony has all been in in the Shea case, after it has been in in the investigation which I have quoted from here, have any of these men been removed? Have you heard of the mayor of Troy preferring charges against any of these men and removing him? Not one. Did the new police board in Buffalo, fixed there by a statute, attempt to remove anybody for the outrages investigated by your committee and shown in the records of this Convention to have been committed there last fall? Not one. It was not until we got an act through the Legislature last winter, restoring anew the power of appointment in the mayor, that we had any change in the police department, or any attempt to punish any of those who had committed these outrages. Now, my proposition is simply this, and I am not going to waste any more time in discussing it. You have before you these outrages committed by the police. You know what they can do. As sensible men, as lawyers, familiar with the statutes of this State, you know the powers that are vested in them by the statutes of this State in our great cities, and they equally exist in the smaller ones. Near here is the city of Cohoes. There never was a police department more corrupt in the whole State than that in Cohoes at times — used at the caucuses, used at the elections, on every occasion. When such outrages exist in those cities, and you have also the results of the investigations in New York before you, showing the tremendous power the police have over the criminal classes and disorderly houses of the cities, we say the only safeguard that the people of this State have to prevent these policemen from driving these classes to the polls like sheep to the shambles, and voting them, from standing around the polling places and defeating the will of the people by keeping honest voters away and letting dishonest ones in, as this testimony shows, the only safeguard we have, and when I say we, I mean the whole people of this State, who are all interested alike in pure elections, the only safeguard we have, is to give the Governor the power of removal, and if we give him that power, I say to you it is my sober judgment, as I believe it will be

yours when you have considered this question, that that power is worthless unless the same authority having the power of removal is given the power of appointment during the term of the mayor. Take this question home to each of you who live either in the large cities or the small ones. Consider what an outrage it is to have these policemen, who have been appointed by the heads of the department, who are in turn appointed by the mayor, and feel that the election of that mayor may depend upon their action, try to make themselves solid with him by acting in his interest. What value is it to remove men who commit these gross outrages on the franchises of the whole people of the State, unless you vest the power of appointment of their successors during the term of the mayor in the authority having the power of removal?

Mr. Choate — Mr. Chairman, may I ask Mr. Becker another question for information as to the construction that the committee put upon lines 4, 5 and 6, at page 3, in regard to the term of office of the appointee of the Governor?

Mr. Becker — Will the President be kind enough to read it?

Mr. Choate — "Upon such removal the Governor may appoint the successor of any official so removed, and such successor shall 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." My inquiry is as to the construction of that provision; whether, the Governor having removed and exercised the power here given him of reappointment, and his appointee proves to be guilty of misconduct in office, is it the purpose of the committee that the mayor shall not have then the usual and ordinary power of removing him?

Mr. Becker — The purpose of the committee is not to do anything such as that suggested by the President, for it has specifically provided in the section that it has reported, that nothing herein contained, referring still to the section and lines read by the President, and to any other part of the article, shall interfere with the right of the mayor to remove.

Mr. Choate — Then, immediately upon appointment by the Governor, the mayor has power to remove his appointee?

Mr. Becker — He would have the power on charges and for cause shown.

Mr. Holcomb — It is expressly taken away from him by the last line.

The Chairman — The gentleman from New York will address the Chair.

Mr. Choate — Mr. Chairman, may I call Mr. Becker's attention to the last two lines? What becomes of the last two lines: "But such power shall not extend to the removal of any person appointed by the Governor, as herein provided?"

Mr. Becker — Mr. Chairman, I consider that the President has put a question that I must answer very frankly; that I was not aware that the additional lines had been put in there since the article was first reported. They were not in the first article. I am very glad that he brought the question up, because it is evident that it has been the intention of the committee to do other than that which I had supposed. I think it is plainly evident from that that they expected to preserve this power of the appointment in the Governor, and not to permit the mayor to remove. I will say that I was not present at the last session or two of the committee when that particular line was inserted by the committee.

Mr. McClure — Do you approve of it?

Mr. Becker — I should feel bound by the action of my committee. Personally I should prefer to permit the mayor in all cases to have the same power of removal in any case as he had originally. But, if the wisdom and judgment of the committee are otherwise, I certainly would not question it. I should subordinate my own judgment to theirs. But my personal notion would be that that power, so far as that is concerned, ought not to be taken away entirely, for that officer might do things not in the line of interference with the rights of the people of the whole State, but in the line of disobedience of duties solely relating to city affairs, which, perhaps, might justify his removal. And so long as the Governor had still the authority to remove his successor, if he did anything, for doing which the Governor thought that he ought to be removed, I cannot see that it would work very much harm or injustice one way or the other.

Mr. E. R. Brown — Mr. Chairman, in the consideration of this question, it has seemed to me that the committee, notwithstanding the care and labor bestowed upon the article, have gone further than perhaps they intended to go. It is the custom in many cities to make the appointment of the head of the police, not on the first of January, but at some other time during the year, although the mayor takes office on the first of January. Such is the case in my own city. Now, a mayor taking office on the first of January, finding in office a commissioner or chief of police whom he did not have

the power to remove, or the successor of whom he did not have the power to appoint until the first of April, might find himself in the situation of having that subordinate of his removed on the first of February or the first of March, and by the Governor a successor appointed, and when the statutory time arrived for the appointment to be made by the mayor, he would by this provision be deprived of making the appointment and would not be permitted to make it under the terms of this amendment during his entire term of office. That objection alone, it seems to me, should, if we have the choice simply between the proposition as it is laid down in this section by the committee and an entire rejection of that proposition, lead us to reject it. But there are some other considerations to which I would like respectfully to call the attention of the committee. My friend from Erie, Mr. Becker, has detailed at considerable length the circumstances connected with the disgraceful administration of affairs in his city in recent times. That disgraceful administration, as I understand it, was carried to its final consummation by virtue of special acts passed by the Legislature, signed by the Governor, notwithstanding the protests of the citizens of the city of Buffalo; and does the gentleman believe that when it was consummated through the act of the Governor, if it was so consummated by that act (I deplore any partisan argument on this floor, but I suggest this to the gentleman), does he believe that it would give him relief to have the Governor who signed those bills remove the officer?

There is another consideration in relation to this matter. I believe in applying the same laws, other things being equal, to cities that I do to rural districts. That has been claimed in behalf of cities and claimed in behalf of the country, and it ought to be conceded, it seems to me, upon all hands. Under the provisions of our present Constitution and the laws, it is provided that the Governor of the State may remove the sheriff, may remove the district attorney, and the Legislature has said in its discretion that the Goveronr might appoint their successors for the time being. Why not let this provision rest upon the same basis? Is not that an adequate protection? I think that the power of removal in the Governor is desirable. I regard the office of head of police as analogous to that of sheriff, a peace officer, and in the last resort, the Governor of the State should have the power to exercise the authority of the State throughout the State; but it should be in the last resort only, and it should not be so exercised as to make the several communities, or any community in the State of New York, feel that the power of the State had deprived them of the right of local self-government. In so far as this principle is laid down in this amendment, I

do not see how it can be controverted that it is in derogation of the principle of home rule. It is in derogation of that principle, necessarily and properly so but, being in derogation of so desirable a principle, we ought to hesitate a long time before we carry it so far as to endanger that principle. Now, Mr. Chairman, there is no danger, in my judgment, arising from the circumstance that the Governor shall not have the power of reappointment. Our cities, although they may be given to occasional outbreaks of disorder, will not be entirely lost to such a judgment against them as would be voiced in a decree of the Governor removing the head of police. I do not believe there is now or that there ever has been a mayor in the State of New York who would have the effrontery to replace in office a head of police who had been turned out by the Governor of the State. But aside from that, the power of removal would again remain in the Governor. He could remove him again, yes, and remove the mayor. But, Mr. Chairman, this power if we do not vest it in the Governor, would be vested in the Legislature. Is this a part of a plan to discredit not only the local authorities, but the Legislature of the State? For my own part, I would rather, in the last resort, where deliberation could be had upon a subject of this kind, have it rest in the deliberations of the Legislature, than to have it rest in the power of perhaps an arbitrary and an unjust Governor. It has occurred in the State of New York, that there have been men sitting in the Governor's chair who did not always have due regard to the interests of the various communities of the State. Is it not possible, and placing it in the hands of one man, is it not much more probable that this power will be abused by that one man than it will be by the Legislature representing the entire people of the State. Now, Mr. Chairman, I have in the remarks that I have made upon this subject barely suggested some of the thoughts that have occurred to me bearing upon the latter part of the section now under consideration. If an amendment is in order I desire to offer one which will carry that purpose into effect, if the Convention shall be so disposed.

The Chairman — The Chair will state, upon examining more carefully the amendment, or what was called the amendment, offered by Mr. Blake, that he is satisfied that it is a substitute, as it goes to the entire extent. It leaves nothing in and it puts in a complete section. Hence, the Chair will rule that it is a substitute, and that the original section may be perfected before we act upon the proposition of Mr. Blake.

Mr. E. R. Brown — I offer an amendment, and I will ask that it be read.

The Secretary read the amendment, as follows:

Strike out all after the word, "defense," in line 3, page 3, and section 3, and insert: "Any vacancy in office caused by such removal shall be filled according to the provisions of section 5 of article 10."

Mr. E. R. Brown — Section 5, of article 10, provides: "The Legislature shall provide for filling vacancies in office. In case of elective offices, no person appointed to fill a vacancy shall hold his office by virtue of his appointment, longer than the commencement of the political year next succeeding the first annual election after the happening of the vacancy." This is an ancient provision in the Constitution of the State. If this provision were extended to the section in question it would put the cities upon the same basis that we put the rest of the State. I do not offer this suggestion, Mr. Chairman, with the slightest disrespect toward the committee, for whose labors I have nothing but praise. But I regard this proposed article, printed as Document No. 33, were stated briefly, as well side of the historical development of the power of the Governor under our constitutional growth in the State of New York; one that has been prompted and brought into this Convention on account of lamentable circumstances in special localities, which I deplore, but which I do not believe ought to control the deliberations of this body in forming permanent, fundamental constitutional laws.

Mr. J. Johnson — Mr. Chairman, I am very glad that the debate to-day has taken the range of the discussion of high principles. The question suggested a few moments ago by the President of the Convention I deem is very pivotal and very important. In the report which the Committee on Cities presented, along with their proposed article, printed as Document No. 33, were stated briefly, as well as they might be in the brief space that it was thought well to consume, the thoughts which have come to the mind of the committee on this matter. I ask the attention of the gentlemen of the Convention to what is there said, to what is somewhat elaborated in the presentation of this article when the discussion first opened. Those facts will be found at pages 687 and 689 of the Debates. What is the apparition if apparition there be? What is there that calls for something new in the policy of this State, something which, though I believe new in this State, so far as I can learn, exists in nearly all other States of the Union. It is that anew and again has been shown and demonstrated the danger that the police officials of the community in our densely populated sections may become the allies of those who would overthrow the government at the ballot-box. That is the danger. That is what this is chiefly aimed at. And

without it, I would not suppose there was reason for any such thing. It is astonishing to me the acquiescence, the disregard with which such attacks on the ballot-box by brute force, by assaults, sometimes by the cruelty of imprisonment, of murder, are committed. Why, sir, I remember well when the question of the policy of Europe, as dependent on the policy of the German empire, was depending on the result of an election in that imperial State. Long hung that election in the balance. The power of the police, the power of the soldiery, all the bruce force of the State, disciplined and armed into soldiery, was in the hands of the young ruler whose policy was called in question. I remember more years ago when the question whether the third Napoleon should be emperor of France was submitted to the result of a plebiscite, there were the fortune of dynasties, the foundation of empires, the forces of government submitted to a people that was supposed to exist under imperial rule; and never once was it said or hinted, never once was the suggestion made, that those citizens of an empire or a kingdom were attacked, assaulted, beaten or imprisoned, in the exercise of their elective franchises.

Mr. Jacobs — What history do you read?

Mr. J. Johnson — If the gentleman wants to know what history I read, I will give him a catalogue when I am through the speech.

Mr. Jacobs — It must be very original.

Mr. J. Johnson — I make the statement, sir, that so far as I have read as to the German empire, which is a recent matter, there was no statement made at the time or since, that brute force was used to intimidate voters. I say that if it had been, the inhabitants of those countries would have rebelled and ought to. And yet, the significant fact is here, that more and more constantly, and the history I here read is the history that my friend from Kings reads ——

Mr. Jacobs — Never.

Mr. Johnson — The history of events in the great cities that the power of the police is used to control elections and to intimidate voters. Do you and I read that history alike?

Mr. Jacobs — I do not think we do.

Mr. Towns — Mr. Chairman, will the gentleman permit me to ask him a question?

Mr. J. Johnson — I would rather not. Now, Mr. Chairman, what were the incidents which came before this Convention? Five delegates seated by a return of nearly fifty per cent of the entire population, and the return was made by conspirators protected by

the armed police. What were the events that met us in Buffalo? Peace officers undertaking to control the elections and seize the liberties of the people. What were the events that met us in Troy? The police of the city, as has been proved by evidence, in complicity with the ballot-box stuffers, who came there not secretly, but in gangs, armed and equipped for war. Those are the incidents of the last six months, as they have been written in the record of trials for conspiracy, in the record of trials before the Governor, as they have been written in the records of trials for murder, and those trials have taken place since we have been sitting here. And is that all? I have a right to say, sir, that the difficulty that developed in the three widely separated parts of this State exists in a large degree in all the cities of the State, or in many of the cities of the State. It is a danger which is a menace, a threat, which, if it goes on, will destroy civil liberty in this State. What, then is the remedy? Has the State no function? A return in New York equivalent in percentage of population to that of Gravesend would give a return of certainly six hundred thousand votes, and every one would know, as know they did in Gravesend, that it was absolutely false. But delegates took their seats and held them under such returns. What hinders it that in some city, or some part of a city, under the power of the police, some day it may happen, by influences, by acts no more flagrant, no more aggressive, wanton and inexcusable, that the State of New York may be throttled, and those, and only those, who are beneficiaries of the crime will be authorized to prosecute. Now, sir, my thought is that the time has come, the whole surroundings and teachings of the occasion demand, that something shall be done to erect a barrier against this possibility of wrong. It seems to me that if the people can be awakened by such an assault upon their liberty, they must be awakened now. It was a masterly insight of the Hebrew law-giver, when he would lead the people out of bondage in that wonderful march which is the march of history, that the lintels of the doors were stained with the blood of the sacrifice. The blood of the sacrifice for civil liberty has stained the altars of liberty in Troy. It is adjudicated and the facts are proven in court. I believe this people is great enough to live, and in the generation of Gettysburg this State shall not die. But it is our duty to do something. What, then? Do precisely what was done to punish those crimes. Do precisely what was done by Governor Flower to punish those crimes. Admit that the sovereignty of the State, and her banner and the escutcheon are assailed by such crimes, and admit that the State may protect itself. Did it or did it not violate the principle of home rule when the

Governor went into Buffalo and removed the recreant officer? Did it or did it not violate the principle of home rule when, by his power to remove the district attorney, the pressure was made by the Governor that brought a man from another county to try the murderer of Robert Ross? Did it or did it not violate the principle of home rule, when the appointee of the Governor and the Attorney-General, the local officials being silent, prosecutors in Brooklyn were appointed from this Capitol, to prosecute the robbers of Gravesend? Did that violate the principle of home rule? Does it violate the principle of home rule to resist when attacked, to save the honor and escutcheon of the State, when thieves and ballot-box stuffers would drag it down? Sir, a crime against the ballot-box in the smallest precinct of this State is damnable treason to the liberties and the history of the State. I wonder, sir, when such things go on, when I see such crimes and assaults treated with derision, what must the generations say that sleep in bloody graves on the hills of Gettysburg and along the Potomac? Did they die for ingrates, or did they die for men? Have we that which is worth preserving, and will we let it go? Now, sir, these are the questions; and if it be true that the principle of home rule, whatever you may call it, was not invaded when the whole central authority of the State was used to punish crime, was used to punish murderers, if it be true that that did not break into the principle of home rule, can it be said or suggested that to give the power to prevent the crime, to save the arc of the covenant from the robbers, can it be said that that is beneath the work of this Convention? No, sir; I think not. The words "home rule" are strangely used. I have before me the statute of 1892. I would not trespass upon anything that is political here. I simply say that the gentlemen who present the objection of home rule here were represented in the Legislature of 1892, and their friends, their political friends, were in control of that Legislature. I read here from the second volume of the Laws of 1892, at page 1781, the statute passed in that year as to the appointment of the successors of a sheriff who is removed. Did they give it to the board of supervisors? No. Did they give it to any county officers? No. The Legislature of 1892 enacted that when the sheriff of a county was removed, his successor should be appointed by the Governor. That is the principle, that is the enactment of 1892. If my friends of the minority will go with me to the charter of the city of New York, enacted in 1882, held inviolate in 1892 and 1893, when they might have repealed it if it invaded the principle of home rule, they will find there, if I mistake not, and if I am in error, I will be corrected,

that the power is there given for the Governor to remove the mayor of that great city on charges and after a hearing. Sir, it is in the Constitution, it is in the statute book of 1892, and in the statute book of 1882, that where crime is committed by high officials, by those who have to do with the peace of the State, the State is assailed, and the remedy is not complete to leave the appointment to those associated with, and presumably in some way guilty or derelict with them.

The sovereignty of the State has spoken. It is in the Constitution. It is in the statute; and I say, sir, that it is a weak and poor defense against this principle that would at least attempt to do something to save the right to the voter, to save the right to the citizen, to save it for the State, when its dignity is attacked, its flag or its escutcheon smirched, to say that there is no power to send a man there to administer. The point of this is exactly here: there is not one particle of administration in the city of New York possible to the State. You may enact and re-enact, and when you have gone all over it, you cannot send the smallest messenger to represent the sovereignty of the State. You may remove and remove, and again the new appointee comes, must come, from the same local source of official power. These, sir, are the facts. This is the necessity. This is what has come with force to the Committee on Cities, and we believe that if, at this emergency, and at this time, we do not attempt something to stop the withering march of force and corruption to desecrate elections, if this Convention fail in that, it will let go an opportunity and a capacity for ennobling the State such as has been rarely presented in its history. What we have done we have done for the best. If it goes too far, shorten it. If it does not go far enough lengthen it. But do nothing to affect the principle that when the State is assailed, when the Fort Sumter of the Empire State is fired upon, there are cannister and grape and men behind it to right the wrong. Mr. Chairman, such are the considerations. It is new ground, difficult ground. Whether to do or not to do anything, your committee had no difficulty. How far, whether a little more or less, exactly what to do to right the wrong, to stay the danger and erect the barrier, was a matter of gravest consideration. We believed, sir, that in view of the dangers, the wrong which found place in the elections of the representatives to this Convention, the wrong which found a history in a murder trial, the wrong which found history in the action of the Governor, the Convention would deem it wise to erect a barrier, so high, so strong, that no weight of clamor could ever break it down.

Mr. Root — Mr. Chairman, the concluding sentences of the very eloquent and able remarks just made by the chairman of the Committee on Cities satisfy me that the course of that true conservatism which ought, above all things, to characterize a Constitutional Convention should lead us to adopt the amendment which has been offered by the gentleman from Jefferson (Mr. Brown). I find in the remarks of the chairman of the committee the frank avowal that, while the committee was clear and without doubt as to the principle upon which they should proceed; while they were clear as to what they should do in part, they were in doubt, and still are in doubt, as to how far it is wise to go. Now, Mr. Chairman, and gentlemen of this Convention, let me undertake to state what I understand to be the principle upon which the committee proceeds, for the purpose of seeing how far we should go, for the purpose of seeing what weight we should give to the doubt which is in the minds of the committee, and how we should resolve it. The principle, as I understand it, is this, that all elections are matters of State concern; that the exercise of the sovereignty of the State over every part of its dominion requires that it shall keep control over the forces which dominate elections. And for that purpose the committee provided in their reported article that the State should control the appointment of election boards and that the State should retain in its possession the power to control the police, who can, by brute force, control elections. I agree with that principle; I agree with it fully and heartily. I would not have the State surrender its power to control the casting of ballots which, in every part of the State, weigh against the ballots cast in every other part of the State; and I say again, as I have said before upon this floor, the abandonment of that power means virtually secession by a part of the State. But, sir, does the principle require that we should go to the full length that the committee's report goes, or should their doubt be resolved by stopping at the point indicated by the gentleman from Jefferson? The object is to put in the control of the State this power — not of any officer of the State, but in the control of the State. How has that been done heretofore? Why, the Constitution of 1846 provides that the Governor of the State may remove sheriffs and county clerks and district attorneys, and then provides that the Legislature shall provide for filling vacancies. Now, sir, we justify placing the power of the removal of the heads of police departments in the hands of the Governor by the analogy between those officers and the peace officers of the counties. That justification requires us only, permits us only, to go to the same extent that the Constitution goes as to removal of sheriffs. Both of

these grounds upon which we proceed, first, that it is necessary that the State shall control in the last resort the keeping of the peace and order at elections, and, second, that the treatment of the peace officers of cities should be like the treatment of peace officers of counties, are satisfied by putting the power of removal in the hands of the Governor and putting the power to provide for the filling of vacancies in the hands of the Legislature; and neither one of them permits us to go farther. And the chairman of the committee has quoted to us within half an hour laws enacted by the Legislature which show that that body is able and ready and willing to provide for the filling of vacancies, and that unless some good cause be shown to the contrary they would provide for it, as they did provide for it in regard to sheriffs, as they provided for it in regard to the mayor of the city of New York — precisely as this committee would have the Convention provide for it here. In providing for that, Mr. Chairman, they may throw checks and balances and safeguards around their provision. It may be well to provide in one way to-day. Four, five, ten or fifteen years hence it may be deemed by common consent desirable to provide in another way for filling the vacancies. It seems to me, sir, that there are two perfectly valid and prevailing reasons for resolving the committee's doubt in the direction of not going too far in the course of innovation in this matter. The first is that neither precedent nor the limits of the principle upon which we proceed, justify or permit us to go any farther than is contemplated by Mr. Brown's amendment; and the second is this, that we owe it, each one of us, to our own self-respect and to the honor of the State we have sworn to serve, without regard to the words "minority" and "majority," without regard to questions of party benefit or party injury, to see to it that we send before the people of this State this fall a Constitution for them to pass upon which will not be open to any just imputation that the majority of this Convention has been reaching out, without precedent or justification in principle, to lay hold upon political and partisan power in the city or in country, anywhere within the limits of the State. (Applause.) And, Mr. Chairman, without any necessity, without any justification in precedent or principle, gentlemen who would go to the full length of the proposition of the committee — while I believe nothing is farther from their minds than to seek partisan advantage — would lay themselves and all of us, and the work of this Convention, open to the imputation of being governed, not by conservatism, but by desire for party advantage. For these reasons, Mr. Chairman, I shall vote, and I hope that my associates

all about the chamber will vote for the amendment proposed by the gentleman from Jefferson. (Applause.)

Mr. Jenks — Mr. Chairman, I offer the following amendment, if it be in order.

The Secretary read the amendment offered by Mr. Jenks in the language following:

Amend section 3, commencing at line 3 of page 3, by striking out the words "upon such removal the Governor may appoint the successor of any official so removed, and such successor shall 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."

Commencing in line 10, strike out the words "but such power shall not extend to the removal of any person appointed by the Governor as herein provided."

The Chairman — The Chair holds that the amendment is not now in order.

Mr. Choate — Mr. Chairman, I would like to say a few words in support of the amendment offered by Mr. Brown. Yesterday morning I declared that I should regard it as a great calamity if we should offer a cities article to the people as a partisan measure; and notwithstanding the apprehensions excited in the mind of my sensitive friend, the youthful member from the fourteenth district, by my remarks yesterday afternoon, I am of the same opinion still.

Now, we are making a Constitution here, not for a day, but perhaps for all time, for the next fifty years perhaps, if we take pattern from what has happened heretofore; and it seems to me that we ought not to be inspired by the incidents of the last six months, but should look before and after. We should consider what has been in the past and what may be in the indefinite future that will make this amendment, or this section of the article, as it has been prepared and presented by the committee, sometimes possibly inexpedient. I can remember, Mr. Chairman, a state of affairs in the city of New York involving a condition and consequences far more terrible, far more threatening, far more fatal than anything that has occurred in the past year, either in Buffalo or in Troy or in Brooklyn.

Mr. Jacobs — Gravesend.

Mr. Schumaker — Gravesend, not Brooklyn.

Mr. Choate — Well, Gravesend, which I had supposed until now a part of Brooklyn.

Mr. Jacobs — It is now.

Mr. Choate — I can remember when if this section had been enforced, as it is now proposed, it might have resulted in most terrific consequences, not for good but for evil. In the year 1863 we had a mob ready to seize upon the city of New York, and actually in possession of it. We had a loyal mayor, and we had a Governor who was not disloyal. But suppose we had had, as we might have had, for there were many men of that type in the State and in the city of New York at that time, suppose we had had a disloyal Governor, desirous for purposes of anarchy and of disunion of leaving that city for destruction in the hands of the mob that had seized upon it, and you had had power in such a disloyal Governor to remove the head of the police, which was the salvation of the city and of the State at that time, and to appoint one of his own servants, with a restriction upon the mayor never to interfere with him during his term of office, where should we have been then? I think the committee make out their case under ordinary circumstances in the ordinary routine of possible emergencies, if you please, for vesting this power of removal in the Governor, but not so when they say that the Governor shall have power to appoint in his place, during the residue of the term of the mayor in office, without any power in that mayor who is held responsible for the peace and good conduct of the city, to interfere with him in the case of misconduct on his part. (Applause.)

Well, now we can draw that lesson from history, can we not? And we might look into the future, and look to possibilities that may occur. We, to-day, as we believe, represent a great conservative people of five or six millions, but opinions change with wonderful rapidity, and it may be while this proposition, if you carry it into force, shall remain the fundamental law of this State, that we shall have an anarchical Governor of this State, as other great commonwealths in the Union now have, some of them, one at least ——

Mr. Jacobs — Three.

Mr. Choate — Well, I think we would all agree that there was one, and that possibility is not absolutely removed from even our great and loyal people. Now, we will suppose that we have such a Governor in the chair as the chief magistrate of this State, and outbreaks with which he is in sympathy occur in the greater or the smaller cities of the land, and in sympathy with those outbreaks he sees fit to remove a loyal, a faithful head of the police and put in a creature of his own. Where are you then? Is that a possibility that may not happen? Now, I say you must look into the distant future as into the distant past to see how this will work. I am

always thinking when studying the operation of these provisions how, possibly, the boot may act upon the other leg, not where it happens to be to-day; and looking at it on both sides, taking into full view these disorders that have happened in these three corners of the State of New York during the last year, it seems to me that there are far greater dangers than heretofore have threatened us that may possibly threaten us in the future, and that it would be unsafe under such circumstances as we may thus call before us, by imagination at least, to say that when the Governor has once removed the mayor of a city, holding office it may be, for a year and eleven months, charged with the responsibility of the peace of that city, he shall have nothing to say in regard to the conduct of the head of the police. It appeared from the surprise manifested by the second member of the Committee on Cities at the discovery of this snapper upon the end of this article, that they are not all of one mind about it, and it presents a doubt, just as it did when the judiciary article came before us divided nine to eight on the question of nine by seven. We had to solve that doubt for them. So I say now, let us solve it, not in any partisan view, but with a view to the safety of the whole people in the long run, and give the Governor the power of removal, but let the Legislature say how the vacancy thereby occasioned shall be filled.

Mr. Towns— Mr. Chairman, it seems that we are all agreed just at this time of day that this is not, and should not be, a partisan enactment. It seems to me that the majority, I shall not speak of the minority, since their proclaiming themselves as such aroused, it seemed to me, the acrimonious criticism of the leader of this House — it seems that the majority have softened to some extent their rigid determination to adjust the other side of the House to the Procrustean couch they had prepared; and the difficulty which arose in their path reminds me of a story that I once heard to the effect that as a calf was going down the pathway to get some water it heard a mournful noise. Looking around, it heard distinctly, "Help me out of this difficulty. I am here suffering. Help me." A little more investigation proved that there was the enemy of its race, the serpent, coiled up, with a stone upon its head. Well, this calf was very benevolent and it determined to remove the stone, and it did so. But first it said, "Well, you know you often bite me, and I suppose that if I remove this stone you will do so again." "Oh! No; take it off; I am suffocating here: I am in great distress. Take the stone off and I will never bite you any more." Well, soft hearted, it removed the stone. An invitation was extended on the part of the calf to go down and partake of the sweet waters of

the running stream, and the serpent journeying with the calf got down there and they drank copiously. Pretty soon the calf heard a hissing noise, looked around, and there was the old enemy coiled up ready to strike. The calf said, "I thought you promised not to do me an injury" "Well, I did, but I have got to bite you. It is my nature. I have got to do it." "But you said you wouldn't." "It makes no difference, I have got to bite you. The time has come now, and I have got to do it." "Well, leave it out. Let us appeal, and see if we cannot adjust this. I was kind to you. You wanted my assistance. Just leave it out." They did leave it out to the first person that came along, who happened to be the fox. He said: "Well, I can't decide this case unless I get you all back to the *locus in quo*, to see just exactly how it was." So he took them back and said, "Where were you, Mr. Calf?" "Well, I was standing right there, walking along the path, and I stopped and heard Mr. Serpent." "Where were you, Mr. Serpent?" "I was over here." "Well, coil yourself up." It coiled itself up. "Is that all?" "No, there was a stone upon my head." So the fox got the stone and put it on the serpent's head and said: "Is this the situation of affairs as they existed before the calf released you?" "Yes." "Now," he said, "just you get away and go on mind your own business;" and the calf, he got. Now, that is the advice I give to that portion of the House called the minority. I tell them to let Mr. Johnson and Mr. Choate and Mr. Root fight this matter out themselves and mind their own business. (Laughter.) This is their Constitution; and if they do that, and adhere to that rule, the iniquitous measure, the undemocratic measure, the unrepublican measure, the illogical measure, a measure which never could have been conceived except in the rumbling caverns of that erratic mind, aided by the second member of the committee (laughter) would never have been produced here for the solemn consideration of this Convention. So I say again to those gentlemen who have come to the assistance of Brother Root when the judiciary, that matchless mechanism produced here, was in danger, who lifted the stone off his head and heart, who saved him then in the perils and tribulations of his deliverance, that they had better mind their own business. This is a Republican fight, and let them fight it out. But it would have fallen by its own weight of ill logic and unrepublicanism. Do they mean to say this is not the case — this in parenthesis, Mr. Chairman — this is not the case that has been provided for in section 5 in the Constitution? Those are elective officers, officers elected by the people. This is the case of an appointive officer, one appointed by the mayor, one

who should answer to the mayor, one whose very discipline in office, whose very power, whose very obedience, whose very efficiency, depends entirely upon his responsibility to the person who gave him official life; and to take away from that man the power of reappointment or the power to discipline such an officer, to lodge it in the chief magistrate of this State, is undemocratic, is perilous to our free institutions, and it should not prevail. And I imagine that Mr. Root, the leader of this Convention, and that our President, the combination of all that is perfect in man, has seen this, and have called off that mighty warrior who is trying to exorcise the spirits that sleep upon the hills of Gettysburg, who has conjured up and tried to wrap around him not that banner which I see before my eyes, but the bloody shirt which has been buried, and rotten and tattered these many years; who has conjured up on the pages of history creatures that never existed save in his own brain, all for the purpose of putting through this thing, which must have been born, if born at all, it seems, only to have been conceived at present; and it seems that certain gentlemen here have determined that it shall never be born except they know its shape beforehand or its sex. I say that such an article as that, which has begotten querulousness in the party, which has begotten dissension, which has taken the mighty trinity of effort on the part of Mr. Johnson and Mr. Becker and again Mr. Johnson to put it through, will necessarily fall of its own weight; and I appeal once more to my brethren of the minority, and I do not wish to classify them as bovines or anything of that kind, but I appeal once more to them to let this Republican fight go on. It is a thing of beauty and it should be to us a thing of joy forever. (Laughter.)

Mr. Mulqueen — Mr. Chairman, will the gentleman from New York permit a question. Will not the danger you fear still exist if the Legislature should enact that the Governor would have power to fill the vacancy, and if yes, would it not be the part of wisdom for us to place in the Constitution the provision that the mayor alone should have the power to fill the vacancy?

Mr. Choate — I think not. The mayor may not be trustworthy and the Legislature may, and should have the power from time to time to mold the power of reappointment to suit the necessities of the State.

Mr. Mulqueen — One more question, if the gentleman please. As I understand the Constitution, at present the Legislature enacts laws which apply for all time. It does not enact a law for removal to meet a particular case. Suppose the Legislature should say,

what we now declare to be unwise, that in case of removal at any time, the Governor shall fill the vacancy, would we not have the evil you fear?

Mr. Choate — Not all of it; not by any means a large part of it. This proposition is that the Governor shall reappoint and the mayor have no power to interfere with him.

Mr. Towns — Is not the whole difficulty obviated by allowing the Governor to remove the mayor? It is already admissible in the Constitution.. He has that power. Why not add here in this Constitution that, for causes which effect the police and which he disregards, he may be removed by the Governor? Would not that be adjusting this matter upon a symmetrical scale, and be aiding in the discipline and government of the different divisions of the State, make them all answerable to the Governor?

Mr. Choate — I would prefer that my friend from Kings, Mr. Schumaker, should answer that question; but I will say again that I do not think that simply giving the Governor the power of removal is enough. You should retain the hold of the State upon it in some form, and I know of no better form than by doing it through the Legislature.

The Chairman put the question on agreeing to the amendment offered by Mr. Brown, and it was determined in the affirmative by a rising vote of 82 to 28.

Mr. Jenks — I offer an amendment, Mr. Chairman.

The Secretary again read the amendment heretofore offered by Mr. Jenks and read.

Mr. Choate — I would suggest that Mr. Jenks see whether the amendment offered by Mr. Brown has so changed the situation that any change should be made in the phraseology.

Mr. Jenks — I regret that so much tax is being put upon the voice of the very efficient Secretary of this Convention, but without intending to speak at present upon this amendment, I will simply state to the House what the amendment seeks to do. It seeks to strike out all parts of section 3 which give the power to the Governor of the State to interfere with any police official in a city so far as the matter of appointment is concerned, and it leaves to him the power of removal upon charges. The purpose of this amendment is simply to take away from the Governor the power to reappoint in case he makes a removal. That is the sole purpose of the amendment offered.

The Chairman put the question on agreeing to the amendment offered by Mr. Jenks, and it was determined in the negative by a standing vote, 54 to 69.

Mr. McClure — I rise to a question of information. It seems to us here that votes carried on these two amendments are entirely inconsistent. I rise to ask the Chair in what condition the amendment introduced by the committee is now, after we have voted on these two amendments.

The Chairman — It stands as amended by the proposition offered by Mr. Brown. The other amendment having been rejected the inconsistency, if any, has passed away.

Mr. McClure — May we have it read as it now stands?

The Secretary read the amendment as follows:

"Section 3. 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 official, or officials, or any of them, constituting the 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.

"Any vacancy in office caused by such removal shall be filled according to the provisions of section 5 of article 10 of the present Constitution."

Mr. McClure — What comes after that?

The Secretary — That is all.

Mr. McClure — We would like to have the rest of the section read.

The Secretary — I read it all.

Mr. Platzek — I desire to offer a substitute to the article.

Mr. Holcomb — If in order, I would like to offer an amendment.

The Chairman — An amendment to the section?

Mr. Holcomb — An amendment to the section, yes, by striking out all after the figure 3 in line 20, down to the place where Mr. Brown's amendment begins as to vacancies in office, and insert in lieu thereof the following words:

The Secretary read the amendment offered by Mr. Holcomb in the language following: Strike out all after the numeral 3, down to the word "defense," and insert in lieu thereof the following: "The Governor, after notice and a hearing, may for cause, and after

a hearing, remove the mayor of any city. In every city heads of departments, city officers and employes, whose powers and duties are limited to the territory of a city, or part of a city, shall be chosen by electors or appointed by the local authorities thereof."

Mr. Holcomb — Mr. Chairman, in respect of this power of removal by the Governor, the other day when I had the honor to submit certain remarks to the Convention, I called the attention of the Convention to the precedents which have controlled Republican action during the last quarter of a century, and in truth ever since the enactment of what was known as the metropolitan police system, in the year 1857; and I will be obliged to the Convention if I might have the privilege again and especially to call the attention of the majority of the Convention to this question of consistency. For more than twenty-five years, ever since the adoption of the charter mentioned by the President of the Convention in his remarks yesterday afternoon, the charter of 1873, that followed the overture of what was known as the government of the city under the charter of 1870 ——

President Choate here resumed the chair and declared the Convention in recess until 8 P. M.

EVENING SESSION.

Tuesday Evening, August 28, 1894.

The Constitutional Convention met in the Capitol, at Albany, August 28, 1894, at 8 P. M.

Second Vice-President Steele called the Convention to order.

Mr. Lincoln — Mr. President, Mr. Crosby has informed me by telegram that he will be obliged to be absent Wednesday and Thursday this week, and asks to be excused from attendance on those days.

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

Mr. M. E. Lewis — Mr. President, I ask leave of absence on Saturday of this week.

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

Mr. Jenks — Mr. President, I ask leave of absence for Saturday of this week.

The President *pro tempore* put the question on the request of Mr. Jenks to be excused from attendance and he was so excused.

Mr. Coleman — Mr. President, I ask to be excused on Saturday of this week, and Monday and Tuesday of next week.

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

Mr. Giegerich — Mr. President, I desire leave of absence for Saturday and Monday.

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

Mr. Mulqueen — Mr. President, I ask leave of absence for Saturday and Monday.

The President *pro tempore* put the question on the request of Mr. Mulqueen to be excused, and he was so excused.

Mr. Jacobs — Mr. President, I ask leave of absence for Monday and part of Tuesday. I would not ask for it, but I am called by telegram on business that must be attended to upon those two days.

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

Mr. Storm — I ask to be excused Friday and Saturday of this week.

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

Mr. Cochran — Mr. President, as it may be that I shall have to be absent Saturday, and if I postpone it until a larger number of delegates are present it may be refused, I will ask now to be excused Saturday in case I need it.

The President put the question on the request of Mr. Cochran to be excused from attendance, and it was determined in the negative.

Mr. Woodward — Mr. President ——

Mr. E. R. Brown — Mr. President, I desire to raise the point that there is no quorum present.

The President *pro tempore* — I think the Chair should recognize Mr. Woodward before the question of quorum is passed upon.

Mr. Woodward — Mr. President, I have been here at every session of the Convention, of every session of my committee, but I want to be excused for Saturday afternoon and Monday.

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

Mr. E. R. Brown — Mr. President, I would like to know what disposition was made of Mr. Cochran's case.

The President *pro tempore* — The Chair understands that leave of absence was not granted unanimously.

Mr. Maybee — Mr. President, I desire to be excused Saturday afternoon and Monday morning.

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

Mr. Deady — Mr. President, I ask to be excused Saturday and Monday forenoon.

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

Mr. M. E. Lewis — Mr. President, I move that when the Convention adjourn on Saturday it be until Tuesday morning at ten o'clock, and upon that motion I move the previous question.

Mr. Deady — Mr. President, I make the point of order that there is no quorum present.

The President *pro tempore* — The Chair will state to Mr. Lewis that the question of quorum was raised before, and perhaps it is advisable to ascertain whether there is a full majority present or not.

Mr. Lewis — I have moved the previous question, Mr. President.

Mr. E. R. Brown — Mr. President, I make the point that Mr. Lewis's motion is a matter that will have to go to the Committee on Rules.

Mr. Davies — Mr. President, I raise the point of order that there is no quorum present.

The President *pro tempore* — The point of order is again raised that there is no quorum present, and the Secretary will call the roll for the purpose of ascertaining whether or not there is a quorum present.

The Secretary proceeded with the call of the roll.

Mr. Hamlin — Mr. President, I move that the roll-call be suspended.

Mr. Lewis — Mr. President, I rise to a point of order, that the roll-call having been ordered, it cannot be suspended except by unanimous consent.

The President *pro tempore* — The point of order is well taken.

The call of the roll being completed, the Secretary announced that ninety-six members were present.

The President *pro tempore* — The motion of Mr. Lewis, upon which the previous question is moved, is that when the Convention adjourns on Saturday next it be until Tuesday morning at ten o'clock. The question now is, shall the main question be put.

Mr. Choate — Mr. President, I wish to be heard upon that question.

The President *pro tempore* — The previous question having been moved cuts off all debate.

Mr. Choate — If it is ordered.

The President *pro tempore* — I think it is not debatable whether it is ordered or not.

The President put the question on whether the main question shall now be put, and it was determined in the negative, by a standing vote, 49 to 26.

The President *pro tempore* — Mr. Choate is now in order.

Mr. Choate — Mr. President, I understood the question now to be whether we shall adjourn from Saturday noon until Tuesday morning.

The President *pro tempore* — That is the question before the Convention.

Mr. Choate — And for one I protest against that. After the conclusion of the present week we shall have but two weeks in which to complete all our business. I consider that it is a matter of duty for the members of this Convention to take a brace and stick to it until this work is done. There are four questions, one of which is now under consideration, which must be determined, in deference to the opinion of the people of this State who have sent us here, before we can by any pretense claim our liberty. As I understand it we are bound by our oaths to perform this business, and I do not believe there is a gentleman present who thinks for a moment it can be accomplished, even the disposition of these four questions, in less than the time that remains to us before the fifteenth of September. It has already been stated often enough in the Convention, and I believe every gentleman so understands, that the Committee on Revision will require several days after we have passed finally upon those four questions, in which to put our work in order for submission to the people; and I believe that we should be recreant to our trust if we took a holiday in the meantime. I trust that gentlemen will be true to their oaths and faithful to their duty, and vote down this somewhat revolutionary movement.

Mr. Veeder — Mr. President, upon the question before the Convention I demand the ayes and noes.

The call for the ayes and noes was sustained.

The President *pro tempore* — The Chair must hold to the roll-call without debate and without any delay. The question before the Convention is upon the motion of Mr. Lewis, that when the Convention adjourns on Saturday it be until Tuesday morning at ten o'clock.

The Secretary proceeded to call the roll.

Mr. Cochran — Mr. President, leave of absence having been refused me, I vote in the affirmative.

Mr. Jacobs — Mr. President, it would be very indecorous for me to vote upon this question, because I have been excused.

Mr. Choate — So has the gentleman that made the motion, Mr. President.

Mr. Jacobs — If the majority want to stay here on Monday, I will vote no.

Mr. Platzek — Mr. President, I desire to be excused, and explain my vote. If there are any gentlemen present who are accustomed by usage to celebrate Labor Day, I am quite certain that upon application to this Convention we shall only be too glad to excuse them. I shall certainly vote that way. I agree entirely with what the President of this Convention, Mr. Choate, says. We are here with the solemn obligation to complete our work, and we have very little time in which to do it; and much as I may respect those who want to celebrate that day, and desire a day off, I feel that under the exigencies of the case we ought to proceed. I, therefore, vote no.

Mr. Gilbert — Mr. President, having been excused from attendance, I desire to be excused from voting upon this question.

The President *pro tempore* put the question upon the request of Mr. Gilbert to be excused from voting, and he was so excused.

Mr. Lincoln — Mr. President, I have already been excused from attendance next Monday, and perhaps I ought not to take any action upon this question. I would like to be excused from voting. I do not expect to be here.

The President *pro tempore* — The Chair is of the opinion that the gentleman is entitled to the excuse, and entitled to his leave of absence, but there is a principle involved in the matter and the Chair thinks that the gentleman should vote.

Mr. Lincoln — If I am required to vote, I will vote no.

The motion of Mr. Lewis to adjourn from Saturday until Tuesday was lost by the following vote:

Ayes — Messrs. Becker, Blake, Bowers, Carter, H. A. Clark, Cochran, Coleman, Giegerich, Herzberg, Holcomb, Hottenroth, Jenks, M. E. Lewis, Marks, McDonough, Mulqueen, Parmenter, Peabody, Redman, Springweiler, Titus, Tucker, Veeder — 24.

Noes — Messrs. Allaben, Arnold, Baker, Banks, Barhite, E. R. Brown, Cady, Chipp, Jr., Church, Cookinham, Countryman, Danforth, Davenport, Davies, Dean, Dickey, Doty, Durfee, Emmet, Faber, Floyd, Foote, Forbes, Francis, Augustus Frank, C. A. Fuller, O. A. Fuller, Galinger, Gibney, Goeller, Goodelle, A. H. Green, J. I. Green, Hamlin, Hawley, Hedges, Holls, Jacobs, I. Sam Johnson, J. Johnson, Johnston, Kellogg, Kimmey, Kinkel, Lester, C. H. Lewis, Lincoln, Lyon, Manley, Mantanye, Marshall, Maybee, McIntyre, McKinstry, C. B. McLaughlin, McMillan, Mereness, Moore, Morton, Nichols, O'Brien, Osborn, Parker, Parkhurst, Peck, Phipps, Platzek, Pratt, Roche, Root, Sandford, Schumaker, W. H. Steele, Storm, T. A. Sullivan, Tekulsky, Vogt, Wellington, Whitmyer, Woodward, President.

The President *pro tempore* — By courtesy of the President, the Convention was allowed one-half hour for miscellaneous motions. The Chair now declares that the Convention should go into Committee of the Whole, and Mr. I. Sam Johnson will take the chair.

The Chairman — The Convention is again in Committee of the Whole on general order No. 13.

Mr. Holcomb — Mr. Chairman, when the recess was taken at five o'clock, I was asking the ear of the Convention, and now I will proceed with the few remarks that I have to make. I do not see, Mr. Chairman, why this provision should be included in the proposed amendment of the Constitution, in respect of giving power to the Governor to remove the head of police. When I had the honor to address the Convention on another occasion upon this same subject, if I remember the precise words of the amendment as then proposed, power was given to the Governor, not only to remove the officials who should be at the head of the police department, but also to remove the man who should be the executive head of that department. In other words, applying it to the city of New York, that the Governor should have power to remove not only the police commissioners, but also the superintendent of police; and, as I read the section now before us, that part of the amendment has been stricken out, and, now, the power is intended

to be given to the Governor to remove the official or the officials constituting the head of the police force; and if those words imply the men who shall be at the head of the department, then, of course, it is giving power to the Governor to remove the police commissioners.

I supposed, Mr. Chairman, when we began the consideration of this proposed amendment of the Constitution that it was to apply generally to the cities of the State, but yesterday it became very manifest to my mind that there is one city alone at which the action of this amendment is directed. It was so declared, substantially, by the chairman of the Cities Committee; it was reiterated substantially in the remarks made to the Convention by the President of the Convention, which remarks, if they might be stripped of their verbiage and of all the graces that accompanied them, to be looked at precisely as they mean, would be, in my judgment, a deformity, because the charge made by the President of the Convention in his remarks concerning the Democratic organization, or whatever one may call that controlling and governing power, actually expressing the will of the people of the city of New York, was not so much an arraignment of the Democracy of the city of New York as it was of the principle which is behind that Democracy, the principle upon which the whole system of our government rests, the principle that the people shall rule. It was an assault, and I do not think that word at all too harsh to be applied, although on account of the suavity of manner with which the assault was made, it did not bear, looking at the President as he spoke, the appearance of an assault, but, nevertheless, it was a deliberate assault as I understood it, not upon the organization of which I happen to be a member, but upon the people of the city, who find themselves willing to have their voice expressed through the action of that organization.

In the remarks I made the other day I had occasion to refer to the charter of 1873. The President of the Convention yesterday referred to the overturning of the charter given to the city in 1870. That charter was overturned, by, what I called the other day, the revolution of 1871, and that is what it was — a revolution. In 1873 the Republican Legislature of the State of New York — that Legislature that had been carried into power upon the great wave of change of sentiment which made John A. Dix Governor — gave us the charter of 1873, and I would call your attention, gentlemen, if I may, to the fact that its enactment came after there had been a great deal of experience in respect of the charters of cities and the government of cities; it came after the experiment of 1857 had been tried, and had been discountenanced by the people of the city and

of the State in the enactment of the charter of 1870, and out of all the experience of years, of all knowledge that the Legislature could acquire of the expressed experience of the most distinguished men of the city of New York, constituting the committee of seventy, it was under the instruction, direction, I might say under the guidance, the wise and patriotic hand of that committee, that there was put into the charter of 1873, this provision: "Heads of all departments, including those retained as above, and all other persons whose appointment is in this section provided for, may be removed by the mayor for cause." Thus, may be seen the Republicans of the State of New York coming into power in 1873, after that revolution as they have come into this Convention flushed with a sense of their victory, and intent upon reaping its fruit, as one might say, if one were to imitate the language used by the chairman of the Judiciary Committee last night, about us of the minority here, that we were, and forever might remain, a minority, indeed, that we were working our own lack of salvation by our action upon this floor in not being obedient, after all the accomplishment of the committee of seventy, under the guidance, as I have said, of the wise men of the city, and enacting this wise and deliberate provision of law. One of the men whose influence was very thoroughly felt in that enactment, whose influence in the committee and in the Legislature was great, and exercised as I verily believe, in the interests of the people of the State, was the President of this Convention; even then that party did not think of putting this extraordinary power in the hands of the Governor.

It is true that the Legislature provided that, after the mayor should have acted, and before his action should become final, his proceeding should go to the Governor, who should have the right either to concur or refuse to concur, but that suggestion is beside the present proposition from what we saw in this Convention last night, from the words expressed to us of the minority, from the very uncomfortable phrases that were used in respect to the men who come here from the city of New York, I think one might almost say, to use a figure, that the gentleman of the majority are preparing to make this place a sort of political Monte Carlo, so fortunate was their hazard of last fall. I will say that it may not be wise for them to make too strong a bet upon this proposition, or the people may repudiate them and their bank be found broken. You, Mr. Chairman and gentleman, certainly are not, because you have the power here, to come to us and say to us of the city of New York, that we shall do as you will, that we shall obey your behests, and pronounce your shibboleth, and that we cannot enjoy the right to

express our own views in our own way, without being taunted by insinuation and charges that we do not represent the people of our city.

Now, Mr. Chairman, I would not, in this or any other presence, enter upon any defense of my party in the city of New York, or of my party anywhere in the United States of America. I come here as a representative of the Seventh Senatorial District of the State of New York. Its territory happens to lie within the city of New York, but I come here as the representative of the people. I did not come here, as Mr. Lauterbach charged the other day, when he spoke upon the suffrage question, as an accident of any sort, not an accident of an accident, or in the slightest degree as an accident at all. I came here because the people of my district nominated me to this place, and because they gave me the votes that made that nomination good, and I stand here upon this floor as the representative of my people, the people of the Seventh Senatorial District. I give voice to their views here. Their opinions are my opinions, and my opinions are theirs. They are the people who express at the polls their beliefs upon the questions that control their own affairs in both city and State.

I would not make any allusion to this, except for remarks that have been made in debate within this chamber; but I would call attention, if I might, in respect of this fling that there are five men, or one man, or two men, who govern the politics of the city; that we have there a Democratic organization with a great Democratic vote behind it, and, if you are fretful, because we have very frequently met you and fluttered your dove-cotes, as we shall meet you again in the future, and flutter them again, so that you will know there is a Democratic constituency down there by the side of the river and the bay, that is no reason why you are to say to us, and unrebuked, that we represent nobody except some man or men, who dictate to us our policy and tell us what we shall or shall not do, and that we have no influence, even with ourselves. And to one thing I would call attention in this connection, and that is the very constitution of this Committee on Cities. Who made it? Why, the President of this Convention. Then there is one man, the President, whose power is supreme. Why did he select a single individual out of the whole body of this Convention, and one who did not have a single city in his county, and why is there but one man of that description upon this Cities Committee appointed by the very distinguished President of the Convention? If the President shall think I have a Pantata in New York, then I am prepared to say that he is the Pantata of this Convention, as he showed

clearly enough in naming Mr. H. A. Clark, of Tioga county, to be a member of the Committee on Cities, when behind him alone, of all the committee, there was no city in his county? There is a city in Fulton county, where Judge Spencer comes from. There are cities, if I remember the list correctly, in all the other counties there represented — there is only one county having representation on the Cities Committee that has no city ——

Mr. Choate — Mr. Chairman, I rise to a point of order, that the gentleman is not speaking to the question before the House, and it is in the power and it is the duty of the Chair to keep him within it.

The Chairman — The Chair decides that the point of order is well taken.

Mr. Holcomb — Mr. Chairman, I will endeavor to proceed in order. I do not think, Mr. Chairman, if I may speak with such frankness as addresses itself to my judgment at this moment, I do not think I am any more thoroughly out of order than was the gentleman from New York, who just called me to order, during the debate of yesterday.

The Chairman — The gentleman will proceed in order.

Mr. Holcomb — If that be too much, it stands upon the record. Now, Mr. Chairman, I will see whether I can get on in harmony with your idea of order as to the remainder of my remarks. To-day that member of the committee, Mr. Clark, of Tioga — and if that be out of order, I am not aware of it — talked about the population of the city of New York having thrown upon it a constant sewerage from the countries of Europe. May I not say a word in his presence upon that subject? I say this, Mr. Chairman, that we take people from all over the world. I do not understand that it is so very long since every man here within the sound of my voice was of people coming hither from somewhere on the face of the globe and not originating in the United States; and I am reminded that while some remarks were being made yesterday concerning what has been called the "foreign gang" in the city of New York, I saw one gentleman upon this floor ironically applauding who I myself heard say in a club house here that his ancestors had come from Hesse in Germany; and when I heard that gentleman applaud that remark concerning the "foreign gang" yesterday, I remembered very well that there was a certain king of Great Britain who bought and sold the people of Hesse and made them fight us when we were undertaking the struggle of our revolution. (Applause.) Mr. Chairman, these may be or they may not be proper remarks to

be made in this presence. I am perfectly willing to drop them here, provided I may make this further statement, that when men come here our gates are open to them all, there is room and welcome for all, and there was a great deal of patriotism in the remark made by the chairman of the committee, a very decided patriotism in which I entirely agree with him, and in making which he was not called to order, and, therefore, I presume I may go so far as to remark that we open our arms and receive these immigrants to become part of the great body of our people. They enter into our citizenship, and having once been panoplied in that which is greater than anything else on the face of the earth, American citizenship, they are the equals of all men, in this Convention or out of it, and it does not become us to ask whence they came. The question is, what do they, now that they are here — be they Hebrews or negroes, be they Englishmen or Irishmen or Germans, or be they of whatsoever creed, race or clime, they having once stepped upon our shores, are free men, no matter whether their ancestors were sold to battle with us when we were in the throes of our revolution or were not — they stand here now our brethren within our American citizenship.

I would not have said so much, Mr. Chairman, had I not been taunted as I was yesterday by the gentleman from New York who just now called me to order. I am ready to be called to order if I am out of order, but I have a right to give my voice here upon this floor for my people, and I say that the men that live in my district, I don't care whether they live in single dwellings or in tenements, or whether they live in clubs, or where they live, they are citizens of this republic, and they will not take this provision that you are undertaking to put upon them, made out of the whole cloth, never before attempted to be imposed upon them by any Constitution or statute ever presented save only the law of 1857, which so soon was destroyed. They will not take that and swallow it, and you must listen and hear the voice that will utter when the polls shall be opened on that November day, so near at hand, when the result of your labors here will have been passed upon by the people.

As I had the honor to say to this Convention the other day, I am perfectly content to stand upon the provision put in the chapter of 1873, by the Republican Legislature, under the sanction of the great committee of seventy, but not upon this which seems to have come from some body, called a "Committee of Twenty-one," about which so much has been said here. I don't know what that "committee" is, or where it comes from. I remember the old story of the three tailors in Tooley street, who resolved, "We, the people

of England," and these men for aught I know may be the twenty-one new carpenters building constitutions for the people of the State of New York. But what is that to us? We are here upon our oaths, and with our own head-pieces to find out what we should do for the people, and then to do it according to the best of our ability.

"The heads of all departments," said the Republican Legislature in 1873, "shall be removable by the mayor;" and as though that Legislature wished to emphasize that proposition, they very shortly after and in the same session passed a supplementary act relating entirely to the police force of the city of New York, and they did not take one jot or tittle from the proposition that removal of the head of the New York police force should be made by the mayor of the city and not by the Governor. The proposition does not even seem to have been suggested.

A great deal is said about the manner of government in the city of New York; whether the people there can govern themselves. The President referred to the trial through which that city passed in the year 1863, and his remark was a very strange one to me. I think it was George Opdyke who was the mayor of the city of New York — we had a loyal mayor then he says — and Horatio Seymour, not mentioned by name, the then Governor of the State of New York, as brave, wise and patriotic a man as ever administered anywhere (applause) was referred to by the President of this Convention as a man who "was not disloyal." Not disloyal to the Republic during the war between the States? Well, certainly not. How many regiments were equipped by the people of the State under the administration of Horatio Seymour and sent to the front? And there I am content to make one allusion to that great Democratic organization of which I am a member. We sent to the front during that war, ourselves, with our own money, we paid for, we equipped the Forty-seventh Regiment of New York Volunteers, and the bones of the great part of the regiment are moldering to-day under the very field of Gettysburg, to which the gentleman from Brooklyn referred in such eloquent terms this afternoon. And only within a year or so has that same Democratic organization, in the city of New York, raised a monument to the memory of those heroes there upon that same bloody field.

I have nothing in the world to palliate in respect to my organization, or my friends in that organization, or my party in the city of New York, or my party anywhere else. Are we not patriotic? Do we not do our duty? Do we not pay you taxes to the utmost of our capacity? Do we not follow wherever the welfare of the

country demands that we should follow? I understand that in certain minds in this Convention there is a synonym between good government and Republicanism. There is no synonym between the two words, as I read them, or in any dictionary, whoever may have edited it, whether it were the great Sam Johnson of former time, or the later Johnson of to-day, referred to by the gentleman from New York in his speech on Friday last. There is nothing that reaches me that those two words are synonymous.

Gentlemen, I am content if you will give us a reasonable amount of home rule. You have been very frank with us to-day. You have said that you would take the words "home rule" from the title. Mr. Clark, the mismatched member from Tioga upon the Cities Committee ——

Mr. J. Johnson — Mr. Chairman, I call the gentleman to order. It is entirely improper to refer to any member of the Cities Committee in that way.

The Chairman — The gentleman will proceed in order.

Mr. Holcomb — Mr. Chairman ——

Mr. Storm — Mr. Chairman, may I inquire what is the question before the committee?

The Chairman — The question before the committee is the amendment offered by Mr. Holcomb.

Mr. Storm — Let us confine ourselves to that then.

Mr. Schumaker — Mr. Chairman, what objection can there be to referring to any member of a committee? I never heard of such a thing in any deliberative body that I have ever been connected with.

The Chairman — Mr. Holcomb will proceed.

Mr. Holcomb — All right, Mr. Chairman, if the "Storm" has subsided. I have almost finished. This amendment puts it in the power of the Governor to make these removals. The Governor never before has been given the power; he should not be given it now; it should abide where it has vested ever since the city has had any charge concerning it, where the right to it rests under our ancient charters, in the mayor, aldermen and commonalty of New York exercising governmental functions in that city. I do not believe that this Constitutional Convention should undertake to take those rights away or to interfere with them. It has the power undoubtedly. It has never been attempted but once; that was under the act of 1857, which was repudiated in 1870, and repudiation of which was made good in 1873.

Mr. Chairman, if the power of appointment of officers be con-

tinued in the mayor, then the power of removal should abide there also. In respect to the first clause of my proposed amendment, that the mayor of the city shall be removable by the Governor, that simply is putting into the Constitution what is now the law of the State; it has been on the statute book for many years, and there is no reason why it should not be in the Constitution, indeed, there seems to me every reason why both propositions should be put into the Constitution, that there may be no doubt in the future as to what the delegates of the people meant when they were undertaking to discharge their duties here.

I am sorry if anything has been said that ought not to have been said. I am very sorry if I have said anything that I ought not. I regret that anything was said yesterday that ought not have been said in respect to my colleagues upon this floor, or in derogation of our dignity as delegates here, but, it having been said, I deemed it my duty not to remain silent, and, having said this much, I am done so far as concerns this section three of this proposed amendment to the Constitution. (Applause.)

The Chairman — The question is on agreeing to the amendment of the gentleman from New York (Mr. Holcomb) which the Secretary will read.

The Secretary read Mr. Holcomb's amendment as follows:

"The Governor, after notice and a hearing, may for cause and after the hearing remove the mayor of any city. In every city heads of departments, city officers and employes, including policemen and firemen, and all officers and employes whose powers and duties are limited to the territory of a city or part of a city, shall be chosen by the electors or appointed by the local authorities thereof."

The Chairman put the question on the adoption of Mr. Holcomb's amendment, and it was determined in the negative by a rising vote, 41 to 70.

The Chairman — Are there any further amendments to this section?

Mr. Platzek — Before the adjournment I endeavored to present an amendment or a substitute. I was informed that there was a substitute before the Committee of the Whole, and that I would have to wait the disposition of that substitute, or possibly submit it as an amendment to that substitute. I want to be right and regular in the matter, and would like to take instruction as to how I should present it.

The Chairman — That would be a matter for the gentleman from

New York to determine, whether to present it as an amendment or as a substitute.

Mr. Platzek — I will offer it as an amendment to the substitute of Mr. Blake now before the House, and ask to have it read.

The Chairman — Are there any further amendments to the section? That will be perfected first, and then the Chair will rule that the substitute shall be perfected, and then the vote taken as to which the commitee will agree.

Mr. Roche — I have an amendment to section 3.

Mr. Platzek — Mine was an amendment to section 3 also.

The Chairman — Yours was an amendment to the substitute.

Mr. Platzek — I wanted to present it as an amendment to section 3, but you said there was a substitute which had to be disposed of first.

The Chairman — The Chair will state that there is a substitute now before the body; that the section must first be perfected, then the substitute perfected, and then the question will be upon which the committee will agree to, the substitute or the original.

Mr. Platzek — I desire, if that is so, to offer mine as an amendment to section 3, which will precede the substitute.

The Chairman — Then will the gentleman state where it comes in the section — where the words are to be inserted in section 3?

Mr. Platzek — I offer it as a general amendment to section 3.

The Chairman — Then it would become a substitute.

Mr. Platzek — Then I will ask the Chair to retain it on the desk until the amendment offered by Mr. Roche is disposed of.

The Chairman — The Secretary will read Mr. Roche's amendment.

The Secretary — Mr. Roche moves to amend by adding at the end of the section:

"Nor shall this section be held to prohibit the Legislature from passing laws authorizing the election in any locality of the heads of the police force therein."

Mr. Roche — Mr. Chairman, this section as I now read it, and as I suppose it is contemplated, provides simply for the appointment of the heads of police, either by the mayor or by the mayor with the consent of the common council. Now that the method of appointment is not the only one that should prevail. We have had very many changes in our police force in the city of Troy during the

past thirty years and one of these changes was a law providing for the election of police commissioners by the people. I am not aware that we ever had any better police commissioners through the various methods of appointment which prevailed before that, and prevailed subsequently, than those secured by the elective system. It seems to me this section should be in such shape that if the people of any locality desire that the police commissioners shall be elected instead of appointed, the Legislature ought to be enabled to pass a law which would meet the wishes or demands of the people of that locality.

The Chairman — The question is on agreeing to the amendment by Mr. Roche.

Mr. J. Johnson — I quite agree with the suggestion made by Mr. Roche; but the section as it is simply says nothing about an election, it merely says that a certain person shall not appoint; I think there is no need of the amendment.

Mr. Roche — Section 3 reads:

"No law shall be passed conferring the power to appoint the head of the police force of any city or any city officer, except the mayor, or the mayor with the consent of the common council."

Now, impliedly at least, it seems to me that is a declaration that the heads of police are to be appointed, and not to be appointed by any other local authority than the mayor, or by the mayor with the consent of the common council. If there is any doubt about that then certainly this amendment will remove it.

Mr. J. Johnson — Will the gentleman from Rensselaer change his amendment so as to have it inserted after the word "council?" The lines near which he would present it, I understand, have been stricken out.

Mr. Roche — I was not aware they were stricken out. I do not care in what particular place the words are inserted, so long as we have a provision in here which will render it certain that the people of the locality may be authorized by the Legislature to select the police commissioners at the polls. Where there is any doubt upon that subject I think it is grave doubt, and I would like to see it removed.

The Chairman — The committee would like to know where it is to be inserted?

Mr. J. Johnson — Where do you want it put?

The Chairman — As at present it is inserted at the end of the section, wherever that ends.

Mr. Roche — Yes. If the section has been stricken from line 3 down to line 12, then the amendment would come after the word "defense" in line 3.

The Chairman — That would be at the end of the section as it now stands?

Mr. Roche — Yes.

The Chairman put the question on agreeing to the amendment offered by Mr. Roche, and by a rising vote it was determined in the negative — yeas 46, noes 68.

Mr. Tekulsky — With reference to section 3, it appears to me that this Convention has devoted an unnecessary amount of time to it of no use to anybody. I can see nothing in that section that is of any good to anybody, be it either political or otherwise. Some person who concocted the idea of making a policeman the greatest man in the State of New York, or who had some fears of him, has tried to inject some reform into the Constitution. Now I have myself always considered that a police officer was simply the agent or servant of the people, and I don't want to go out of this Convention with the idea in my mind that I must be scared the first time I meet a police officer. You are doing it here. You are making more fuss over the head of the police department than you are over the judiciary, which is the most important measure you have passed here. I say to the delegates here present, if you are not careful with this amendment you certainly will ruin the judiciary article, which is, I think, a very good measure for the people of the State of New York. Why they have injected this police clause in here is something I cannot get through my brain, and I suppose the reason is because I am not a lawyer. It seems it has come into the brains of the lawyers that they must have something to do with it, because they have to do with the superintendents of police. I don't know anything about that part. I don't know that they are going to usurp their powers or whether they are going to become lawyers, or whether they are going to take their clients away from them. For what reason they are trying to inject this into the Constitution is something more than I can understand. No State in the Union has had it. Of course you take it from Buffalo, I suppose, because of what happened two years ago up there, and you want to take away the power from the mayor and give it to some one else to appoint that head of police. That is something that probably will never occur again during our time, and I say, for one, speaking as a Democrat upon this floor, that I ask the Democrats here not to bother themselves

with it any more, but if the Republicans desire to pass this measure, let them have it; give it to them, and the people will then resent it.

The Chairman — Are there any further amendments to the section? If not, Mr. Platzek's amendment will be in order.

Mr. Platzek — I offer the amendment.

The Chairman — The Secretary will read it.

The Secretary — Mr. Platzek offers the following amendment:

"Section 3. The power to appoint and remove the heads of the police force of any city is vested in the mayor thereof, or in the mayor with the consent of the common council. The Governor may also remove the head of the police force of any city for cause, upon charges preferred before him, after notice and opportunity to be heard."

Mr. Platzek — I ask, before I send the substitute, that the word "department" shall be inserted in the two places where the word "force" is, so that it shall read "head of the police department," instead of "head of the police force."

The Chairman — The Chair rules that this is a substitute, and the first question will be on Mr. Blake's substitute.

Mr. Bowers — I would like to know what we are voting on. Mr. Blake's substitute was read early this afternoon, and I would like to have it read again.

The Chairman — The Secretary will read the substitute offered by Mr. Blake.

The Secretary read the substitute offered by Mr. Blake, as follows:

"Section 3. 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 mayor may remove the official or officials or any of them constituting the police of any 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 to be heard in his own defense. 'Upon such removal, the mayor may appoint the successor of any officer or officers so removed, and such successor or successors shall hold office during the unexpired term of the officer or officers so removed, and until their successor or successors, shall be appointed."

The Chairman — The question is on the substitute offered by Mr. Blake.

Mr. Blake — I desire to call the attention of the Convention to

the fact that this substitute simply places in the hands of the mayor power to remove and power to appoint, where, it seems to me, it should be lodged.

Mr. Bowers — Mr. Chairman, I presume that this substitute offered by Mr. Blake, and the substitute offered by Mr. Platzek, are the last substitutes upon which debate will be had of any moment, in this Committee of the Whole, on this most important question. Before the vote is taken I wish to say a few words which will express my own views and the views of some of my associates upon this entire bill as affected by this section.

The first section of the bill, as it now stands amended, provides for separate elections in a form that will unquestionably be acceptable to a vast number of the minority delegates in this Convention, when the terms of the Governor and State officers shall have been fixed, as I understand they will be, to agree therewith, and the provisions as to giving home rule, in the fourth, fifth and sixth sections of the article, except so far as those sections provide for minority representation, may also be acceptable to very many of the minority delegates. In other words, Mr. Chairman, I am fully in accord with the principle of all those sections of the bill which provide for separate elections. These sections of the bill, as a whole, give beneficial results to the cities and State. They are wanted by the people of the cities, and they are wanted by the delegates to this Convention. The question is whether the third section is framed in such form as to prevent the successful passage of this bill in this Constitutional Convention and its acceptance by the people afterwards.

There have been suggestions made here that amendments proposed by certain delegates were calculated to defeat the effect of the entire article. But will gentlemen now bear in mind that the keeping in of this section No. 3, with the power vested in the hands of the Governor to take control of the affairs of any city in the State, are of such character as to prevent, to the knowledge of those who insist upon maintaining that provision, the other sections from being received by the people of the great cities of the State. They had better submit to the plunder to which they submit year by year, and to the passage of bills, political very many of them, than that their citizens should yield the independence and manhood which belongs to them as of right, by bowing down to the power of the Governor to come in and absolutely govern all the great and most important protective part of the city government. I speak now, because I feel very forcibly all the criticism that will be made as we pass on in this debate in the future, and when the responsibility for the defeat of this measure will be placed by one gentleman upon

another, and that other upon some third gentleman still further on. We are in accord upon the great principles, but we cannot agree on this question as to giving the Governor power which is now claimed for him. We have, this afternoon, been told the reasons for it. We have been told in plain and distinct language that it is proposed to have the Governor of this State manage the elections in different cities. It is a cause of complaint that there have been some wrongs done in some of the great cities during the past year; and because there were alleged frauds, nay, more, because they yere conceded frauds in Gravesend, and because there were some wrongs attempted in the city of Buffalo, and because there were wrongs attempted or done in the city of Troy, we are to have the whole theory of home rule turned upside down and a provision of law put in the Constitution never before dreamed of. But does not the gentleman from Erie know that the people have already punished the wrongdoers for the election frauds to which he referred? Did not the city of Buffalo give an enormous Republican majority at the last election, at the very time when he claims that it was in danger? And have not the people all over the State already relegated these wrongs to the past and punished the wrongdoers? And have not we in the Convention itself, by our own votes of the minority, taken the last step to remove the wrongs that had been thus attempted or done? Mr. Chairman, with a past entirely cleared of all the wrong that was done or attempted to be done, what possible excuse can there be for so depriving cities of the home rule which has been theirs heretofore? Perceiving, as some of the leading men on the side of the majority did this afternoon, that the pursuit of this particular section was one they could not afford to maintain in its then form, they pretended to offer to the delegates of this Convention, and to the people, some change. But was it a change which accomplished anything? If so, we should be glad to consider it, for we are desirous of home rule, desirous of separate elections, and desirous that this bill shall be put in such form that when we can vote for it. But, Mr. Chairman, all that has been granted this afternoon is this: The Governor shall remove, and having removed, instead of his being given power to appoint for a period running through the unexpired term of the office of the mayor then sitting, it is now provided that the Legislature shall provide for filling the vacancy in office. Is there the slightest doubt that in answer to the suggestions that have been made to the Committee on Cities, and that have been made during the debate upon the floor of this Convention, the Legislature at its next session, if it should happen to be Republican in politics, would provide in language plain and dis-

tinct that the Governor should do the very thing that the delegates on the floor of this Convention to-day have pretended to say that he should not do? Why should the power be left to the Legislature? Why should it be left to them to say how that vacancy should be filled, when it is the right of the people of the city of New York to fill their own offices, and to spend their own money in their own way, so long as they do not offend against the rights of any other citizen of the State? We would prefer the position we are in now; for if the mayor of the city of New York, or of any other city, refuses for a moment to remove a police officer when he should be removed, the Governor of the State can remove the mayor, and the mayor cannot remove the head of the police department except with the approval of the Governor.

Standing, then, with all the protection that can possibly be asked by any citizen of any city, no matter where he lives, why is it that this provision is put in now? I say in all seriousness to you, gentlemen, who have led this Convention on the majority side, that you must appreciate that the keeping in of that provision means that support cannot be given to this bill by delegates from the cities. You only passed your judiciary article through this Convention and much other work with the aid and active assistance and participation of many of the minority; why not give us a chance to work with you still further? Why insist upon putting into this particular bill that provision against which we must protest? Why, if you insisted upon its being put into the Constitutlon at all will you not separate it and put it in a separate article, and have it voted upon separately, in order that the spectacle may not be presented to the people of the State of this Convention in one hand offering something and in the other taking away so much more that it may not be accepted?

On this subject, I speak with the same earnestness that I have spoken at all times in this Convention. I hope that the sober second thought of the delegates will lead them to say that the obnoxious section may either go out altogether, or may be so changed as not to rob the cities of their manhood, and so changed that we may discuss the remaining sections of the bill unembarrassed by this, and with the desire simply to perfect them, if they need perfecting, or put them into such shape that the cities of this State may receive some benefit from the holding of this Convention.

I do not now say, and it is foreign to my purpose to suggest, that this section is being kept in with the intentional purpose of leading to the defeat of this bill. I have no such thought. I should not express it at this time if I had it. But I believe that the result is the same. And bringing it to your attention as I now do, in what

are probably the closing hours of this debate, I earnesly urge that the sober second thought which has so frequently come to the assistance of this Convention, may once more come to the front, and so permit that section to be amended so that the mayors of the cities shall be left with the right to govern their own departments and remove their own heads of departments, including the head of the police force, as exigencies or occasion may require; and not to insist upon injecting such a proposition into a bill spoken of as a bill intending to give home rule to the cities of the State.

Mr. Platzek — Mr. Chairman, I can discuss the suggestions contained in my amendment in treating of the substitute presented by Mr. Blake. Many pessimistic views have been uttered, but nevertheless I feel hopeful in view of the general sentiment that an agreement will be arrived at not alone satisfactory to the members of this Convention, but especially to the people whom we represent. We ought not from pride of opinion to stand here simply self-asserting, but we should realize that we are the agents of constituents who expect us to perfect a Constitution which may be presented to and voted upon by all the people. I am sufficient of an optimist to believe that before the fifteenth day of September we will have arrived at a satisfactory result, and one that will meet with the approval of the people. I should be sorry indeed if we had wasted four months of our own time and that of the people and their money, and merely present for the suffrage of the people a paper which they will reject. And it is in that view and in that spirit that I ask the attention of this Convention for a very few moments.

The substitute, or the amendment to the substitute of Mr. Blake, which I offer, contains very few words, but in my humble opinion it contains all that is necessary as a constitutional declaration. The difficulty is and has been that there have been attempts to incorporate in the organic law a statute dealing with details, when all that we are asked to do is to declare a constitutional principle. I differ with Mr. Blake in his substitute in this respect. Personally, I should be glad to see the amendment adopted allowing mayors to appoint the heads of the police departments, and allowing them to retain the absolute right to remove them; but I have no right to say that my judgment is supreme, and that men, older and younger in the Convention assembled, should not be consulted and that their views should not be accepted and respected. The suggestion which I make in my substitute, is that the mayor should have the right to appoint and to remove, and that the Governor should also have the right to remove the head of a police department — a concurrent right as

between the Governor and mayor; leaving the right to appoint (in the event that the Governor removes) in the mayor — the responsible head of the municipality. I believe in forcible government. I believe in lodging the power in the head of the municipality, and holding the man who is the executive head responsible for the goor order and good government of the city; and because I believe that I want to confer the power upon him, and I want to hold him responsible for it, and not have that responsibility divided. If he errs, if he is dishonest, if he is partisan, the people of the city will rise and assert themselves, and will mete out justice to him, and to the political party which he represents. I believe that we can trust the people, and that we can let them have something to say in the control of their municipal affairs.

Much has been said about the State being in jeopardy because of the police force in the city of New York, or some other city. For fifty years we have lived under a system which gave to the Governor the right to remove the mayor, the executive head of the city, and the man who is responsible for the government of the municipality; and, therefore, the man who appoints the head of the police department, and who is held responsible for their good conduct. That would be all sufficient in my humble judgment, where the power is lodged in the Governor to remove the mayor who controls the police. We do not have to go a step further and say that he shall not remove the police. But, assuming, for the sake of the argument — and I would bring about an agreement for the sake of all of us here, and I know that there are many of us here, both of the minority and of the majority, who are willing to leave something to the Governor — assuming, for the sake of the argument, that we leave to the Governor the right also to remove the head of the police department — if that is what is going to be the panacea which will bring about good cheer, good will and good government; but I do not want to be left in the attitude when this Convention adjourns of having neglected my duty under my oath of office. I have listened with a great deal of pleasure to what the chairman of the Committee on Cities says about leading the children of Israel out of the bondage, but I tell you, as one of those children, that I do not want to be free myself at the expense of others; I do not want to leave the Democracy in bondage, and be free myself. I will go a step further. It might as well be said that the federal government is not protected in the State or in the city, and that, therefore, there should be a national police, with a right in the President of the United States to remove the Governor, the mayor, or the head of any police department in any city of this

great nation. By way of illustration, and as indicating the great dangers that are likely to happen, we have had a picture of Gravesend, and of Troy, and of Buffalo, and have been told in most pathetic tones — why, sir, if I were not so hard-hearted, and had not grown so old, I would have shed tears when I heard my friend, Johnson, as he depicted the woes of the citizens in those places where they are deprived of their rights, how the right of suffrage was denied them, and how they trampled upon the ballot, and how they trampled upon the liberties of the people. I arose after he took his seat, hardly believing that we were still here in a free country and among free men, but imagined that when he took his seat all of us would be incarcerated in some vile dungeon somewhere in these United States. But, notwithstanding all that, we are still here, a free and happy people, under a good State government, under an excellent municipal government, and in spite of such great differences of opinion the people of this great State will maintain a State government to look after their municipal affairs. Now, it is not denied that people have been arrested upon election day, sometimes through the ignorance of policemen, and other times from that of deputy marshals. The gentlemen who are here from Kings, and from Erie, have told of such cases there; and I have stood in a court of justice, too, and on election day have been before the United States commissioner, when hundreds of men were brought in before him upon warrants issued upon one hour's notice on election day, and they were brought in under federal authority under those warrants; and I say here to you that of forty-seven cases that I tried myself before Commissioner Deuel at the last federal election, he in honesty and fairness discharged every man who was examined, because they were brought before him upon false accusations, and there was no doubt that the arrest was for no other purpose than to hinder them from getting to the polls in time to vote. Therefore, let us not quarrel about little things. If policemen in the cities of New York, or Buffalo, or at Gravesend, much as it may be regretted, may sometimes make mistakes, or even be under the direction of misguided or dishonest men, why, our country will nevertheless live; our State will go on; and our cities will still flourish.

I hope most sincerely that the committee will adopt the substitute I have offered. I believe that it covers *in toto* all that is required. It provides for the appointment of heads of the police department by the mayor, with right in him to remove; and it also gives the Governor the right to remove the head of that department

for cause, and after opportunity to be heard. It seems to me that it is fair, that it is honest, and that it is all that we want.

The great cities of this State require home rule. They ought to have home rule. But they ought not to have given them that which is called home rule, but which is anything but home rule — centralization of the worst kind. That is all I wish to suggest at this time.

Mr. Griswold — It is little more than a suggestion that I wish to make. The argument has been presented here, and I have heard it very often as being a paralled case to what is proposed here — that the Governor removes the sheriff, and, I think, the county judge and surrogate of the several counties when charges are made against them, and also appoints the persons to fill those offices in the time intermediate between the removal and the next election. It is suggested to my mind that originally, when the Constitution was first adopted, and that power was given to the Governor, there was no intermediate appropriate officer to exercise that power. What officer is there standing between the Governor and the district attorney, sheriff, county judge or surrogate, upon whom it would be appropriate to confer that power of appointment and removal? There is no other officer that I can think of upon whom it would be appropriate to confer that power standing between those officers of counties and the Governor. In this case it is entirely different from that. Here stands an officer — the mayor — between the heads of departments under the mayor (and who must necessarily control to a great extent), and there stands the Governor of the State.

It must be very evident that sixty delegates here cannot outvote the 125 in opposition. This whole question must stand as determined by the Republican members who compose this Convention, and it is for them to consider for themselves whether for the sake of some little advantage which they conceive they might gain by having this power vested in the Governor, when, perhaps, they would have the Governor, it is worth while to stand out for it. Whatever the Republican delegates here say upon this subject they can make it so. There is no doubt about that, for I have never known a time when sixty men could outvote 125.

It seems to me that the mayor is the appropriate officer. You say that you cannot trust him. Perhaps, that is because you think he may be a Democrat. Now it strikes me that the chief officer of the great city of New York — a city with a population larger than that of many States — will be a man whom the people can trust; that when the people of that city elect a mayor they will be likely

every time to select a man of character and standing, and I think that nine times out of ten it will happen in the future, as it has in the past, that the people of that great city elect to the office of mayor as capable and efficient an officer as the people of the State elect to fill the Governor's chair. I believe that they have done this in late years. Why, then, can we not trust that officer as the appropriate officer, or the officer immediately at the head of those departments.

As I have said before, I live outside of the city, and had not purposed to say a word upon this subject, but the thought has suggested itself to me that there was an entire difference in the relationship and standing between those county officers and those heads of departments in respect to the question of removal. As to the heads of the departments, there is an appropriate and proper officer — the mayor; and I insist upon it that you are quite as likely to have as good a man, as honest a man, as faithful a man to administer the affairs of that city, elected by the people of that city as mayor, as you are to have in the Governor's chair.

It has been said a great many times that you ought not, and dare not, trust the mayor with the power that is appropriate and that properly belongs to the head of the city — to the man that the city will elect and must be responsible for. I submit that it would be better policy to dispense here with party feeling and not seek any future advantage, which is just as likely to turn against the party which attempts to obtain it as any other way, in the ordinary course of events, and according to my experience in political affairs.

The Chairman put the question on the adoption of the substitute offered by Mr. Blake, and it was determined in the negative.

The Chairman — The next question is on the substitute offered by Mr. Platzek.

Mr. Bowers — What was the vote taken on?

The Chairman — The vote was taken on Mr. Blake's substitute, and it was lost.

Mr. Blake — I ask for a count.

The Chairman — The Chair had rendered its decision before the count was asked for, but it will allow the count.

The Chairman again put the question on the adoption of the amendment offered by Mr. Blake, and, by a standing vote, it was determined in the negative — yeas, 36; noes, 69.

The Chairman — The question now is on the substitute offered by Mr. Platzek, which the Secretary will read.

The Secretary — Mr. Platzek offers the following amendment as a substitute for section 3:

"Sec. 3. The power to appoint and remove the head of the police department of any city is vested in the mayor thereof, or in the mayor, with the consent of the common council. The Governor may also remove the head of the police department of any city for cause, upon charges preferred before him, after notice and opportunity to be heard."

The Chairman put the question on the adoption of the substitute offered by Mr. Platzek, and, by a rising vote, it was determined in the negative — yeas, 37; noes, 70.

The Chairman — The Secretary will read the fourth section.

Mr. Durfee — Before the Secretary proceeds to read the fourth section ——

Mr. Roche — Have we got through with the third section, Mr. Chairman? I have an amendment to propose to the third section, and I did not understand that we were through with it.

Mr. Durfee — I understand that I have the floor?

The Chairman — Mr. Durfee has the floor.

Mr. Roche — Has Mr. Durfee the floor for the purpose of making an inquiry with reference to the fourth section?

The Chairman — I do not know, and cannot tell until I have an opportunity to hear what he says. Mr. Durfee will proceed.

Mr. Durfee — I rose, Mr. Chairman, to inquire what part of section 3 was stricken out by the amendment offered by Mr. Brown, and which was adopted this afternoon?

The Secretary — All after the word "defense," in the third line on page 3.

Mr. Durfee — I wish, also, to inquire whether there was in that amendment anything which retains the power of removal in the mayor? My recollection is not very clear upon that point, and I would like to be informed.

The Chairman — The Secretary will read the whole section as it now stands.

The Secretary read section 3 as follows:

"Section 3. No law shall be passed conferring the power to appoint the head of the police force of any city or any city officer, except the mayor, or the mayor, with the consent of the common council. The Governor may remove the official or officials or any of them constituting the 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. Any vacancy in office caused by such removal shall be filled according to the provisions of section 3 of article 10 of the present Constitution."

Mr. Durfee — All after the word " defense," in line 3 of the proposition as reported by the Committee on Cities having been stricken out, that part of the proposition which contains in express terms the power of the mayor to remove the head of the police seems to have been stricken out also; so that as the section as amended now stands it would appear that the mayor had no such power. Now, Mr. Chairman, not being especially familiar with the affairs of cities, I feel great diffidence in suggesting any amendment to the proposition reported by the committee.

The Chairman — I will suggest to the gentleman that the ruling will be that no further amendments can be made until the article has been gone through with. Amendments were called for the original section, that section was preferred, and then the substitute was perfected. Now, as the Chair understands it, the only time when further amendments can be offered will be after the other sections are considered, and then amendments generally will be in order.

Mr. Durfee — I may, perhaps, be pardoned, since I have the floor under the ruling of the Chair, in making a suggestion to the chairman of the Committee on Cities, that there ought to be incorporated somewhere, by some amendment — which, as I very probably may not be here, I cannot myself make or offer — a provision for continuing in the mayor the power of removal; since, so far as I am able to learn, everybody concedes that he ought to have that power, to be exercised in extraordinary cases.

The Chairman — Such an amendment will be proper when amendments in general are in order, as they will be after the other sections have been gone through with.

Mr. E. R. Brown — If I am in order I would move to reconsider the vote taken on the motion made by Mr. Jenks. I think that was voted down under a misapprehension. It was evidently offered for the purpose of accomplishing what Mr. Durfee desires to have accomplished, and what I desire to have accomplished; and to remove that doubt I do now move to reconsider that vote.

The Chairman — The Chair is of opinion that it cannot be now reconsidered after the section has been perfected, but that it may be reconsidered when amendments in general are in order.

Mr. Roche — Is another substitute in order now? Will another substitute to section 3 be in order at the present time?

The Chairman — The Chair will hold that it will be.

Mr. Roche — Then I desire to offer one, for the two-fold purpose of restoring the power to the mayor to remove the head or heads of the police force, and also for the purpose of getting rid of Mr. Brown's amendment, which was adopted this afternoon. Unfortunately for myself I was not present when that was voted upon. I want to say that I regard the proposition of the chairman of the Committee on Cities as much fairer and squarer; it is certainly as bold, as square and as plain as anything that can be produced on the subject; and I regard it as much fairer and squarer than these piebald affairs which have been offered and debated upon, pretending to give the minority something which in fact they do not get.

The Chairman— Will the gentleman send his amendment to the desk?

Mr. Roche — I will in a moment, when I have completed it.

Mr. Doty — I move that we proceed to the consideration of section 4.

Mr. Cochran — May I ask what shape section 3 is in before we leave it?

The Chairman — There is nothing before the House at present in respect to section 3. The question before the House is on the motion of Mr. Doty to proceed to the consideration of section 4.

Mr. J. Johnson — In presenting section 4 ——

The Chairman — We have not got to it yet. The motion has not been put.

Mr. Roche — I have my amendment ready for section 3.

The Chairman — The motion of Mr. Doty is first in order.

The Chairman put the question on the motion of Mr. Doty to proceed to the consideration of section 4, and it was determined in the negative.

Mr. Roche — I now offer my amendment to section 3.

The Chairman — Mr. Roche offers the following substitute for section 3, which the Secretary will read:

The Secretary — "Section 3. Power to appoint or remove the head or heads of the police department of any city is vested in the mayor, or in the mayor, with the consent of the common council. The Governor may also remove the head or heads of the police

department of any city for cause, upon charges preferred before him, after notice and opportunity to be heard. The Legislature shall provide by general law for filling vacancies which may arise in the head or heads of the police force caused by removals by the Governor."

The Chairman —This appears to be an equivalent motion, and it is so near the hour of adjournment that the Chair cannot decide the question as present, without an examination of other portions of other amendments or substitutes.

Second Vice-President Steele resumed the chair, and declared the Convention adjourned until Wednesday, August 29, 1894, at 10 A. M.

Wednesday Morning, August 29, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, at the Capitol, Albany, N. Y., August 29, 1894.

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

The Rev. J. H. Messenger offered prayer.

On motion of Mr. A. H. Green, the reading of the Journal was dispensed with.

Mr. Tibbetts — Mr. President, I have an unexpected business engagement Friday and Saturday, and I desire to be excused for those days.

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

Mr. Redman — Mr. President, I desire to be excused on Monday and Tuesday next on account of an important business engagement.

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

Mr. Herzberg — Mr. President, I ask to be excused for Friday and Saturday.

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

Mr. Durnin — Mr. President, Mr. Schumaker has been called home on account of serious illness in his family, and he desires to be excused until Monday next.

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

Mr. Springweiler — Mr. President, I ask to be excused from the sessions Friday, Saturday and Monday.

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

Mr. Goodelle — Mr. President, I ask that Governor Alvord be excused to-day on account of illness.

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

Mr. Arnold — Mr. President, I ask to be excused for Saturday.

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

Mr. Blake — Mr. President, I would like to be excused for next Monday.

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

Mr. Foote — Mr. President, I have a report ——

The President — One moment, Mr. Foote, I have a dispatch from Mr. Cornwell, asking that for necessary causes he be excused for the rest of the week.

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

Mr. Foote — Mr. President, the Committee on Revision and Engrossment presents several reports.

The President — Will you hold that for a moment, Mr. Foote? Memorials and petitions are in order. Notices, motions and resolutions.

Mr. Porter — Mr. Turner would like to be excused for to-day and to-morrow, on account of illness.

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

Mr. Hamlin — Mr. President, I would like to be excused on Monday.

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

The President — Reports of committees are in order.

Mr. Foote, from the Committee on Revision and Engrossment, to which was referred the proposed constitutional amendment introduced by Mr. Tucker (introductory No. 191), reported by the Com-

mittee on Preamble and Bill of Rights and from the Committee of the Whole, entitled "Proposed amendment to amend article 1 of the Constitution, as to damages for the loss of human life," reports the same as examined and corrected, and as correctly engrossed.

The President — This will be put upon the order of third reading and reprinted, unless it has already been printed in the exact shape it comes from that committee.

Mr. Foote, from the same committee, to which was referred proposed constitutional amendment introduced by Mr. Vedder (introductory No. 216), reported by the Committee on Powers and Duties of the Legislature and from the Committee of the Whole, entitled "Proposed constitutional amendment to amend section 10 of article 3 of the Constitution," reports the same as examined and corrected, and as correctly engrossed.

The President — Same disposition.

Mr. Foote, from the same committee, to which was referred the proposed constitutional amendment introduced by Mr. O'Brien (introductory No. 119), entitled "A proposed amendment to amend section 3 of article 2 of the Constitution, as to the suffrage," reports the same as examined and corrected, and as correctly engrossed.

The President — Same disposition.

Mr. Foote, from the same committee, to which was referred the proposed constitutional amendment introduced by Mr. Alvord (introductory No. 9), reported from the Committee on Salt Springs and from the Committee of the Whole, reports the same as examined and corrected, and as correctly engrossed.

The President — Same disposition.

Mr. Foote, from the same committee, to which was referred the proposed constitutional amendment introduced by Mr. Hill (introductory No. 183), in regard to the suffrage, reports the same as examined and corrected, and as correctly engrossed.

The President — Same disposition.

Mr. Foote, from the same committee, to which was referred the proposed constitutional amendment introduced by Mr. Doty (introductory No. 86), reported by the Committee on Judiciary and from the Committee of the Whole, reports the same as examined and corrected, and as correctly engrossed.

The President — Same disposition.

Mr. Foote, from the same committee, to which was referred the proposed constitutional amendment introduced by Mr. McMillan (introductory No. 11), reported from the Committee on Legislative

Powers and Duties and from the Committee of the Whole, reports the same as examined and corrected, and as correctly engrossed.

The President — Same disposition.

Mr. Foote — Mr. President, I wish to call attention to the fact that three reports from the Committee on Revision were by motion laid upon the table. Before they can be put upon the order of third reading, it will be necessary under the rules that they be printed. I suggest that they be printed at this time.

The President — They have already been printed.

Mr. Springweiler — Mr. President, I move you, sir, that general order No. 69 be made a special order for Thursday morning, and on that I will demand the ayes and noes.

The President — Thursday of this week or next?

Mr. Springweiler — Thursday morning.

The President — To-morrow morning?

Mr. Springweiler — Yes, sir.

The President — Mr. Springweiler moves that general order No. 69 be made a special order for to-morrow morning. Gentlemen will bear in mind that this requires a two-thirds vote. The Chair is of the opinion that that will bring it on after the matters already made a special order before that time are disposed of.

Mr. Springweiler — Mr. President, I call for the ayes and noes on that.

The President — Those who will sustain the call for the ayes and noes on the motion to make it a special order for to-morrow morning will rise and stand until they are counted to the number of fifteen.

The call was sustained.

The President — The Secretary will call the roll.

The Secretary called the roll, and the motion was lost by the following vote (not a two-thirds vote):

Ayes — Messrs. Ackerly, Baker, Banks, Becker, Blake, Bowers, Campbell, Carter, Chipp, Jr., H. A. Clark, Cochran, Coleman, Danforth, Davenport, Deady, Deterling, Deyo, Dickey, Durfee, Durnin, Faber, Forbes, Francis, C. A. Fuller, Gibney, Giegerich, Gilbert, A. H. Green, Hecker, Hedges, Herzberg, Hill, Hottenroth, Jacobs, Jenks, I. S. Johnson, Kellogg, Kimmey, M. E. Lewis, Marks, Maybee, J. W. McLaughlin, Moore, Mulqueen, Nostrand, Ohmeis, Osborn, Parker, Parmenter, Peabody, Platzek, Porter, Powell, Putnam, Redman, Roche, Rogers, Sandford, Smith, Springweiler,

W. H. Steele, T. A. Sullivan, W. Sullivan, Tibbetts, Titus, Tucker, Veeder, Whitmyer, Woodward — 69.

Noes — Messrs. Abbott, Allaben, Arnold, Barrow, Bigelow, Cady, Cassidy, Church, G. W. Clark, Cookinham, Davies, Dean, Doty, Emmet, Floyd, Foote, O. A. Fuller, Galinger, Goodelle, Hamlin, Hawley, Hirschberg, Holls, Kinkel, Lester, C. H. Lewis, Lyon, Manley, Marshall, McIntyre, McKinstry, McMillan, Mereness, Morton, Nichols, O'Brien, Parkhurst, Pashley, Peck, Pratt, Root, Spencer, A. B. Steele, Storm, Vedder, Vogt, Wellington, President — 48.

Mr. Bowers — Mr. President, before we go into general orders I would like to ask for a report from the Committee on Governor and State Officers as to the change of term, if there is any to be made, of those officers. I ask for it because it may have a material bearing upon our action in reference to the cities article.

Mr. McMillan — Mr. President, the Committee on Governor and State Officers have already reported verbally to the Convention, and when they make a written report it will be in accordance with the action of the Convention on the cities article. The Committee have agreed on a report to conform with the action taken upon the cities article. That has been stated here time and time again by the chairman of the Cities Committee and by the chairman of the Committee on Governor and State Officers.

Mr. Bowers — Mr. President, I submit that the report of the Committee on Governor and State Officers will have a material bearing upon the cities article. I have already stated how it will affect it. Now, as it is stated by the chairman of the Committee on Governor and State Officers that that committee is ready to report, there seems to be no reason for withholding it any longer. This Convention has ordered all of the standing committees to report by a certain day, and as their report is ready I do not see why it should not be put in.

Mr. McMillan — Mr. President, there is every reason why that report should be withheld, because if made now it may not be as the final determination of the Convention will be on the cities article. Whatever the report may be, it will be made to conform with the disposition of that article.

Mr. Osborn — Mr. President, a similar question has been raised in reference to the terms of Assemblymen and Senators. In reference to this whole subject I desire to say that it has always seemed to me that the duty of a committee to which was intrusted the question of the term of such important officers as the Governor,

Senators and Assemblymen would be to give an opinion to this Convention based, not upon their desire to facilitate the passage of the cities article, but upon their calm, deliberate judgment as to what term would be most desirable for the Governor, or for a Senator, or for an Assemblyman. The duty of the committee, in my judgment, is to examine into those subjects upon their own merits; to report to this Convention what in their judgment is the proper term for Governor, and the proper term for Senators and Assemblymen, and then having made that recommendation to the Convention, allow the Convention, which is in possession of the entire subject, including the questions of the cities article, to determine what compensation and what changes shall be made in those three classes of officers to meet the needs of the State. The Convention is entitled to hear from the committees their opinion as to what is the correct term of those various officers unprejudiced by what may be the demands of the cities amendment. Therefore, Mr. President, I think it is desirable that the Committee on Governor and State Officers should report what is the correct term for Governor and that the Committee on Legislative Organization should report as to the Senators and Assemblymen.

The President — If the Chair correctly heard the report of the Committee on Legislative Organization, they did report as to the terms of Assemblymen.

Mr. Osborn — I did not wish to state that they had not reported.

Mr. Root — Mr. President, there seems to be no matter before the Convention now, except the giving of instructions by various individual members of the Convention to the Committee on Governor and State Officers and the expression of individual opinions as to how that committee ought to perform its duties. If I am right about this, I move that we go into general orders.

Mr. Bowers — Mr. President, I make the point of order that this Convention having ordered that all committees report by a certain time, that a report is in order from the Committee on Governor and State Officers. It is quite important that we should hear why they do not report.

The President — Mr. Bowers is entirely in error. There is no motion before the House.

Mr. Cochran — Mr. President, I would like to make a motion, sir, and that is that the Judiciary Committee be instructed to forthwith make their report in response to resolution No. 113 of Mr. Bigelow, of July tenth, as to the latest day which this Convention can consistently sit upon the work in which they are now engaged. I think, sir,

that this is a very important matter, and we should have had a report before this. We see in the papers that it is contemplated that this Convention sit until September fifteenth, and then adjourn until the fifteenth of November. I think it is important that we should hear from this committee.

The President — The question is on the motion of Mr. Cochran.

Mr. Maybee — What was that matter, Mr. President?

The President — That was as to how long this Convention can sit, and what the law is as to the publication of its work prior to its submission to the people. It must be submitted to the electors this year, or may be next year.

Mr. A. H. Green — I concur with Mr. Osborn entirely in his suggestion about this matter, and it is a matter which occasions some embarrassment ——

The President — This is another matter, Mr. Green. Mr. Osborn referred to another matter. This motion is to require a report from the Judiciary Committee.

Mr. Root — Mr. President, may I inquire what has become of the motion that I made to go into general orders?

The President — The Chair rules that it does not require a motion to go into general orders on the cities article, under the order of the Convention.

Mr. Roche — Mr. President, it seems to be entirely probable that there are certain matters of an important character which will take up the greater time of the Convention, if, indeed, they do not take up all the time of the Convention between now and the fifteenth of September. We have made certain of these matters special orders in order that they might be considered fully by the Convention.

The President — Is Mr. Roche speaking to Mr. Cochran's motion?

Mr. Roche — No, Mr. President.

The President — The question is on Mr. Cochran's motion to instruct the Judiciary Committee to report forthwith on the matter referred to them on July tenth.

Mr. Cochran — On that I call for a rising vote.

A rising vote was had, and the motion of Mr. Cochran prevailed by a vote of 68 ayes, 27 noes.

Mr. Bowers — Mr. President, I move that the Committee on Governor and State Officers be required to report forthwith.

The President — Mr. Bowers moves that the Committee on Governor and State Officers be required to report forthwith.

Mr. McMillan — Mr. President, I desire to say a word to the Convention upon that suggestion or motion. As I have already stated, the Committee on Governor and State Officers have agreed among themselves to make a report in conformity with the cities article. The cities article is the only one that makes any change in the offices necessary. If the Convention sees fit to make no change in the cities article, no report will be made from the Committee on Governor and State Officers changing the term of said officers. If any change is necessary, it will either be a change of two or four years, as the Convention may take action on that article, and until that article is disposed of, it seems to me entirely unnecessary to take the time of the Convention, because the committee will be entirely governed by the action of the Convention on the cities article.

Mr. Bowers — The reason we ask for the report, Mr. President, is because we want to know whether the committee is to report two or four years. We wish to know it now before we vote upon this cities article, and I see no reason why they should not tell us if they have come to a decision.

Mr. Roche — Mr. President, there is another matter in this report besides the matter whether the term will be two or four years. A proposition has been referred to and considered by the committee providing for the election by the people of the Superintendent of Public Works, instead of his appointment by the Governor. It has also been proposed and referred to the committee and considered by them (I do not know whether favorably or unfavorably) that the officers of State Engineer and Surveyor and Superintendent of Public Works should be consolidated into one. Now, these are both matters of considerable importance and it seems to me that we should have a report from this committee at as early a date as possible, and the time now seems to have arrived, in order that we may know what they have done upon these two propositions besides the question of whether the term of Governor and State officers shall be two or four years. I hope that we will get a report from the committee some time to-day on these two subjects.

Mr. McMillan — Mr. President, I move to lay the motion of Mr. Bowers upon the table.

The President put the question on the motion of Mr. McMillan to lay Mr. Bowers's motion upon the table, and it was determined in the affirmative by a rising vote of 75 ayes, 29 noes.

Mr. Roche — Mr. President, I was remarking a short time ago that probably the time of this Convention from now to the fifteenth of September would be taken up, if not entirely, almost entirely, by matters of very considerable importance. I, therefore, desire that this Convention should at some stage consider what I deem to be one of the most important matters that can come before it and that can come before the people, and that is the care and the improvement of the canals of the State. Up to this time we have presented the very unusual and extraordinary spectacle of not a word being uttered in this Convention relative to these great public works of the State of New York, which are connected with our history from almost the beginning of the State, which are the pride of the State, and in whose importance and management the commercial supremacy of this State is so largely involved. Now, sir, I say this is unusual, for any person who will examine ——

The President — There is no motion before the Convention, Mr. Roche.

Mr. Roche — I am going to make a motion, Mr. President, and my remarks will be very brief. For any person who will examine the records of the Constitutional Convention of 1821, the Convention of 1846, and the Convention of 1867, will at once see that the great men of the State devoted a great part of their time in those Conventions to looking after the welfare of the canals of the State and considering what measures would best promote their interests and improvement. Now, sir, these canals are in such a state to-day, and the demands of commerce are in such a state to-day, that we ought to do something on a large and liberal scale relative to these great public works. I, therefore, move, Mr. President, that after the report of the Committee on Legislative Apportionment is considered and disposed of, that this Convention take up and make a special order for the consideration of the several propositions before us relative to the care, improvement or management of the canals of this State.

Mr. Becker — Make it next after.

Mr. Roche — Next after, yes.

Mr. Kellogg — Mr. President, I move to lay that motion upon the table, and upon that I move the previous question.

Mr. Veeder — I ask for the ayes and noes.

The President — Mr. Roche moves that the canal question be made a special order immediately after the conclusion of the apportionment matter. Mr. Kellogg moves to lay that motion upon the

table. Mr. Veeder calls for the ayes and noes upon the motion to lay upon the table.

The call for the ayes and noes was sustained.

The Secretary proceeded to call the roll.

Mr. Abbott — Mr. President, I am not in favor of this proposition, for the simple reason that I am opposed to making so many special orders. While I favor the proposition of Mr. Roche, I am opposed to making it a special order, and I, therefore, vote in the affirmative.

The motion to table the motion of Mr. Roche was determined in the affirmative by the following vote:

Ayes — Messrs. Abbott, Ackerly, Allaben, Arnold, Barhite, Barnum, Becker, Bigelow, E. A. Brown, Cady, Carter, Cassidy, Church, G. W. Clark, H. A. Clark, Cookinham, Davies, Dean, Deterling, Dickey, Doty, Durfee, Faber, Augustus Frank, Fraser, Galinger, Gilbert, Goodelle, Hamlin, Hawley, Hecker, Hedges, Holls, Jacobs, I. S. Johnson, J. Johnson, Johnston, Kellogg, Kinkel, Kurth, Lauterbach, Lester, C. H. Lewis, Lincoln, Lyon, Manley, Marshall, Maybee, McIntyre, McKinstry, C. B. McLaughlin, McMillan, Mereness, Morton, Nichols, Nostrand, O'Brien, Parker, Parkhurst, Pashley, Powell, Putnam, Redman, Root, Spencer, A. B. Steele, W. H. Steele, Storm, T. A. Sullivan, Tibbetts, Vedder, Vogt, Wellington, Wiggins, Woodward, President — 76.

Noes — Messrs. Baker, Banks, Barrow, Blake, Bowers, Bush, Campbell, Chipp, Jr., Cochran, Coleman, Countryman, Danforth, Davenport, Deady, Deyo, Emmet, Farrell, Fitzgerald, Floyd, Forbes, Francis, C. A. Fuller, Gibney, Giegerich, A. H. Green, Griswold, Herzberg, Hirschberg, Holcomb, Hottenroth, Jenks, Kerwin, Kimmey, Marks, McDonough, J. W. McLaughlin, Meyenborg, Mulqueen, Nicoll, Ohmeis, Osborn, Parmenter, Peabody, Peck, Platzek, Roche, Rogers, Sandford, Smith, Speer, Springweiler, W. Sullivan, Titus, Towns, C. H. Truax, Tucker, Veeder, Whitmyer — 59.

The Convention resolved itself into Committee of the Whole on general order No. 13, the cities article.

Mr. I. S. Johnson in the chair.

M. J. Johnson — Mr. Chairman, I believe the pending question is whether the amendment of the gentleman from Rensselaer, Mr. Roche, is an equivalent amendment.

The Chairman — The substitute of Mr. Roche.

Mr. Johnson — Mr. President, I raise the point of order that it is an equivalent motion and not in order.

The Chairman — The Chair understands that Mr. Roche desires to perfect or correct the substitute.

Mr. Roche — Mr. Chairman, as the members well know, when the amendment was drawn last evening it was done very hastily. I would like, therefore, to offer for it this morning a substitute amendment, which I will now send to the Clerk's desk. In the same connection, I desire to say that having last evening characterized the amendment of Mr. Brown in certain terms, which was also done hastily, and not with a full knowledge of the exact character of his amendment, I desire to say that if there was anything in the slightest degree disrespectful either to Mr. Brown or to his motives in offering the amendment, it was far from my intention to indulge in any such thing.

The Chairman— Will Mr. Roche send his substitute to the desk?

Mr. Roche — Yes, sir; I offer it and send it up to the desk.

The Chairman — The Secretary will read the amendment.

The Secretary read the amendment as follows:

"The power to appoint the head or heads of the police department in any city where such officers are appointed, and whether elected or appointed, to remove them or any of them for cause and after hearing, shall be vested in the mayor, or the mayor, with the consent of the common council, as shall be prescribed by law. The Governor also may remove the officers or any of them constituting the head of the police department in any city for cause and after a hearing."

Mr. Johnson — Mr. Chairman, I submit that that is an equivalent motion and has been embodied in other amendments and substitutes that have already been passed upon. I raise the point of order that it is out of order.

The Chairman — The Chair will hear Mr. Roche on that.

Mr. Roche — Mr. Chairman, I desire to say that it is not an equivalent motion. The proposition that is now before the committee is that of the Committee on Cities, section 3. Their report is amended by Mr. Brown and it leaves the section in just this shape: That the mayor, or the mayor, with the consent of the common council, may appoint the head or heads of police departments and the Governor alone is authorized to remove them. Now, I do not think that the Convention intended that the power of removal should be confined to the Governor alone. On the contrary, I

believe that the wish of the Convention is that the power of removal should be concurrent; that it should be with the mayor and with the Governor, both of them. In that respect, while this proposition is entirely different from the square proposition of Mr. Platzek, there is another point of difference, Mr. Chairman. This whole section as it now stands simply relates to the appointment of heads of police and to the removal of heads of police, where those officers are appointed. Now, there are certain cities of this State in which the police commissioners are elected by the people, and this contains no provision whatever for their removal either by the mayor or by the Governor. So I put in here in my amendment a subject which has not been considered by the committee at all, and that is, whether they are elected or appointed they may be removed by the mayor, and they may be removed by the Governor for cause. Now, in those respects I say the proposition is different from any of those which have been voted upon by the committee.

The Chairman — The Chair holds that Mr. Johnson's point of order is not well taken. The question is on the substitute of Mr. Roche.

Mr. Roche — Mr. Chairman, when this proposition was first reported from the Committee on Cities, some of my distinguished Democratic friends (for whose political opinions as well as for whose judgment I have great respect) announced themselves as not opposed to the idea that the Governor of the State should have the power in certain contingencies of removing the heads of police departments. I concurred with them in that opinion, and I have heard nothing since which would induce me to change. I believe there are certain subjects or matters which are purely and properly matters of municipal rule or regulation, and that to a great extent they are pointed out in section six, or rather in section five of this report of the Committee on Cities. I believe that there are certain other matters, the management and control of which should be largely invested in the local authorities, with a supervisory power, however, in the Governor of the State. The Constitution of the United States guarantees to every State a republican form of government. It guarantees to protect the State not only against foreign invasion, but also against domestic violence and disturbances of the peace. I believe the State of New York should hold the same relation to every division of the State that as to matters which concern the State at large; the peace, good order and welfare of the State, like the police government and matters relating to the health of the State, the State itself should exercise some supervisory power.

Now, sir, the cities of this State, according to the figures which

have been submitted here, constitute the major portion of the population of the State. They are constantly increasing in importance and population. If you look into the future (and we are not making laws for to-day, and next year), we may honestly and conscientiously discern questions and problems arising in the cities of this State, in the great centers of population and wealth (and I say this with full confidence in the people of the State), I say they may discern questions and problems which will render it highly important, not only to the dweller in the city but the dweller in the hamlet. That the Governor of the State, charged with the faithful execution of the laws of the State, shall be able to go into the city and if the mayor, either through ignorance, or dishonesty, or corruption, or indifference, or in false sympathy with matters which are inimical to the best interests and prosperity of the State, neglects to do his duty, that the Governor, acting for the people in that locality as well as acting for the people of the State in a matter which concerns the general welfare, may be able to correct the abuse. I believe, however, that when we have given the Governor that power we should stop. I think it is the sentiment of this Convention that the Governor of the State should not be permitted to go into the cities and name its local officers, even if those officers perform duties and exercise functions which have an interest and concern for the people at large. The history of every Constitutional Convention in this State is a step forward, a march in the direction of giving the people in the different localities greater control over municipal affairs and over the selection of public officers. We have done away with the council of appointment. We have done away with those boards which selected for the people of the localities all their public officers, which provided that the Governor of the State might select and under which he did select the mayors of the cities of the State, and I say that to-day we ought not to go backward and place in that functionary the power of appointment of the officers who are to control the administration of the police affairs of the cities. I do not anticipate that any trouble will come by giving the Governor the power of removal. On the contrary, I believe that it will be a spur and an incentive for the police officers to do their whole duty and to do it faithfully and well, with knowledge of not only what they owe to the law and what they owe to the people residing in the locality, but what they owe to the State, and that their failure from indifference, from neglect, will be reproved and they may be deprived of their positions by a power which has under its control and which is charged with the duty of seeing that the laws of the State are executed.

It has been suggested that if the Governor removed a delinquent police officer, the mayor of the city might appoint the same man over again. I think the idea, Mr. Chairman, is a far-fetched one. I do not believe that the mayor of any city will so fly in the face of public opinion, of what is decent, of what he owes to himself, of what he owes to the locality and what he owes to the chief magistrate of the State, as to make any such selection; and it has been well answered here that if he did, the Governor of the State might well take notice of it and remove the head of the city government itself.

Mr. Vedder — Mr. Chairman ——

Mr. Roche — Pardon me, Mr. Vedder. Were you not under the impression that I was through?

Mr. Vedder — Yes.

Mr. Roche — I was not.

The Chairman — Mr. Roche has the floor.

Mr. Roche — Now, Mr. Chairman, this proposition of Mr. Brown leaves it in the power of the Legislature to provide for filling vacancies where the officer is removed by the Governor and it prescribes the way the vacancy shall be filled pursuant to the provisions of section 10, article 5 of the present Constitution. Now, I submit that that is bad form, to say the least. The Constitution that we will adopt here will go into effect, if approved by the people, on the first of January next, and will be the Constitution of the State, and it seems to me, therefore, that it is not a proper thing to make reference to the Constitution that has already been done away with and that the court should be called upon to construe it by reference to a Constitution that is not now in force. It seems to me, therefore, that the words "the present Constitution" are highly objectionable. The provision is an anomaly. You propose to give the mayor power to appoint. You are willing to intrust him with that power originally. You believe that is a measure in the direction of home rule; that it is logical and consistent with the provision in your Constitution. Now, if this man that is appointed is removed by the Governor with no probability whatever of the reappointment of that official, why call in the aid of the Legislature or of any public state officer to fill that vacancy? You declare in your section that the mayor shall appoint, and why take away from him the power to appoint in case of the vacancy and vest it in some other officer? It seems to me that it makes entirely an illogical and inconsistent provision out of this section of the Constitution. There is no necessity for it whatever. You trust the mayor in one place, and the filling of the vacancy may safely be

left to him. It has been suggested by a friend near me that he may appoint over again. I supposed that I answered that proposition a few moments ago and cannot answer it any better than I did. But if you leave it to the Legislature you may have a rule of conduct in one place and an entirely different rule in another place. Under the stress of political excitement, of political necessity, if proceedings should be had for removing the head of a police department in a city and the Governor for cause should remove him, it may be found that the persons in political accord with the Governor and in political accord with the Legislature would go before the Legislature for a special act, be it Troy or Syracuse or any other place, and that an act would be passed for filling the vacancy, and that in anticipation of what the Governor may do or is likely to do in reference to the charges before him. Thus you would have propositions for filling the vacancies in one place of an entirely different character from that which may prevail in another place. That may be entirely true even of the man occupying the office of chief magistrate of this State. I have seen that able and patriotic Governor, John A. Dix, approve against his own judgment an act in reference to the police of the city of Troy, at the earnest request of Republicans of the city of Troy whose character and influence he respected so highly that he could not withstand their importunities. That act, by the way, was declared by the Court of Appeals within six months after its passage to be unconstitutional. At times the very best of men urged by political necessities, or political excitement, or what they believe to be the needs of the party in their locality, may urge the Legislature and may urge the Governor to do something which in their calmer moments they would not think was wise and prudent. Sometimes, in both parties, we ask to be saved from ourselves and our friends, and oftentimes we are glad that we were not able to accomplish some of the things that we set out to do.

Now, Mr. Chairman, I ask that this provision be put in a consistent shape. Let the mayor, or the mayor and common council combined, to whom you give the power originally, let them have the power to fill the vacancy, the short term, as well as the full term, and do not inject the Governor or Legislature of the State into the locality. It seems to me that all it is desired to do, all the evils, whether existing or apprehended, that it is desired to meet and overcome, can be fully met and can be fully overcome, and that the interests of the people at large can be fully subserved by a wise provision that the Governor may step into the locality and for cause remove the head or heads of police departments, and when

you have accomplished that, it is all that is necessary. Then let your municipal machinery go on as it did before, and let the place be filled by those who from local knowledge and local conditions are able to select the most able and suitable person to fill the place.

Mr. Parmenter — Mr. Chairman, I have a few observations I would like to make with reference to some of the provisions of this proposed amendment, and I may as well make them on this motion now before the committee as at any other time. They will be very brief. It would seem from some of the observations made by gentlemen here that the city in which I reside, and in which I have resided since 1846, is in some measure responsible for the framing of certain provisions in this article. Now, I am not quite satisfied with any proposition I have yet heard upon this subject, and, although I say it myself, I have had some experience in the law department of the city of Troy, being the predecessor of my friend (Mr. Roche) for a great many years; and I have some knowledge as to the workings of the police system in the city of Troy. Now, the question is, in case of any dereliction in the superintendent or the police commissioners of a city, who should have the power of removal and who the power of appointment to fill vacancies in such cases? It has been asked, if the Governor can remove the sheriff, or the county clerk, or the surrogate, why should he not be permitted to remove members of a police department? I think that has been substantially answered in the course of the debate. Who would you get to remove a sheriff in a county? Certainly no one can suggest any other proper person. The only judicial person who would probably have cognizance over the sheriff of a county for any dereliction would be the county judge, and yet his duties are so closely connected with those of the sheriff and the county clerk that no one would like to intrust such a responsible power in his hands. It is all well enough for the Governor to remove the sheriff, to remove the county clerk or the surrogate, or even the mayor; but when you go one step further, and say that the Governor shall look into the police commissioners' room and remove them, or some of them, for any improper conduct, it seems to me that it is going a little too far. Now, let me recall to the minds of gentlemen here, who may not be as familiar as Brother Roche and myself and Mr. Peck are about these matters in cities, to some of the changes that have been made in the police department of the city of Troy since I became a resident of that city in 1846. We then had a night watchmen system until, I think it was, in 1865, when what was known as the capital police district was made, a new civil division of the State, for the purpose of regulating the police. It consisted of Albany, of

Greenbush, across the river, of Troy, of Lansingburgh, of the then village of Cohoes and of the city of Schenectady. That was in 1865. The men who were put in charge of that police department as commissioners were honorable, high-minded men, but nobody seemed to be satisfied with the administration of affairs under them. Very soon after that time Albany asked to be released from that district, and it was granted by the Legislature. Cohoes asked to be released. The same privilege was granted. Schenectady did the same thing, Lansingburg did the same thing, and finally Troy came in and asked to be relieved from the operation of the law under what was known as the capital police act. The release of Troy from the operation of that act took place in 1870, and at that time a police board was created and a police force was formed under such board. That worked tolerably well. And I might say here that I have great confidence in every mayor that I have ever known in the city of Troy. I have lived there long enough to have witnessed the administration of Whig mayors, of Democratic mayors, of Republican mayors and of Independent Democratic mayors who were voted for by the Republican party; and I do not think any one of them was ever a dishonest man. I think if we had any one of these men now, if he was not cramped and crowded by the acts of the Legislature, he would discharge his whole duty in case of any dereliction on the part of police officers. So Troy, as I have said, was in 1870 relieved from the capital police system; and in 1873, during the administration of Governor Dix, and in the very last days, I think, of his administration, nearly the last, a new system was adopted wiping out the then existing police force and the police department of the city of Troy and putting in an entirely new one, the Rensselaer police district, consisting of the city of Troy, an island in the Hudson river in Albany county and two other patches of territory, with commissioners appointed by the Governor with the advice and consent of the Senate, right in the teeth of the Constitution. The old force were all turned out of office a few days afterwards, and a new force installed. I happened to have charge of the law department of the city of Troy at that time, and believing, with a great many others, that the law was unconstitutional, I took out proceedings to test it, and went to the Court of Appeals with it. They held that the law was unconstitutional, and the old force were reinstated. That continued along until bye-and-bye a law was passed providing that the police board should consist of the mayor, and of two other commissioners elected. There was grumbling about that, but that continued along with some little alteration until 1885. In 1885 we had a mayor who, though an honorable man,

happened to be a straight-out Independent Democrat, and the Republicans liked him so well that they elected him with what Democratic strength he could get, and defeated the regular Democratic candidate. I voted against him, it is true, as I vote against all irregular nominations, but he was an honorable, high-toned man. Nevertheless his Republican friends pretty soon got sick of him, and they attempted to impeach him, and have him removed by the Governor. He was not removed, however. After a patient hearing the Governor refused to remove him. Then they went in connection with the regular Democrats to the Legislature, and they got an act which provided that the president of the common council, who was nothing but an alderman, except when acting as president, should within ten days appoint four police commissioners, one from each of the two great political parties, for a term of two years, and two other commissioners to hold office for a term of four years, one from each of the great political parties; and thereafter the four police commissioners were to be appointed by the common council, but with restrictions as to the manner of voting. That act provided, furthermore, that within five days after the new police board was created and in operation the old force should be entirely abandoned, their offices should be closed and they should go out and the new force come in. That was done. This system continued for a while, and down to I think only two or three years ago, and we got along tolerably well under that. The only difficulty with that system was when the police board endeavored to have one or two policemen removed — the difficulty was that the police commissioners were not lawyers and did not understand the rules of evidence. They were required to have proof, and they got such proof as satisfied them that those policemen were not qualified to act, and they removed them. Their counsel went to the Supreme Court, and the Supreme Court set their decision aside saying that illegal evidence had been admitted. They were ready to do their duty but did not understand the law well enough to know what was proper evidence and what was improper evidence. And thus it went on until 1892. Then a new act was passed by the Legislature which provided, I think, that the police board should consist of three persons and that the old commissioners should go out of office, and that those three persons should be appointed by the mayor alone; and subsequently, in 1892, my friend, Mr. Roche, prepared a new charter, and that new charter contained a provision that the police board should consist of three persons to be appointed by the mayor. That continued in force down to the present day.

Now, I believe, as I have said, during all these shifting changes, with all the mayors that we have had, if they had not been cramped by legislative acts in respect to the charges to be made and the evidence to support them, without doubt any dishonest man on the police force would have been removed at any time. Now, the question comes up before this committee as to where the power should be lodged to remove a dishonest or unfaithful police officer, the superintendent as well as the commissioners, and who should fill such vacancies? That is the question that has to be passed upon by this Convention. The provision coming from the Committee on Cities proposes that the mayor should remove the officers, but in case he should neglect or refuse to discharge such duty promptly, the Governor should remove the delinquent police officer. Not only that, but he should fill their places by an appointment by himself, and that appointment should stand during the term of the then mayor of the city. I do not know how that would work in the city of New York, or Brooklyn, or in any of the larger cities of this State, but I do know something about it so far as the city of Troy is concerned. My opinion has long since been formed upon this subject, and I have seen nothing and heard nothing during this discussion that changes my mind upon that subject. I think that home rule and propriety would induce us to frame an article providing that the police officers, like some other officers, should be removed by the mayor, without requiring any specific charges to be preferred or any particular line of evidence to support those charges; because the mayors are not always lawyers. It is very seldom that a lawyer is elected mayor of the city of Troy. I would have the mayor, if he removes a man, appoint another in his place. I would give that power solely to the mayor. I would not trouble the Governor with it. And then I would hold the mayor responsible and if he did not discharge his duties properly I would have the Governor remove the mayor. That is my theory about it. I do not know that I can get any proposition here that will precisely meet my own views upon this subject, but I will do the best I can. If I cannot get just such a one as I want I will get the next best. I am decidedly opposed to the idea of having the Governor interfere in order to remove a superintendent of police, or a chief of police or the head man in the detective department of the city of Troy, and I think it would be highly improper in other cities. The Governor, as I have said, removes county officers and a city officer because there is no one else above them in the locality to whom such power should be intrusted, but to go down below the mayor, pass by him and go into the police board or the administra-

tion of the superintendent of police, and investigate and find out whether they are derelict in their duty or not, seems to me to be a very improper thing to do. I submit cheerfully to the wishes of this Convention, providing its action shall be adopted by the people at the polls; but I would desire, if I could have my own way, and I submit it to the Convention, to place all this power upon the mayor himself, and hold him to strict responsibility; and remove him if he does not discharge that responsibility; and I think you will have no trouble, either in Troy, or Buffalo, or New York, or Gravesend. That is the course I would desire to pursue if I could by any form of proposal which would meet the approval of the committee.

Mr. J. Johnson — Mr. Chairman, mindful of the shortness of the time, I ask for thoughtful attention from the members of this Convention for less than three minutes by the watch. If this amendment is passed it destroys all there is of police in this article. Why? The police officials are purely creatures of legislation and not of the Constitution. Everything that is purposed by the amendment can be done now under the Constitution — everything. It is done in many cities. Everything that is proposed there is done in one or another of the cities. What there is in this amendment that is new, and all there is on that point, is that the State, in a great emergency, when it is attacked, may reach down and put in power one official appointed by it. That is all there is of significance in the amendment as it stands to-day. That was preserved by the amendment of yesterday, it only being subject to the ruling of the Legislature instead of the Governor. Strike that out and there is nothing but what is now in the Constitution. The whole thing is destroyed.

Mr. Smith — Mr. Chairman, this subject of government is certainly a very interesting subject to study. In this country the theory is that the people govern themselves. In practice it is carried out by political parties. Government by the people must necessarily be conducted by party. That is the only way by which the individual can make his influence felt. As I have had occasion to say before in this Convention, if individuals were to act independently, they would not accomplish any practical result, but would waste their energies on the vacant air. They must act with their party to make their influence felt. Now the question is — and it is a very simple question — shall the city of New York, or the city of Albany, or the city of Troy, or any other city be allowed to govern itself through the action of the political parties in such city? If the people of the nation can be trusted to govern themselves; if the people of the State can be trusted to govern themselves, why not trust the people of cities to govern themselves? And if you adopt

the principle that cities may govern themselves, then you must necessarily intrust the government to the action of political parties, and whichever party has a majority of the people in its favor will be clothed with authority to conduct the government of the city. Now, how can that principle be applied and put into practice and kept inviolate, except by allowing the majority of the people in a city to elect or appoint their own officers? How can that principle of home rule be applied except to allow the people to govern themselves, through the action of political parties in cities? That is the question here. And if you clothe the government of the State with authority to make appointments of local officers in cities or in counties, you destroy the great fundamental principle of home rule. We shall have no difficulty in applying this doctrine of home rule if you leave out of your action in this Convention the desire for party supremacy. I will venture to say that it is this desire for party supremacy in the State and in the cities of the State that strongly influences opinions which we see actively at work here to have the State control local affairs in the cities of the State, and particularly in the city of New York. You must act upon some principle in making this Constitution, or else you will be exposed to the charge that you have made it of opinions which were molded from prejudices or which were influenced by a desire for political supremacy. The question is whether you will stick to principle or whether you will turn this Convention into a political agency to promote the supremacy of your party. (Applause.)

Mr. Roche — Mr. Chairman, I would like to ask the chairman of the Cities Committee a question. Judging from some expressions on the floor and off the floor, I have derived the impression that some members think, when you speak of the head or heads of police, that it may cover the superintendent of police; and I would like to know whether the committee intend that it shall apply only to the commissioner or commissioners, who are, in fact, the police department, and that it shall not affect any subordinate appointed by them, no matter of what class or how high a class that subordinate may be.

Mr. J. Johnson — Mr. Chairman, it is intended to affect the actual heads of the police department; and in the case supposed by Mr. Roche, where the superintendent is under, or subordinate, to the heads of police, it would not affect him. Of course, it might be quite possible that in some cities the head of the police actually controlling the power next to the mayor, and above whom there is no one else, might be the superintendent. But in the case stated by

Mr. Roche, the case of a subordinate superintendent, that is not included in the power.

Mr. Roche — Mr. Chairman, another suggestion, and I make this more particularly to the majority of this Convention. I think that they may very well regard the warning which was so eloquently expressed by Mr. Bowers last evening. I think that we are actuated by a desire to have this Constitution which we adopt acceptable to the people. That is my own feeling. I have enough pride in my membership in this Convention and in the work that is done in it, at least I hope to have, so that I may go home and, whether to my constituents singly, or through the public press, ask them to support this Constitution. I, therefore, believe that it should be made as little objectionable as possible to the cities of this State. I think it is unwise to place in here a provision which will inject the Legislature under any circumstances into municipal affairs, even if those municipal affairs are police matters, in the way of appointing a police commissioner, or commissioners, in place of those whom the Governor may remove. We all know that the number of persons who vote upon the adoption or rejection of constitutional provisions is comparatively small. The votes are largely cast in the great cities of the State. Many of them, and particularly the most important of them, are largely Democratic. If the great and powerful Democratic organizations in these cities object to this provision as a violation of the spirit of your existing Constitution, as a departure from the march in the direction of home rule and of self-government which we have made for half a century, as an unwise and unnecessary thing, in my opinion it will defeat not only this provision, but will greatly endanger other provisions which will be submitted to the people. It is entirely unnecessary and entirely unwise to incur this risk, to offend this sentiment of home rule, which I believe is not confined to the Democracy of the great cities, by putting in a provision here which would enable the Legislature under any circumstances to come into any city and to appoint, or to provide for the appointment by a State officer, or by a State board, or by the Legislature itself, of any head or heads of a police department who may be removable, or who may be removed, by the Governor of this State. I submit, with all due respect to the judgment of the chairman of the Cities Committee, that he ought not, in the interest of this home rule article, he ought not, in the interest of this Constitution, he ought not, in the interests of his own party, to ask that this objectionable provision shall be inserted in what seems otherwise to be an acceptable proposition to the majority of this Convention.

Mr. Spencer — Mr. Chairman, I hoped that the time might arrive in the history of this august body when we would be relieved from amendments that do not amend and from substitutes which lead from safety to uncertainty, from firm ground into a quagmire; but it seems to me that amendments of this character are very common in this body. While I am not thoroughly satisfied with the phraseology of this section as it now stands, I am more dissatisfied with the substitute which the gentleman from Troy has offered. I do not see how it is possible for any member of this Convention to vote for any such thing as that; we should say that the Governor should be charged with the responsibility and the duty of removing an officer in a city, and then that he should not have the power to fill that vacancy. Why should we make an exception in this instance? We give him power of that kind with regard to other peace officers, other officers that discharge duties under the Constitution, and why should we not confer the same power on the Governor in respect to a police official that we do in respect to a sheriff, a county clerk, a district attorney and other officers; and why should we introduce into the Constitution such a ridiculous proposition as the one that the Governor of the State shall be responsible, and charged with the duty of investigating the police department of any city, and then, when he has removed an official, he shall be powerless to name an officer for the place who shall correct the abuses, and that he (the Governor) will be compelled to leave it in the hands of the mayor who was responsible for the appointment of the official that had been removed, to repeat and continue the error by the appointment of a man of like stamp? I say, sir, that we must vote down this proposition of Mr. Roche's. He has been converted very thoroughly since he made his remarks in this body last evening. His proposition last evening was that he much preferred the amendment proposed by the Committee on Cities, because it was definite and certain and explicit; it placed the power definitely in the hands of the Governor, and he (Mr. Roche) objected to the present wording of the section, because it was uncertain and indefinite, and left it to the Legislature, who might appoint this man or that, or provide for the appointment of this man or that man.

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

Mr. Spencer — No, sir. I am not here to be interrogated. I am here to speak a few moments, and then take my seat. I am not here to speak all the time; I am not here to take every opportunity to speak on every possible question; but as a member of the Committee on Cities I think I have the right to be heard in defending that committee from the unjust assaults that have been made upon it;

and I say that our system is complete, is consistent, is definite, is certain, and that the one that is now proposed is indefinite, uncertain, undefined, and nobody can tell what it will be or what it will amount to.

Mr. Durfee — Mr. Chairman, the thought intended to be expressed in the substitute offered by the gentleman from Rensselaer, as I gather from his remarks and from the remarks of other gentlemen who have spoken upon that subject, is that the power of removal should be vested in the mayor; but unless I am very much mistaken, the substitute, in fact, vests the power of removal in the mayor, or the mayor and the common council.

Mr. Roche — No.

Mr. Durfee — If that is the case, then the drafting of the substitute does not fully express the idea which it was intended to convey. If I remember correctly the expression is so connected with the expression of the power relating to appointment that it puts the power of removal on the same footing as the power of appointment. I desire to call the attention of the authors of the substitute to that defect, as it seems to me, in phraseology.

The Chairman put the question on agreeing to the amendment offered by Mr. Roche, and it was determined in the negative, by a rising vote, 46 to 65.

Mr. J. Johnson — Mr. Chairman, in the amendment proposed by Mr. Brown yesterday, the last clause, commencing with the word "nothing," on line 6 of page 3, was stricken out. I understand that it was not intended or precisely understood that it was stricken out at that time. I, therefore, move to amend the section as it now stands by inserting these words; add at the end of section 3, as amended, the following: "Nothing in this section contained shall in any manner interfere with the power of the mayor to remove the head of the police force or department or other police officer, as such power is or may be conferred by law."

It is practically what was there before and what I believe no one desires to have done away with. I would also ask to add at the end of line 24, page 2, the words "or department."

The Chairman stated the question on the motion of Mr. Johnson.

Mr. Cochran — Mr. Chairman, if I recollect the ruling of the Chair last night, as to amendments offered by the minority, it was that they were not now in order. I fail to see why this invidious distinction is made between amendments offered by the minority and those offered by the majority party.

Mr. Johnson — Mr. Chairman, if that was the ruling, I will withdraw the amendment and will reserve it until the article is completed.

Mr. Mulqueen — Mr. Chairman, I ask unanimous consent to permit Mr. Johnson to offer that amendment now, so that we may get rid of this amendment once for all.

Mr. Cochran — I withdraw my objection.

The Chairman — Unanimous consent is asked to the introduction of an amendment by Mr. Johnson. If there is no objection it will now be considered. There being no objection, the question is on the amendment offered by Mr. Johnson.

The Chairman then put the question on agreeing to the amendment offered by Mr. Johnson, and it was determined in the affirmative.

Mr. Nicoll — Mr. Chairman, I now move to strike out all of section 3, as amended.

Mr. Johnson — Mr. Chairman, I submit that that is out of order.

Mr. Cochran — We ask unanimous consent, Mr. Chairman.

The Chairman — The Chair thinks the motion is in order.

The Chairman then put the question on agreeing to the motion of Mr. Nicoll, and it was determined in the negative.

The Secretary read section 4.

Mr. J. Johnson — Mr. Chairman, I desire, on behalf of the committee, to say that this section is, except in the transposition of a sentence, the same section that was originally presented. We have so fully discussed it, both orally and through the report of the committee, that I do not take the time of the Convention at present.

Mr. Bush — Mr. Chairman, I offer the following amendment.

The Secretary read the amendment offered by Mr. Bush, in the language following: Amend section 4 by striking out on lines 16 and 17 the words "to be elected with or without proportional or minority representation."

Mr. Davenport — Mr. Chairman, in moving the minority report of some of the members of the Committee on Cities as a substitute from this point on, I desire to say that I am authorized in their behalf to give the fullest and the heartiest accord to the principle of separate elections, and that we desire that that should be carried forward to its logical and full sequence. In the action with regard to general order No. 8, the State has been made to conform to the principles laid down in the article on cities in behalf of cities alone,

so that upon those two points there is really no question of difference. Upon the question of section 3, which has been passed upon, we are in strong opposition, believing that the principles therein contained are in conflict with the great principles of home rule, and in moving this substitute, it seems to us, that it provides that larger, fairer and freer quality of home rule which ought to be granted; that, while it recognizes the paramount authority of the State, it does something to preserve to the municipalities created by the State certain reserved rights which are not afforded by the present measure.

Mr. Bush — Mr. Chairman, I wish just to change that amendment. I want to leave out one word there, and I offer this in place of it.

The Secretary read Mr. Bush's amendment, as changed by the mover, in the language following: Amend by striking out the following words, line 17, page 3, "with or without proportional or minority representation."

Mr. Bush — Mr. Chairman, it seems to me that the sentiment of this Convention has been expressed so fully heretofore upon the question of minority or proportional representation, that but a few words will be necessary in this connection at this time. I believe that nearly every delegate upon this floor is a firm believer in the rule of the majority, and further, that minorities should not be represented upon any board, or hold any public position. I do not think, Mr. Chairman, that it is in line of or is following the principle of republican institutions to permit minorities to be represented. I think the only and the sole duty of minorities is to educate enough of their fellow-citizens of the majority so that they themselves may some day be brought into the majority, and that, I think, is their sole and only function, and that is the sole and only position which they should occupy in public affairs. I shall not make any long speech upon this question. I think the principle is so patent and plain to every one that they should not be permitted to be elected in this manner, that I shall say nothing more on the subject.

Mr. Dickey — Mr. Chairman, lest my silence might seem to give approval to this part of the cities article providing for minority or proportional representation, I rise to second the proposition of the gentleman from Ulster, in his proposed amendment, that this part of the section be stricken out. I am strongly opposed, and I believe my people are, to such a provision in this article. We believe in responsible party government and the rule of the majority, and, therefore, I will vote for the amendment.

Mr. Smith — Mr. Chairman, this Convention should have no

embarrassment in the adoption of this motion of the gentleman from Ulster. Certainly, the minority here have had no consideration paid to them, and that should be sufficient as a guide in acting upon this motion.

Mr. Holls — Mr. Chairman, in my opinion, the amendment offered by the gentleman from Ulster would strike from this article one of its most important and valuable features. For that reason I am opposed to it. A great deal has been said, when discussing minority and proportional representation, about majority rule. Now, nothing can be said in this body in favor of majority rule that I would not indorse very heartily; but I want honest majority rule, and not a mere plurality fraudulently calling itself a majority, and an honest majority rule is precisely what proportional representation would give us if carried into effect. Proportional representation means that a majority in any political division shall have precisely the weight to which its members entitle it, and no more. It means that one minority, merely because it happens to be the largest of several majorities, shall not arrogate to itself the functions of the majority; that a political party which has three-fifths of the votes in a city shall have three-fifths of the representation, and that another, having two-fifths, or one-fifth, or one-tenth, shall have its proportionate share, no more and no less. I will not take the time of this Convention for an elaborate discussion of the principles of proportional representation. Any man who has taken the trouble to look impartially into the matter will agree with me that it is the most honest and the most efficient method of securing true popular government. But, sir, this is not a provision making it mandatory upon the Legislature that proportional or minority representation shall be introduced. If it were, firmly as I believe in the principles involved, I should not be willing to put them into the Constitution. I do not think it would be wise to put into the Constitution a mandatory provision which could not be changed, except with great difficulty, requiring the cities to have proportional representation. But, sir, this is merely permissive. To strike out this permission would simply be to perpetuate a prohibition which now exists in the Constitution against even trying the experiment in the cities of this country. What this article tries to make possible is better government for our cities. I will not enter into a general discussion of this vast question nor attempt to answer the eulogies upon the present New York city government, which we have heard *ad nauseam* in this Convention. I do say this, however, that many serious, high-minded, practical men in this country have given thought and attention to the problem of better city government. They are not all of

them "dudes." They are not all of them "Pharisees." They are not all of them impracticable literary men or studious pedants. Most of them are thoroughly conscientious and honest in their views. They know that of the great cities of the world those which are governed well, are governed upon one principle. There is to-day no great city in the whole world, which is governed well, which is not governed by a great representative body, representing every class of its citizens. Look at the great cities of the old world, London, Paris, Vienna, Berlin, Glasgow. The problems which confront them are not essentially different from those of New York. They grow as quickly or more quickly than American cities. I would like to refer this Convention to a very interesting article by perhaps the highest living authority on municipal government in this country, Doctor Albert Shaw, whose essay in the Century for July is very interesting and very instructive. Those great municipalities, having practically the same problems to deal with, of sanitation, of education, of police, of street cleaning, charities and everything else which New York must attend to, are all governed practically upon the same plan; that is, they have a large council, representing every class of the citizens. The fact that in some of them there is a small property qualification for voting, has nothing to do with the question under consideration. It does not affect the fundamental fact that the entire civic body is represented in a large legislative and administrative body, and that body has the responsibility for the whole city government. Mr. Chairman, there is no better light for us in the problem which confronts us, than the experience of others who have practically had the same problems to deal with, and who have dealt with them successfully.

Mr. Hottenroth — Mr. Chairman, may I ask the gentleman a question?

Mr. Holls — I beg not to be interrupted at the present time.

The Chairman— Mr. Holls has the floor.

Mr. Holls— There is no better guide than experience. It is manifestly impossible in this country, and I, for one, am glad it is impossible, to put any restrictions whatever upon universl suffrage in cities. The plan advocated by the Tilden commission on municipal reform has been repudiated by the people, and in my opinion, rightly repudiated. I do not think the election of any board of finance by a separate class of property owners would improve our municipal government essentially. It would leave us with a great unrepresented proletariat, which, in my opinion, would be positively dangerous. But I do believe this, Mr. Chairman, that if

we are ever to have as good and economical municipal government in this country, as now exists in the large and great cities in Europe, it must come eventually from an improvement in the character of our city councils. I know I will be answered that for the last twenty or thirty years all municipal reform in this country on the part of both parties has tended to take away the last vestige of power from our boards of aldermen, until to-day they can do nothing but license peanut stands, give away franchises, and talk about the budget. I am aware of the tendency of municipal reform in this country. I know there has been a great movement to concentrate all power in the hands of one man, the mayor, making him practically a dictator, and electing every two or three years a despot with the hope that he may be a good one, and reform the entire city government. That has worked well in one or two instances, but in most instances it has worked wretchedly. It is utterly wrong and vicious in principle. It is entirely against the American idea of civil liberty and self-government. The American idea is representative government, not only in the nation and in the State, but also in the city, and I repeat, the only hope for better city government, in my opinion, lies ultimately in the improvement of the character of our municipal councils.

Now, sir, so far as the city of New York, including Brooklyn and Long Island City, and the other cities of this State are concerned, that improvement in the character of our boards of aldermen or city councils can never come so long as they are elected upon the district system. The collocation of the people in the city of New York is such that the time will never come when there will not be a number of districts densely populated, in which the character of the aldermen whom they elect will not be of the kind which the city needs and ought to have. I, for one, believe in representation of every class. I do not want to see a board of aldermen composed of millionaires, or of literary men, still less of students or college professors. I hope to see a common council, some day, legislating and attending to the affairs of the greater New York which surely will come some day, thoroughly representing every class and every part of the grand imperial city of the future. But I tell you it cannot be and will not be on the district system, for on that system the temptation to gerrymander, the temptation to rule out the minority entirely, will be too strong for any political party that may be in power. There are to-day in the city of New York over one hundred thousand voters who are as absolutely disfranchised in municipal affairs as if they lived in South Carolina or Louisiana. This is not right. It is un-American, for it is unfair. I do not know how many of the

board of aldermen of New York are Republican. I doubt whether there is one. There may, however, be two or three. If so, the number is entirely out of proportion to the number of Republican voters in the city. I use the word Republican simply because it is convenient. The minority belonging to any political party is in the same position in other cities. There is no way in which their just influence upon municipal affairs can be secured except by some plan of proportional representation. Gentlemen may say it has been tried in New York city before 1873. I wish to deny that absolutely. We should be very careful in the use of words. Minority representation has been tried, cumulative voting has been tried, and I think I am within the truth if I say that both of those systems have to-day been abandoned by most of those who, in the whole world, are working for better methods in favor of proportional representation. I cannot at this time discuss it in detail; I will merely say that its results would be that every political party should get exactly the same proportion of members in the representative body as its vote entitles it to in the entire popular vote. Nothing could be fairer, nothing could be more American, nothing could be better in every sense of the word, both for the city and the citizens. That plan has never been tried in this State. Why not? Because the Constitution at present says that every elector can vote for a candidate for every office to be filled. This one prohibition, put in at a time when proportional representation was not thought of, has been in the way of all progress, in the way of better election methods. It is time that we should remove this obstruction. There is nothing mandatory, I repeat. This does not commit the State to an untried experiment. It simply removes the obstacle from progress in the line of honesty and reform in elections. Mr. Chairman, I hope this amendment and other amendments to this section will be voted down. I would appeal to the gentlemen of the minority, for this is not a matter of partisanship, it is a question of fairness; but we have been told that appeals are useless, since the article is now, unfortunately, in such a condition that they do not choose to vote for it anyway. No one regrets it more than myself. No one regrets more than I do the outbreak of partisanship in this body. But if I cannot appeal to the minority, I certainly do appeal to the majority. We, gentlemen, cannot escape history, as Lincoln once said; and this is our opportunity for at least enabling the city of New York, enabling the good men, the earnest men, who want to improve its government, who would like to have a pride in their own city, giving them an opportunity of agitating for something better. We do not indorse their ideas in detail. We simply tell the people

of the cities here that some of the obstacles to reform are removed, and that if you can persuade the Legislature that proportional representation is a good thing, then let them ordain it. If it does not work well, it can be repealed. I appeal once more to all the gentlemen in this body, who believe that one of our greatest responsibilities, privileges and opportunities is to help improve city government, to vote down this proposition.

Mr. Jacobs — Mr. Chairman, yesterday afternoon we were treated to the election system in France, under the protecting care of bayonets and imperial police; and also, I believe, to the elections which are carried on in Germany under the same benign spirit; and they were held up to us as illustrations of how beautifully elections can be conducted if you only have plenty of bayonets and plenty of police; and it was urged in their favor that nobody had complained in those countries respecting those elections. Well, those who would have complained, when the second empire was established, were shot down in the streets of Paris on the Sunday afternoon. They never had a chance to complain after that. They were dead. As to Germany, the empire has its bayonets and has its police to break up meetings, suppress newspapers and imprison men under all sorts of charges and complaints for criticising the empire or the Emperor or the Chancellor, under that loosely-defined phrase, the minor treason. I hope that we will not have introduced into this country any of those lovable institutions. We are Americans, and we are content with American institutions. (Applause.) We come from Saxon blood, with almost two thousand years of free institutions, and we are content with the genius of our race and the raciness of our soil. We ask for no foreign importations. We do not ask to graft on our institutions something which may be illustrated by the city of Berlin, or of Paris, or of London, or God knows where. We simply ask for illustrations drawn from our own history, from the history of our own race. They suffice for us. We have lived under them, we have thriven under them, and we have grown to be a great and lusty people. England has an empire which stretches around or covers almost four continents, and we ourselves in less than three hundred years have grown to be a great republic of seventy millions of people; and we did not have proportional representation, nor cumulative voting, nor minority representation. We had party government. England and America are the only two countries that do have party government. We do not say it is majority government, but we say it is the government by parties which at recurring elections poll the greatest number of votes upon a given issue. Well, we people have been a long time coming

to that. We have had autocracy and we have had monarchies, and we have had aristocracies, and we had almost everything on earth except party government, and finally, as the result of all our travail, of all our revolutions, of all our internal convulsions, we and our fathers have come to the conclusion that the best form of government for a free people is party government; not that it is perfect, nor that it does not have abuses, not that it does not often go wrong, and very wrong, but take it as a whole, as a unit from beginning to end, it is the least oppressive, the least expensive, and the most satisfactory to our ways of thinking. And, sir, we have grown up under party government, government by the party which could poll the greatest number of votes at any given time. Have we suffered from it materially? Have our liberties been restricted? Has our prosperity been destroyed? Have our homes been sacrificed and invaded? Have our streets been deluged with blood in order that some salvation to society might be imposed upon us? On the contrary, we know that such has not been the case, and I am only waiting for my friend from Kings to hand me that curious list of historical works from which he draws his inspirations. As an anomaly, I think it would be interesting reading.

Mr. J. Johnson — Mr. Chairman, I believe we are on section 4.

Mr. Jacobs — Yes, sir; we are on section 4. You are perfectly right; and I will now strike it. So I may ask, why menace party government? And that is what this article intends to overthrow; that we shall revolutionize ourselves and no longer be governed by our habits of thought, our racial traits, but by something imported from abroad and which has its evolution out of peculiar conditions. In what country is there a party outside of America and England? Elsewhere they have groups of men who never can agree upon anything except hating each other. They are divided by language, by religion, by social gradations, and it may be necessary in order to carry on government there that every group should be proportionately represented; but, sir, it is not so with us. We are a people who speak one language. We are not divided by religious antipathies. We have no personal rancors. We have no gradations of society. However much we may differ on ideas of policy, we are the same in thought, government by party and no other way of government. I have no fear that the people of this State will ever vote any differently. Our friends cannot agree on what constitutes proportional representation. The very earnest and sincere and eloquent gentleman, whom I am now following, tells us that it has not been adopted anywhere. Well, now, there are quite a number of

people who think they have defined proportional representation. But I find that our friends always get away from telling what it is. It does not mean the Swiss free-list system, nor this plan nor that plan, nor the Belgium proposition, nor cumulative voting, but it means something in the air. That is the way generally with all those reforms, something of a butterfly vagary that you may talk about, but you must not define too closely, for if you should, we commons would get on to it, and we would not have it. (Applause.) Well, it is difficult, I admit, to define, and I admire the sagacity of the gentleman who said he would not go into particulars to show how it would operate. I will try and go into its operation. Let us take the city of New York for an illustration—it seems to be a favorite one—and assume that in the election of 1892, the thirty aldermen of the city of New York were then to have been elected — of course, on a general ticket. The thing cannot work any other way. Locality must be set aside, and everything must be swept to one side in order that this matter, this new-fangled idea, may have its full sweep. It is a little bit intricate to men who have not given any thought to the matter, and who cannot always carry figures in their head, to make plain to an assembly of this kind in the hurry of debate. Now, I say, let me make this plain, if I can, by supposing that the Swiss system, which is probably the most perfect of all proportional representation, existed in the city of New York, and that the thirty aldermen of that city were to have been voted for at that election. Now, in the first place, the aldermen, instead of being elected to represent districts, would have all been voted for on the general ticket. That is, every elector in the city of New York would have voted for thirty aldermen. To determine who were elected would require dividing the total vote cast by the number of aldermen to be elected. There were two hundred and four thousand votes cast at that election, in round figures. The total vote divided by thirty, the number of aldermen, would give ninety-five hundred as a quotient with which to divide the total Democratic vote of a hundred and seventy-five thousand, so as to see how many Democratic aldermen were entitled to be elected, not by the votes, but by a sort of common divisor — mathematics are always the weak point of our friends, the reformers. Well, we would divide one hundred and seventy-five thousand, the total Democratic vote, by the new way of getting at elections, by ninety-five hundred votes, and that would give eighteen full quotients, and a remainder of four thousand, and that would give them nineteen aldermen, on the Swiss plan. So it would take a hundred and seventy-five thousand Democratic votes to elect eighteen Democratic aldermen, and only four

thousand votes to elect one Democratic alderman. You see, the thing is full of beauty, and a lasting joy. Now, we turn to the Republicans. The Republicans polled a vote that year of ninety-nine thousand. Perhaps this plan supposes that that party, being of superior quality to our Democratic friends, is entitled to elect aldermen without quite so many votes as are necessary to elect a poor Democrat. (Laughter.) Well, we have a common divisor of ninety-five hundred into the ninety-nine thousand, and that would leave us ten full quotients, and another remainder of four thousand, and that would give eleven aldermen. But there is another plan, by which only twenty-eight aldermen could be so elected, and would leave two aldermen out in the woods, as it were. Now, comes the beautiful plan, called the De Hout plan, to provide for them. I never can get my friends to say which plan, the Hare plan, the Swiss plan, the De Hout plan, the Bruxells plan, or other plan they favor, but they are in favor of some kind of proportional representation. They never will tell you exactly which kind. But the De Hout plan comes in for contingencies and shows you how a very small minority, polling a very insignificant vote, can have an alderman. You will remember that the Republican party and the Democratic party, under this system of dividing votes by quotients, had a remainder each of over four thousand. Well, the De Hout plan provides that the Socialist party in New York, which polled six thousand votes at that election, being much larger than either the Democratic or the Republican remainders, should be given an alderman, making twenty-nine. As for the thirtieth alderman, a new election would have to be held. So, by the De Hout method, it would have taken one hundred and seventy-five thousand votes to elect a Democratic alderman in New York city. ninety-nine thousand votes to elect a Republican alderman in New York city, and, by the grace of God and this shifting method of electing, only six thousand votes to elect a Socialist alderman. That is the plan that is proposed to us as American people. Not because we ever had it before, but because in some other country than this, and for reasons which seem to satisfy, it prevails. Well, it prevails in those countries because they are afraid of popular government, because property holders in those countries have to be conciliated, and an additional weight given to them in the electorate, otherwise they would not agree to the reformatory movements there. But there is one country (Great Britain) where they have tried it in one form, called cumulative voting, where a man votes in the first place because he is himself, and then he votes according to the number of manors he may have in a borough,

or a parliamentary division, or, if they are scattered in parliamentary divisions, as elections are held in England for parliament on different days, he may travel from one parliamentary division to the other and there cast his votes, and if he should have twelve manors, he would have twenty-four votes, whereas poor little I, if I were there, would only have one vote, because I was so unfortunate as to be born simply a man and my fathers had not left me anything. Well, sir, they are getting rid of that in England, and at the great Liberal-Radical convention held at Newcastle last year, and approved by Mr. Gladstone, a program has gone for them. One man and one vote. The race on both sides of the Atlantic is united. Manhood suffrage once and once only, and party government, and not government by all sorts of butterfly politics. I do not want to be sneering about that. I know our friends are honest, are sincere, and undoubtedly as patriotic as I am, hoping for the good of this country, and taking as much pride in it as I am. I am not going to live forever, neither are they. We are not building for ourselves. There are others who will come after us, and we must keep them in mind also, and the best way for a man to do is to construct a system of government which shall be Saxon in its beginnings, developed and elevated by an American transportation. That is the kind of government I believe in, and that is the only kind of government I will ever vote for.

Now, there is something in this reform that does not always come to the surface. You do not hear the plain, common people asking for this new kind of government. It, like all new things, comes down from above, and percolates that way. It is the outcome of the best people, so much wiser than their poor neighbors, of those who are so much in tune with the full counsel of God that their mission seems to be on earth to reconstruct the whole scheme of things, and set aside such trifles as God and natural laws, and reduce mankind to some poor empty automatons to serve the useful purpose of mathematical calculations for the working out of intricate averages and percentages. That is all. Well, their schemes I have no doubt are honestly conceived. I have no doubt that they deeply believe in them, but if anybody can understand them he is beyond me. I think that most of their schemes are so subtle, so far beyond the ordinary understanding, as to require for their solution a more leisurely existence than this earth affords. (Laughter.) Now, in Chicago, last year, they had an election, and the Democratic party was forty-five thousand short of winning. There were ten commissioners for public works, or county commissioners to be elected. One having only crude Saxon ideas would suppose that the Repub-

licans being forty-five thousand ahead of the game ought to have had the ten, and the Democrats ought not to have had any. But, God bless you, sir, one of my friends, I think Charles Francis Adams, writing in the last magazine which I think they call the Proportional Review, proved that that was all wrong, that instead of the Republicans carrying off the victory, they should have shared it with their friends, the Democrats, who were forty-five thousand behind, and there should have been simply five Republican commissioners and five Democratic commissioners, because proportional representation must be preserved. Does anybody purpose that the American people will accept any such, I do not want any fad, but any such rainbow, scintillating vagary as that? I do not think so. I do not think there is any fear of it. But, says our friend, and he pleads very eloquently for it, and he is very deeply in earnest concerning this; the proposition is only permissive. Yes, it is very permissive, but I know the gentleman so well, I do not mean him particularly, but I know the gentleman so well that you put this into the Constitution, "may" have it adopted, and we elect a Republican mayor in New York and a Republican Legislature with a Republican Governor, and all the friends of this kind of a reform will pack their gripsacks, hurry to Albany and insist that the mandate of the people had converted "may" into "must." That is the trick. We understand this permissive legislation. Our friend rather gingerly touched upon the Tilden commission. I thought he would probably avoid that. That was a very beautiful blossom of reform. It was right after the Tweed episode. Mr. Tweed had made the mistake of thinking that he owned the city of New York. It took several courts I think to convince him to the contrary. (Laughter.) Mr. Schroeder — Mayor Schroeder — the ablest mayor that the city of Brooklyn ever had, and I suspect ever will have — he was a German — he was a man with honest instincts, with a high sense of duty, and an elevated conscience, took charge of the affairs of our city and proved just how, instead of owing only ten million dollars, we owed about forty million of dollars, and nobody ever could show us our assets. Well, he made that exposure. He was mayor then; comptroller, I think, in 1873, and mayor, I think in 1875; and a commission was appointed to remodel these municipal governments of ours, and the good reformers then as now were in favor of all of these new things, non-partisan party, civil service reform, proportional representation — everything on earth that is not American they favor.

Now, I will believe in a non-partisan party (a contradiction in terms) the very same day that I believe in Platonic marriages and

the propagation of the race by miracles — and not before. (Laughter.) But to return — why, it is something to laugh at isn't it, after all? And there is no wonder. Now, this commission was appointed, and out of their wisdom, being so much wiser than we, desiring to model us, not after ourselves, but after the people of some other country, they proposed that we should introduce into our affairs that element of aristocracy which is developed from property — the supposition being that if a man is himself he is of no particular account, but if he only owns a donkey he is much better that his neighbor, and, therefore, the donkey should have a vote. (Laughter.) So they proposed to have two boards. One was to be a common council, to be elected by the common people, — it would amuse them. But the real business end of the thing was that there should be a board of finance. (Voices — "Louder." "We cannot hear.") Well, I must consult my own lungs. (Laughter.) And lungs are not always brains, by any manner of means, though some people think they are. (Laughter.) There was to be a board of finance, and it was to be composed of six or fifteen men selected by a sort of superior selection, to be voted for by men who had property. That was the keynote. A man might have brains, and might be a very exemplary citizen, but if he was so unfortunate as to have no property, he was not to be of the elect. But if he was a roustabout, who had made his money with gamblers or in keeping saloons, or doing anything — even stealing — if you please, and could show he had it in bank or in the shape of houses — he was a man naturally fitted to be an elector, and to control the city of New York. Morals were to be set aside. Character was to be of no account. Property — that was the keynote. And if a man only paid taxes for a certain number of years, and owned a certain amount of property, according to the assessed valuations, he should have the inestimable privilege, if not the right, and I am not sure whether he knew it to be or only called it a natural right. (Laughter.) It is very funny — to vote for members of the board of finance who, when elected, were to do the entire business, lay out the expenditures, fix up the budget of estimates, vote the tax levy, and spend the money. All things then would be satisfactory. Well, the people did not seem to take to that after all. The people will, somehow or other, turn themselves from almost divine messages and go their own clownish and boorish way — and be happy at the same time. (Laughter.) This flying in the face of Providence I do not understand; but I suppose it is the appointed way; and they go on. And now let us see who composed this commission. You may recognize some old familiar names of gentlemen who are

always playing at the hand organ of reform; and if it is not this kind of reform it is some other vagary of men who seem to think the way to heaven is to climb a rainbow. They were E. L. Godkin (laughter), you never heard of him before, of course, you know that he is not in favor of any of these fancy things, some of which my friend has advocated; and James C. Carter, Oswald Ottendorfer, William Allen Butler, and the man it is reputed, who writes all of Mr. Cleveland's letters and messages — Simon Sterne. Singular, is it not, they all favor proportional representation? Sir, the same nascent feature is concealed in this proportional or minority representation in some way or other, to introduce into the American system the basic idea of aristrocratic government — more privilege and more weight to property. That is all. After that we can pay the taxes, and they will take care of us. I will not approve of that. I do not believe in it. And I apprehend that working under it is also something in the nature of cumulative voting — because minority representation largely means that. I have talked — I do not say with the gentleman himself — but with others, and have asked them what they understood by "proportional or minority representation," and in the course of conversation it generally came out that somehow or other the word "cumulative" popped out. I do not say they intend to conceal it, but it is only by questioning that it does drop out, and reveals that running through their minds there is the idea of cumulative voting associated with proportional or minority representation.

I do not know that there is very much more to be said about that, except this: suppose that we do have minority representation in these local boards — what good will it possibly do? I have been in the minority business myself. (Laughter.) "Ringing the alarm bell," as the chairman has claimed, will prove the beneficial feature of minority representation.

I was just innocent enough to get on a local board down our way, and to think that by co-operating with some other men I could accomplish some good. Well, I was like the little boy who got kicked by the mule — he was never handsome again — but he knew a great deal more. There were some four or five strong men on that board, and when I name them you will recognize them. There was Theodore B. Willis — a sagacious, upright and honest man; supplemented by one of the most sturdy, rugged and honest men I have ever known, our present supervisor-at-large, Thomas W. Fitchue. There was another man, and however much we may condemn his political methods I know of no reason for criticising his official honesty — John Y. McKane. They put themselves at

the rope. I think I have no egotism in saying that I am not exactly a babe in the woods, and so I took a hand with them, at the tail; and we pulled, and pulled, and we tolled the bell, in season, out of season, and at all hours. We had the press with us — The New York World and the Eagle, Democratic; the Free Press, German, Independent; the Union and the Times, Republican. And so we all got at the bell, and we pulled it for four long years, and pulled at it and tugged at it, and we went into a great many paroxysms of public virtue, and large-sized type. And, strange to say, we accomplished nothing. (Laughter.) We had the speeches, we had the public virtue, we had the press, we had everything except the votes. (Laughter.) And the votes, I am sorry to say, beat virtue. (Laughter.) We did not head off a job, or a sinecure, or any waste of public money; and all that we had was the satisfaction of knowing that we had performed our duty — and walked off with our clothes. (Laughter.) Nothing else. (Laughter.) There is nothing in this alarm bell business. I can tell you that. And yet, I learned a good many things there that I feel pleased about.

But, to go back to the main question, I hope we will cling to the old-fashioned ways. We are a people of conservative instincts, proving all things, and holding fast to that which is true. We have grown up under our system. We have never failed under our system. We have at the same time put down a tremendous war, built a Pacific railway, and established the greatest banking system the world ever knew — all in four years — and have done it by party government. We have built up under party government this country from ocean to ocean with free States made up of free men and with free Constitutions. Why should we depart from it and bring in something from abroad simply because it is something from abroad? Shall we bring our politics as we do our fashions from over the ocean? Or shall we cling to our own ways? I put that to the gentlemen. Do you suppose that if we take this down to the cities, where there is a great number of people who have come from abroad, who know how the thing works over there and who came here because they did not like things over there — that they will vote for this — oh, no! They know what it is. And how will we — I am going to speak now to the Republicans — how will we and the Republican party stand if we adopt this? As it is they say that we are not a popular party. But if we allow ourselves to be put into a position where our Democratic friends can say, "That is another step of the Republican party toward introducing an aristocratic feature into this commonwealth," how many votes

will be gained by that, not only for the Constitution, but for our ticket at large? I think not many.

Mr. Becker — Will the gentleman permit a question?

Mr. Jacobs — Certainly, sir.

Mr. Becker — I would like to know of him if he is the same "Original Jacobs," who introduced No. 91, and argued it before the Committee on Legislative Organization, containing this clause: "The Senate shall consist of nineteen members, who shall be chosen by the electors of the State, and shall hold their office for the term of three years from and including the first day of January next after their election. Every elector may vote for only eleven candidates for Senators?"

Mr. Jacobs — Yes, sir; the same man. And there is not a bit of cumulative voting there, or of proportional representation. (Applause.) Now, sir, I hope I have answered the gentleman's question. And if the gentleman will show me there is the first hint there of proportional representation, or cumulative voting, I will never speak again in this Convention. There is in it no minority representation in the sense in which the friends of that "fad" understand it — that is, an artificial minority gaining representation, not because of their strength or count of heads, but because they can have something in the shape of cumulative voting whereby property shall supplement their votes, and give them votes that they are not entitled to as men. That is what I object to.

And now I think I have said all I need say about this. I hope our friends will bear in mind that we are in danger of introducing a new and dangerous feature into this Constitution of ours, and as politicians and partisans we ought to object to allowing our enemies to put us in the false position before the common people of this country as favoring something whereby a man owning property shall have at the polls greater privileges than a man who does not own anything at all. (Applause.)

Mr. Goodelle — Mr. Chairman, I desire to say but a single word. I am in favor of this amendment. I am opposed to proportional representation and minority representation, believing that it is not in accordance with the spirit or genius of our institutions, and that it would not be accepted by the people. I am not in favor of socialism or anarchism; nor am I in favor of putting in our Constitution any enactments that will stimulate people of that class and of others, isms to organize a party, and then ask for minority representation in all our different municipalities, as well as in the country at large. For that reason I am in favor of this proposed amendment, and because

I am in favor of it I am opposed to submitting to the Legislature anything that this Convention does not approve.

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

Mr. Choate — I understand that that is the motion to strike out the words "proportional or minority representation?"

The Chairman — That is as the Chair understands it.

Mr. Choate — Then I move to strike out the whole of section 4, inasmuch as there is nothing left in it that is not recognized law.

Mr. J. Johnson — I agree that section 4 is not necessary at the present time, although possibly convenient. The mayor is referred to in the succeeding article as is also the common council.

The Chairman — The question is on the motion of the gentleman from New York (Mr. Choate).

Mr. Mulqueen — If you strike out the section as it now stands will any of the sections provide that the city shall have a mayor, and where in this proposed amendment does it provide that the city shall have a common council?

Mr. Spencer — I trust this motion will not prevail. This section 4 is a part, a necessary part as I deem it, of the home rule provision. We have had to-day a great deal of what one of the delegates from Kings has been pleased to dub "opera bouffe," and we are very largely indebted to the city of Brooklyn for many other things. I think that among the things that we shall be glad to remember when this Convention is over will be the three J's from Brooklyn — Johnson, with his dictionary; Jenks, with his comic almanac, and Jacobs, with his Child's History of Europe. (Applause.) Now, sir, are we to make a plaything of this subject? Are we to have an opera bouffe every time we come to deal with the serious question of city government? The succeeding sections of this article are based upon the fact that every city shall have a mayor, and shall have a common council; and for that reason, if for no other, I claim that this section should stand, even with the provision stricken out which has been stricken out. I can see no good reason why it should not appear in the Constitution that every city should have a mayor; and if by the succeeding sections you refer to a mayor in connection with our home rule provision, it should be a constitutional office, and recognized by the Constitution so that the Legislature may not wipe it out, and, in this manner, and by an indirect method, destroy the whole scheme of home rule. And the same may be said with respect to the common council. I see no reason why this motion should prevail.

Mr. J. Johnson — Mr. Chairman, the kaleidoscopic changes presented in reference to the city article came so suddenly, and with such brilliancy, that I confess I was a little dazzled, and my eyesight gone, when I spoke before. I think, sir, that the motion to strike out that section as it stands now is a central shot at the home rule proposition submitted by the Committee on Cities. (Applause.) Why is this provision that the mayor shall have two years? It is because such prodigious, such large, powers as are now vested in the mayor that the thought of the committee was that he should be a short term officer. In New York city the mayor is elected practically for six years. He is really elected for two years, but he appoints for six. We should make it impossible that his actual election should be for more than two years. We regard this as essential — that the mayors of the cities should have an early and quick return to the people.

The next section (since that is changed and since proportional representation is stricken out) I think could be amended possibly by saying " legislative board; " and if this amendment is voted down I shall probably offer that amendment. The next section means this: Mr. Jenks and every one here I think that has spoken with authority, with experience gained from acquaintance in the law department, or intimate association with city governments, following the language of Judge Finch, in 139 N. Y., agrees that although it would be most desirable, it is impossible to assimilate charters already made, of cities fully grown. But the thought of the committee was, as to new cities, that in the growth and fruitage of the future they should exist under similar laws, similar forms, and similar methods, in order that the work of legislation might be simplified. I hope that this amendment will not prevail.

Mr. M. E. Lewis — Mr. Chairman, I quite agree with the chairman of the Committee on Cities that the resolution as presented by the President of the Convention is a central shot and I desire the delegates of the Republican party in this Convention and the people of the State of New York who are interested in home rule for cities and in self-government to note carefully the man that aimed the gun.

The Chairman put the question on the motion of Mr. Choate to strike out section 4, and it was determined in the negative.

The Chairman — Are there any further amendments to this section?

Mr. J. Johnson— I offer the following amendment: To strike out lines 16 and 17, and the first word in line 18, and to insert " legis-

lative council consisting of one or two bodies," so that the sentence will read: "Every city shall have a legislative council consisting of one or two bodies, with such municipal legislative powers as may be provided by law."

Mr. Veeder — I move to amend the amendment by inserting before the word "with," in line 18, the words "to be elected by the electors thereof," so that they shall not be appointed, ever.

Mr. Johnson — There is no objection to that amendment; it is accepted.

The Chairman — The Secretary will read the amendment as now accepted by Mr. Johnson.

The Secretary — Every city shall have a legislative council consisting of one or two bodies, to be elected by the electors thereof, and with such municipal legislative powers as may be provided by law."

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

Mr. Johnson — I think that to say "to be elected by the electors thereof" is a surplusage.

Mr. Veeder — To be elected by the electors of the city, will, perhaps, be better.

The Chairman — If there is no further amendment to this section the Secretary will read section 5.

The Secretary read section 5 as follows:

"Sec. 5. All cities are classified according to the last State enumeration, as such enumeration shall from time to time be made, as follows: The first class includes all cities having a population of 250,000, or upwards; the second class includes all cities having a population of 50,000 and less than 250,000; the third class includes all other cities. Laws relating to any of the subjects hereinafter in this section enumerated in all cities of one or more classes are general city laws. Except as provided by section 6 the Legislature shall not pass any law, except general city laws, as to any of the following subjects in any city: First, streets and highways, except 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, and approaches to any such bridge or tunnel; second, parks and public places; third, sewers and water-works; fourth, the character and structure of buildings as to safety and security; city apparatus and force for preventing or extinguishing

fires; fifth, salaries of city officers and employes; sixth, ward boundaries; seventh, vacating, reducing or postponing any tax or assessment; eighth, membership and constituent parts of the common council; ninth, the powers and duties of the common council or of any city officer as to the subjects hereinbefore enumerated. The Legislature is not hereby restricted in 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."

The Chairman — Are there any amendments to this section?

Mr. Johnson — I ask that in line 16, page 4, the words "legislative board" be substituted for "common council."

Mr. Veeder — I move to strike out ——

The Chairman — Mr. Johnson has offered an amendment. Is yours an amendment to his?

Mr. Veeder — It is an amendment to the section. I move to strike out the paragraph.

The Chairman — It must first be perfected. The question is on the amendment offered by Mr. Johnson.

Mr. Holls — I for one have some little degree of desire to know what the amendment is that we are about to vote upon. I have not the faintest conception what it is.

The Chairman — Will Mr. Johnson send his amendment to the Secretary that it may be read?

Mr. Johnson — Will not the Secretary take it down as I give it; to strike out the words "common council," in lines 15 and 16, and wherever else they occur in the section, and substitute the words "legislative board" or "legislative body," which is the title we have given to it in the previous section. It does not change anything except the verbiage.

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

Mr. Veeder — For the purpose of having explained the meaning of the language, I move to strike out all after the word "enumerated," in line 17, of this section, page 4. I will ask the Secretary to read it.

The Secretary — "The Legislature is not hereby restricted in 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."

Vice-President Steele resumed the chair and adjourned the Convention until three o'clock this afternoon.

AFTERNOON SESSION.

Wednesday Afternoon, August 29, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, at the Capitol, Albany, N. Y., Wednesday afternoon, August 29, 1894, at three o'clock.

Second Vice-President Steele called the Convention to order.

Mr. Abbott — Mr. President, urgent necessity compels my asking to be excused from attendance on Saturday afternoon and on Monday during the day session.

The President *pro tempore* put the question on excusing Mr. Abbott as requested, and he was so excused.

The President — Mr. Andrew Frank desires me to ask that he be excused for to-morrow afternoon.

The President *pro tempore* put the question on excusing Mr. Frank as requested, and he was so excused.

Mr. Banks — Mr. President, I desire to be excused for Saturday.

The President *pro tempore* put the question on the request of Mr. Banks to be excused from attendance and he was so excused.

Mr. William Sullivan — Mr. President, I desire to be excused from attendance on Monday.

The President *pro tempore* put the question on excusing Mr. Sullivan as requested, and he was so excused.

Mr. Veeder — Mr. President, I desire to be excused from the session of Saturday afternoon.

The President *pro tempore* put the question on excusing Mr. Veeder as requested, and he was so excused.

Mr. Hirschberg — Mr. President, I ask to be excused next week for attendance at the County Court in Orange county.

The President *pro tempore* put the question on excusing Mr. Hirschberg as requested, and he was so excused.

The President *pro tempore* — The Convention will now resume the adjourned Committee of the Whole, and Mr. Johnson will take the chair.

Mr. I. S. Johnson in the chair.

Mr. Veeder — Mr. Chairman, I made my motion in order that

the chairman of the committee might explain to us the meaning of this sentence, and I will be glad to hear from him. I am not captious about it, but I do not understand what the purpose of this paragraph is. I would like the chairman to explain, if he will.

The Chairman — Mr. Veeder asks the chairman of the committee to explain section 5.

Mr. Veeder — The intent of the last paragraph of section 5, beginning with line 17, after the word "enumerated."

Mr. J. Johnson — Mr. Chairman, the intent and effect of that provision, as we understand it, is this — to illustrate, the cities of New York, Brooklyn and many of the cities of the State exercise a certain jurisdiction beyond their boundaries in the matter of acquiring and utilizing water rights. It seemed to the committee that when they were outside of the domain for which they were elected, it would be a gross invasion of all the principles on which the amendment was founded to provide that they should be beyond the reach of the Legislature in those other localities and other territorial jurisdictions. Since the article was framed, I have received communications from a number of gentlemen stating that that provision had another value. In the interior of the State there are many cities that are compelled for municipal purposes to carry their sewage beyond the city limit, and it equally affects that. It has no other purpose, and so far as we know, no other effect.

Mr. Veeder — Mr. Chairman, I ask then, to withdraw my motion.

Mr. Choate — Mr. Chairman, I desire at the proper time, and if now is the proper time to do it, to move a reconsideration of the vote by which the words "with or without proportional or minority representation" were struck out from this section, and it is immaterial to me at what particular time it is considered, if I may be allowed for a moment to state the reasons why I wish to make that motion. I do not know how the attention of other gentlemen was occupied at the time the question was put upon that motion, but it seemed to me that the committee did not understand what they were voting upon. At any rate, a large proportion of the members of the Committee of the Whole did not understand it, and there were various gentlemen, myself among the number, who wished to be heard upon that subject; and men of both sides of this Convention, as they have been called. It has always seemed to me that those words in respect to the common councils of the cities of the first class were of essential importance to this scheme of city government as laid out in the preceding and the succeeding sections; that the great cities, containing, as each of them does, a very large

minority of citizens interested in the affairs of the city, and whose interests, perhaps, exceed, or at least equal, those of the majority, should have some right of representation in a municipal legislature that might in time to come be charged with those immense powers of government in respect to which a restriction is applied, by the succeeding sections, upon the power of the Legislature of the State. You take, for instance, the city of New York — why, Chancellor Kent said fifty years ago, when it had put a population of 125,000 inhabitants, that in a century the city of New York would rule the affairs of the entire State; and as time has advanced that prophecy has been more than justified; and I think it may well now be predicted that during the time that this Convention, which we are now framing, if put in force, shall be in operation before another Constitutional Convention, that will substantially be the fact, especially if there should be, as may well be expected, a union of the cities of New York and Brooklyn.

Mr. Bush — Mr. Chairman, for the purpose of a ruling, I rise to a point of order.

The Chairman — The gentleman will state his point of order.

Mr. Bush — My point of order is that the section which the gentleman is debating has been already passed, and the debate on that section, or anything in relation to it, is not now in order.

Mr. Choate — I wish to say in regard to that point of order, Mr. Chairman, as I said at the outset, that I do not especially care when I shall have an opportunity to make this motion to reconsidér; but our rules provide that a motion to reconsider must be made on the day on which the vote was taken, or on the next legislative day; and they also provide that the same rule shall apply in the Committee of the Whole, with some exceptions, as in the Convention at large; and if it is sufficient for my purpose, I will give notice that I intend to make such a motion at the proper time; and if the report of this Committee on Cities should extend beyond to-morrow, I shall insist upon my right to make it before the subject is disposed of, and before the to-morrow's day is completed.

The Chairman — The Chair holds that the point of order raised by Mr. Bush is well taken. The committee will proceed with section 5. Are there any further amendments to section 5? If not the Secretary will read section 6.

The Secretary read section 6 as follows:

"Sec. 6. Laws, other than general city laws, relating to any of the subjects enumerated in section 5, or to such subjects with other

subjects, are special city laws; all such laws, and bills therefor, shall contain the words "special city law" before the first section of the bill or law. After any such bill has been passed by both branches of the Legislature, the house in which it originated shall immediately transmit a certified copy thereof to the mayor of the city to which it relates, and within fifteen days thereafter the mayor shall return it to the house from which it was sent, with a certificate thereon that such city does or does not consent thereto. In every city having a population of 500,000 or more, according to the then last State enumeration, the mayor, and in every other city the mayor and the common council, shall act for such city as to such bills. After consent is given to any such bill, as herein provided, it shall be presented to the Governor for his action thereon. Any such bill which is returned without the consent of the city may be passed by a three-fifths affirmative vote of the members elected to each branch of the Legislature, and it shall then be subject to the action of the Governor as are other bills. In such cases there shall appear thereon, after the enacting clause, the words "passed by a three-fifths vote without the consent of the city." The Legislature shall provide for public notice of any such bill so transmitted to the mayor, and for opportunity for hearings thereon before the consent of the city is given."

Mr. J. Johnson — Mr. Chairman, I desire to amend this section by substituting for the words "common council," wherever they occur, the words "legislative body." I believe that was the phrase we used in section 4.

Mr. Holcomb — May I hear, Mr. Chairman, what that amendment is?

The Chairman — The Secretary will state it.

The Secretary restated the amendment offered by Mr. Johnson.

Mr. Holcomb — I hope, Mr. Chairman, that that amendment will not be adopted. We are accustomed to the words "common council," and have been for many years. The generations of man are uncounted since we have had in the city of New York a common council, and the words "legislative council" are simply an innovation. So far as I am concerned, I hope this amendment will not be adopted.

Mr. Johnson — I will simply say, Mr. Chairman, that this is in conformity with the last two sections as they have been adopted by the committee.

Mr. Holcomb — Then, Mr. Chairman, I shall move to strike out

the words "legislative council" where they appear in the other portions of the bill, when the time shall come.

The Chairman — The motion is not in order now.

The Chairman put the question on agreeing to the amendment offered by Mr. Johnson, and it was determined in the affirmative.

Mr. Nicoll — Mr. Chairman, I move to substitute for the words "three-fifths," in line 12, at page 5, the words "seven-eighths."

The Chairman put the question on agreeing to the amendment moved by Mr. Nicoll, and it was determined in the negative.

Mr. Nicoll — Now, Mr. Chairman, I move to strike out the words "three-fifths," in line 12, of page 5, and substitute the words "four-fifths." Of course, the purpose of this motion is obvious. Under the amendment first introduced by the distinguished chairman of the Committee on Cities, it was provided that on those matters of local government and jurisdiction which appertained exclusively to the city, the Legislature was to have no power of interference. That was essentially a home rule provision, and I had occasion in the course of my remarks upon that to compliment the distinguished chairman of the Committee on Cities for his adherence to the doctrine of true home rule. Unfortunately for us who believe in that doctrine, an amendment was interjected which has now been incorporated in the article, so that instead of having the *quantum* of home rule first offered to us by the majority of the Committee on Cities, we have now only a half-way, or a mongrel, measure of home rule. In other words, instead of giving the cities exclusive control over their own affairs without interference through the Legislature, we are now informed that the grip of the Legislature shall still be left upon the cities, but that they cannot interfere with local affairs, except by a three-fifths vote. Why was that surrender made by the redoubtable champion of home rule on the Republican side of this Convention? Why, having espoused the cause of home rule with all sincerity, has he now gone a dozen steps backward and left the cities of this State still in the grasp of the Legislature even as to their local concerns? What induced him to retire from his first strong position upon this subject? What we want in the cities of this State is the power to control our own affairs without interference on the part of the Legislature. We all know what has been going on in this State for the last fifty years, how our cities have been governed, even as to minute local matters, by the Legislature of this State. We know that we have no office, no franchise, no power, no privilege which cannot be taken away from us to-morrow; and the demand which we have made in this

Convention is that hereafter, as to those matters which are of purely local concern, we shall have absolute control without legislative interference. Evidently some decision has been arrived at in this matter. We are now informed that we shall never have, after long years of suffering and protest, that full measure of local self-government to which we are entitled, but that the business shall be continued at the old stand at Albany, except that it shall be done hereafter by a three-fifths vote. Well, three-fifths is better than nothing; half a loaf is better than no bread. If you want to divorce our local governments from control by the Legislature except by a three-fifths vote, why, a three-fifths we would have to take; but let us not accept it upon the notion that we are getting much of any home rule by that provision. Either adhere to the strong and vigorous propositions which were found in the first measure which proceeded from the Committee on Cities, or else at least give us a four-fifths vote, so that this prohibition to the Legislature from interfering may be practical and substantial. What do three-fifths amount to? Only a few more votes must be got than are needed now. Why not, at least, give us something? If, in fact, it be true that it is necessary for the Legislature to have some control over the affairs of cities; if you say it is not safe to give them the absolute control over their local affairs; that there must be some mode of escape, why let it be even in the four-fifths provision, and not in the three-fifths, which amounts to nothing. And those are substantially my views upon the subject. I think my amendment would work to our advantage in some respects.

The Chairman put the question on agreeing to the amendment moved by Mr. Nicoll, and it was determined in the negative by a standing vote, 31 to 54.

Mr. Bush — Mr. Chairman, I move to amend section 6 by striking out from line 12 the words "three-fifths" and substituting therefor the words "two-thirds." Under the present Constitution of this State, no property of the State can be devoted to a local or private purpose unless by a two-thirds vote of the Legislature. When this proposition was first introduced in this Convention as a home rule provision, it was provided that upon the subjects enumerated in this article the local legislatures, or common councils, should have supreme control in the matters therein mentioned. The illustrious President of this Convention — I might say the Prometheus of this Convention — saw fit to propose an amendment of three-fifths, and in that way has virtually destroyed what-

ever home rule there was in this article upon these enumerated sections. Now, if, under the present Constitution, it was deemed advisable that before any property of the people of the State could be devoted to a local or private purpose, it should require only two-thirds of the members of the Legislature to support it, it seems to me that it would be equally fair that before the Legislature should interfere in the purely local and private affairs of cities a two-thirds vote of the Legislature should consent thereto. Under the proposed apportionment which the Republican majority in this body will undoubtedly carry through — which I hope will not be adopted by the people — but in case it should, there will be 150 members of Assembly. Three-fifths of that number would be ninety. A majority of the members would be seventy-five. It is necessary to have only fifteen more than a majority at any time to entirely override the views of the local authorities of any city as to whether they will or will not have any particular provision proposed by the Legislature. Now, it is only fair to say right here that in all probability any party which controls the Legislature will control it by more, must control it by more, than seventy-five votes; probably eighty or eighty-five, leaving at any time probably not more than five or six votes necessary in order to get three-fifths. Now, what would be the effect of that? At any time in this State when a party in the majority needs a three-fifths vote to accomplish its purpose in any city in this State, it will only be necessary to unseat five or six of the opposition in order to get that control; and has any man in this Convention ever seen the time when any political party in this State, or in the nation, hesitated to unseat five or six of its opponents if they stood in the way of accomplishing any great political purpose? If we adopt this measure, then I would like to see this Convention adopt some method of having the courts determine who are or who are not entitled to seats in the Legislature; because, every session of the Legislature after this is adopted, will simply see a long list of contests in case it is necessary to get a three-fifths vote; because I never knew a political boss that hesitated one minute to unseat four or five common ordinary members of Assembly, if they stood in the way of his mighty will to interfere in some great city of this great land. It seems to me that some consideration should be given to this question if men wish to give home rule to any city. This does not give one particle of home rule. Three-fifths is no better than a majority. It is actually, probably, worse, because it would create scandals that would not arise if there was an absolute majority. For myself, I would much rather

vote that a majority should do it than three-fifths. The effect will be much less scandal in the Legislature of this State.

Mr. Dickey — Mr. Chairman, some people would growl if they were going to be hung, and as for me, for one, I am getting tired of this trying to do something, taking away from probably Republican Legislatures and giving to Democratic cities the power that the Republican Legislature ought to retain for the good of the cities and for the good of the inhabitants, and the Republican minorities in the cities, giving it to the Democrats who now control, and probably will always control, the larger cities, and getting no recognition whatever for it; on the contrary, censure and abuse. This provision of three-fifths, if it should be changed at all, should be lessened instead of increased. As it is now, it is prohibitory. What does three-fifths mean? Three-fifths of the present number of Senators is twenty of the thirty-two. Three-fifths of the 126 Assemblymen is seventy-six. The Republican party has seldom any such number in either branch.

Mr. Bush — How many have they now?

Mr. Dickey — Now, if I may answer you, the conditions were such that the people rose in their might, as they do periodically, and gave us an exceptional majority. That is not likely to happen to that extent in some time again, because the people who gave us the occasion for it, the John Y. McKanes and others, are serving terms in State prison, so that they won't be out to commit such outrages; and the fact that they were sent to State prison will deter others from committing like outrages and awakening and arousing the people, and all the people, so that they will come out and smite you hip and thigh. (Laughter and applause.) And in the Senate, Mr. Chairman, three-fifths of the proposed number, as proposed by the Committee on Apportionment, of fifty, is thirty in number. Three-fifths of 150 is ninety. You can see at once, when you contemplate these figures, that our President has leaned on the merciful side, and has really given these gentlemen the home rule that they are clamoring for. He has put it in the power of a Democratic mayor of a city to rule absolutely without any interference on the part of any Republican Legislature; and I am surprised that these gentlemen do not quickly pass this section and be glad they can get it from this large Republican Constitutional Convention.

Mr. Choate — Mr. Chairman, I think it is time for a word to be said in explanation of a certain confusion of ideas that seems to prevail here about this phrase home rule. As it is put at the head of this article by the Committee on Cities it means one thing. As

it is advocated by these gentlemen who are trying to amend and nullify this section it means another thing. I know very well what they mean by home rule, and it is time to say it. They mean Tammany rule, as it is and as it has been. Now, Mr. Chairman, if they are not satisfied with this three-fifths, and if, as Mr. Bush says, they would rather have it go back to a majority, it will go. (Applause.) I was very much disappointed this morning in not having an opportunity to be heard on what seemed to me to be a cardinal feature of the scheme proposed by the Committee on Cities, and that was the right of the Legislature to give the minority in any city, especially in any great city, a voice in any Legislature that might be charged with these large legislative powers; and for one, I am opposed, and shall always be opposed, to conferring upon any legislature of the cities such power as long as that kind of home rule that they contend for is still maintained. I trust this motion of Mr. Bush's will be voted down.

Mr. Dean — Mr. Chairman, I move to amend the amendment by inserting the word "majority" in place of "three-fifths." Mr. Chairman, I believe in the rule of the majority. I believe that to be absolutely essential to a republican form of government. Under this provision we have introduced the very extraordinary proposition that we will allow the mayor to have a veto power upon the acts of the Legislature. This is certainly a very extraordinary proceeding, and one which can be justified only upon the theory that the Legislature is not to be trusted. However, so long as we are going to submit to a second veto, a veto by the mayor of a city, to be afterward subject to the veto of a Governor, and so long as we will allow a period of fifteen days between the enactment of the original proposition and the action of the mayor, it seems to me, after a provision has been passed through the Legislature and has been subject to this veto by the mayor of a city, that it should come back to the Legislature and be passed by a majority vote. Certainly there is no reason why we should take anything less than a majority, or anything more. It is a correct principle of government, and I believe that it is the duty of this Convention to stand squarely upon that principle.

Mr. Hill— Mr. Chairman, the motion that has just been made by the gentleman from Chautauqua (Mr. Dean) seems to remove whatever of home rule has been provided in this section. To go to the city with a measure for its veto power, and then return to the Legislature and permit the Legislature to overrule that veto power by a majority vote, is simply leaving the matter where it was when it passed the Legislature in the first instance. It robs cities of

whatever good there is in the principle of home rule. Now, Mr. Chairman, it seems to me that the concession which has been made by the Committee on Cities to cities in the way of home rule is a wise one. It is not a novel proposition. It has been suggested repeatedly by eminent statesmen in this country, that some provision should be made to secure the autonomy of cities. The great evils which have sprung up in times past by unwarranted legislative interference have been such as to awaken public interest in this matter as in no other matter before this Convention. Years ago the subject of home rule for cities was thoroughly considered by a commission appointed by Governor Tilden. They examined carefully into the question of the government of cities, and in their report, among other things, they say that "one of the evils existing in the government of cities is the assumption by the Legislature of the direct control of local affairs. This legislative intervention has necessarily involved a disregard of one of the most fundamental principles of republican government." Continuing, they say: "We entertain no doubt that this intervention has greatly aggravated the evils which it was, in many instances, designed to remove. There are some established truths relating to this subject of which the public needs to be reminded in order to perceive what a wide and dangerous departure from sound methods of government is thus made. Our existing system of national and State government stands fully accepted by us as the most perfect, and, practically, the best adapted to our wants. In any effort, therefore, to cure incidental evils arising from defects in the details of the structure, we should take care not to disturb the foundations or endanger its perpetuity. The system of government by municipalities is inherent in our free institutions. In separate communities existing as integral parts of the commonwealth, but having local interests which immediately concern themselves rather than the State at large, the instinct of self-government has always asserted itself in some way as the basis of their organic life. From this vital germ have sprung the municipalities which in every civilized State have claimed and exercised the right, sometimes granted as a concession of sovereign power and sometimes extorted by superior force, of administering law and government in respect to their local affairs, while retaining their allegiance as members of the whole nation."

Then this commission proceeded to give some of the reasons why the Legislature should be limited or restricted in its control of municipalities. They state three or four reasons. Among them are these:

" First, they (the Legislature) have not the requisite time to examine into the condition of affairs of municipalities.

" Second, they have not the requisite knowledge of details, and

" Third, what is even more important, the general representatives have not that sense of personal interest and personal responsibility to their constituents which are indispensable to the intelligent administration of local affairs."

The commission advised that a constitutional amendment be adopted to avert these evils.

Several years subsequent thereto, the Senate committee of 1890 made a careful examination into the government of cities of this State, and arrived at substantially the same conclusions, among which are these:

" Our investigations result in the conclusions that the chief difficulties which underlie the government of cities in this State are four-fold:

" First — Over-legislation and too frequent yielding on the part of the Legislature to the importunities of representatives of the various cities for the passage of special or local bills. In our opinion, the Constitution should be so amended as to protect cities against the power of individuals to appeal to the Legislature, and to protect the Legislature from the necessity of entertaining such appeals by restricting its powers to legislation by general laws.

" Second — The absence of a general law for the government of all the cities of the State, whereby larger powers should be granted to local authorities and the Legislature correspondingly relieved.

" Third — The absence of complete and accurate information relative to municipal administration.

" Fourth — Subordination of the city business to the exigencies of State and national politics."

And they, Mr. Chairman, prepared an amendment to meet these evils against which the report of the Committees on Cities is designed to legislate. If there be one question, Mr. Chairman, above others in its importance to municipalities — and I speak not for the municipality of the city of New York — it is that they should be protected from the hasty, precarious and inconsiderate legislation that has frequently occurred in the past, and is likely to occur frequently in the future, whereby their rights, their interests and their welfare may be jeopardized. There seems, Mr. Chairman, to be no reason whatever why the Legislature should not be prohibited from interfering with the ordinary business affairs of municipalities. It is not easy for a member of the Legislature, coming from the eastern end

of Long Island, to find time to examine into the business affairs of a particular ward of a city, like Buffalo, so as to be able to legislate intelligently in regard thereto. The great questions of public policy, to which our President alluded in his remarks a few days ago, must ever remain within the domain of legislative action; but aside from the important questions of public policy, matters affecting local interests ought to be conceded to the municipalities affected thereby, for they are much better prepared to transact their affairs in accordance with their interests than any Legislature.

As I said a few moments ago, this proposition is not a novel one. In 1835 the English Parliament passed the Municipal Corporations Act, which swept away many abuses and accomplished needed reforms. That act was amended repeatedly, and in the year 1882 it was codified in the form of what is known as the Municipal Corporations Act of 1882. It provides an important and comprehensive scheme for the government of the English and Welsh municipalities. A little later another act was passed, relating to the local government of boroughs, the metropolis and the counties in England and Wales. Parliament has thus provided for local self-government in England and Wales by a general law, wherein is reserved to municipalities the power to secure amendment of any local scheme of incorporation, upon petition to and confirmation by Her Majesty's Privy Council or by Parliament. So far as we have been able to ascertain, the Municipal Corporations Act of Great Britain has proved a great boom to the municipalities of that country. And on this side of the water many States permit the granting of charters only under general laws, and three States of the Union have taken a positive stand in favor of home rule for municipalities. These States are California, Washington and Missouri. They have incorporated into their Constitutions provisions securing to municipalities substantial home rule. Will the State of New York deny to its municipalities that degree of home rule which has been accorded to municipalities by other States of the Union, and even under monarchical forms of government? Gentlemen will remember that Rome, with her iron rule, did not hesitate to bestow upon her conquered municipalities self-government or local government; that those municipalities were permitted to conduct their local affairs as they thought best. Even in the middle ages, we read that the German emperor permitted the so-called "imperial cities" to control their local affairs as they thought best. It seems to me, both upon precedent and upon principle, that this measure should be adopted as it has been reported.

All the writers on political science of the present day favor the

system of local self-government for cities. De Tocqueville says that "a nation may establish a system of free government, but without the spirit of municipal institutions (institutions communales) it cannot have the spirit of liberty."

John Stuart Mill attributes "the operation of free institutions" to the efficiency "of local administrative institutions." The royal sanitary commission of 1869 declared that "the principle of local self-government has been generally recognized as of the essence of (English) national vigor." And the exigency seems to have arisen in this State when local self-government may properly be conceded to its municipalities. It will not impair State sovereignty.

The only criticism, Mr. Chairman, that I would make upon the report of the Cities Committee is that it should be restored to its original phraseology. But the concession that has been made is undoubtedly a wise one, and we ask that the amendment now be preserved intact. It embodies all the good provisions that were recommended by the Tilden commission of 1875 and by the Senate committee of 1890. Since that time the demand for home rule in this State has steadily grown. It is almost irresistible in the municipalities of this State. If this amendment be passed and sent to the cities for their approval it will add strength to the whole article and to the other recommendations that the Convention is likely to make. In justice to these municipalities, we ask you that this provision, as it stands, without amendment, be approved by this Convention, to the end that the municipalities of the State may be protected from legislative interference and may be permitted to conduct their business affairs as they may deem that their interests require.

Mr. Spencer — Mr. Chairman, I fear, sir, that this Convention is liable, in voting upon the motion that is now pending, to take counsel not from its wisdom, but from its passions. I admit, sir, that as a member of the Cities Committee, I have not at all times been able to restrain my impatience with what I have felt to be the unjust criticisms and covert attacks that have been made upon the work of that committee. But, sir, we are here, not to be led by passion, and not to be influenced by the motives which underlie or which spring from any of these sources. Rising to speak upon this subject of home rule, I feel no embarrassment, as some of my fellow-delegates think I ought to feel, because I hail from a very small, although no mean, city. I would say to the gentlemen who hail from these large towns, that a man who is in the midst of a struggle or contest is not as well able to judge of the prospect of success or failure, or of the best plan on which to conduct the contest, as he

who is a little retired, and can take a broader and more calm observation of the field. And so, sir, a man from the interior, who may be a frequent visitor and a close student of the affairs of the great and grand city of New York, may not be without judgment and discretion in regard to its government. I say, therefore, that I do not labor under any embarrassment along these lines; but I do labor under the embarrassment and the difficulty which I experience in formulating my thoughts in proper language and enabling my rather thin voice to reach through the confusion of this chamber. Oh, sir, that I had the diction of a Choate, or the roar of a Dickey! But, sir, I do not know, and shall not pretend to say what Tammany's idea of home rule may be, nor shall I undertake to say what is the sentiment of the members of this Convention in regard to home rule. I have been told that the fact that the Secretary and not the committee prefixed this name to our article has misled some of our friends from the interior districts; and I think, sir, that I am justified in attempting, in my feeble way, to explain what the committee's ideas are on this matter of home rule for cities. It is not, sir, that we should constitute a number of States or independent principalities within the State. It is not, sir, that we should cripple the powers of the State to deal with its large and important affairs for the good of all its people. It is simply this, that we should relegate to the civic and State authorities, respectively, the discharge of their appropriate duties and functions, and in that regard to fasten the responsibility for government upon the parties to whom it justly belongs.

Now, sir, can we separate the matters that pertain to the life of the cities from the matters that relate to the life of the State? Your committee approached this subject from the point of view of the individual. Is it an attack upon State sovereignty that every man has what a learned and distinguished delegate from New York claimed to be his natural right? I think not. I think every man has rights that the State cannot and dare not invade. I think, sir, the State has no concern whether I part my hair in the middle, or whether I part it upon one side. I think, sir, that it is not the concern of the State to interfere with my domestic concerns, to say whether I shall wear the breeches in my household, or whether I shall confer that dignity upon my better-half. And so, sir, I say that in regard to cities, it matters not to the State at large whether Columbus avenue shall be forty or sixty feet wide, or whether there shall be one or two sidewalks upon the Speedway, a question that stirred up so much commotion in Albany last winter. These domestic internal concerns of the city the State ought not to have any-

thing to do with, any more than it has the right to say that I shall raise cabbages or pumpkins in my garden.

Now, sir, the life of the city corresponds in a very large degree to the life of the individual. The same parallel may be drawn between them, and you can carry it to any extent. I will not take the time. Now, is it possible for us to draw this line? Your committee felt that it was a very difficult task to undertake. I admit, sir, that when we were asked to designate these peculiar and particular things that relate exclusively to the city, and in which the State has no concern, we felt that a task had been set us that we could not accomplish. But, as we progressed and worked the thing out, we found that there were certain things, and these things we have undertaken to classify in section 5. And I would call attention to the fact that there are two classes in that category; those relating to the subjects, and those relating to the people or the bodies of officers who, in reference to the internal affairs of the city, are to regulate those affairs; and we have put those provisions there because we have said that the Legislature shall not, except under certain conditions, interfere with these matters. And then we have said that they shall not take these powers from one department and confer them upon another; and they shall not take the power of regulating parks from the park board or park commissioners, and confer it upon the sewer commissioners or upon the police department; and, therefore, the last two divisions of that category are necessary and essential to this scheme.

Now, sir, the next question that came before your committee was, how should these cities have a voice in legislating upon these particular distinct matters? And the question came up, after a large number of hearings; theories and plans were suggested by different men who appeared before the committee, and this question came before your committee: Is there anything in the affairs of the cities of the State that will form a basis or a suggestion as to how this voice of the city may be expressed? And, sir, there were members in your committee from different cities of the State, and one testified that for years the Legislature of the State has refused to interfere in these local concerns in our cities, unless they had the consent and the approval of our local officials. Others from other cities testified to the same thing; and we found that in the interior districts of the State there existed, by virtue of an unwritten law, a provision that the officials of the city should approve any measure before it should receive the signature of the Governor, even if it passed either of the Houses. Here, then, was the suggestion which came to your committee for the way in which the city should be

permitted to exercise its voice, and we have provided that in New York and Brooklyn that voice should be expressed by the mayor. And why? Because we found that they had no representative system of government there that was in touch with the people, but that the people were in touch with the mayor, and if he stood in the way of reform, the people would reform him, and that his successor would permit the act to be passed. But, we found a representative government in almost all the interior cities. We found they had common councils, and that it was in vogue at the present time that acts relating to these matters must receive the consent of the common council, as well as of the mayor; and, therefore, we made this provision that as to those things the approval or consent of the mayor and common council should be obtained.

Now, sir, we have felt that that should be final. We studied over the probabilities or possibilities of having that overruled, and we felt that it would complicate the section. We felt that it would involve propositions that might be confusing, to have bills sent to the Legislature, to the mayor and common council, and then returned subject to being overruled by a majority or a three-fifths vote, and then returned again and finally passed to take their chances before the Governor. But, sir, in waiving our own judgments in regard to this matter, we have agreed to report this bill as it now stands, and we think that, upon the whole, it is undoubtedly the wisest and best course to pursue.

Now, sir, we are not only willing, but anxious, to concede to the city of New York — and I will say that all this contest has raged around that city and Brooklyn — we are anxious to concede to her citizens this same right which is now, by an unwritten law, conceded to the interior cities; and in that connection we not only wish to apply this system to those great cities on the seaboard, but we wish to prevent the infraction of this unwritten law in respect to our own municipalities. I need not call your attention to the frequent and oft-repeated violations of this unwritten law in connection with certain cities of the interior. But, sir, we found that it was only broken or interfered with when, under the stress of political necessity, it was required to carry a vote in a certain city, or to keep in possession of an office some political boss; and, sir, a provision that does not meet the exigencies of party passion and of party necessity is a reed shaken by the wind. We want something substantial in this Constitution; it is necessary to have it in the Constitution, so that it shall be as firm as a rock, stable as the earth itself, so that the Legislature, under no stress of political excitement, can interfere with the domestic concerns in the life of any city. And so,

sir, I hope that this covert motion to defeat this whole plan and scheme of home rule will not prevail.

Mr. Dean — Mr. Chairman, the gentlemen who are discussing this question of a three-fifths vote in the Assembly or in the Legislature to carry these propositions, forget the fact that they are more than compensated for in majority rule by the fact of the great newspapers. Under this provision they have fifteen days from the time a bill passes the Legislature to lie in the hands of its mayor, and without his approval, to pass it over his veto. After it has passed through that process, it still has to go before the Governor for his action. Now, with these great newspaper establishments circulating millions of papers through the State every day in the week, Sundays not excepted, they have fifteen or sixteen issues before the matter can possibly get back to the Legislature. With all that deliberation, it is not fair to say that this is equivalent to passing it by the same vote, the original passage, because it is not. It has all the deliberation and all the discussion incident to fifteen days of newspaper notoriety. Those things are not true in the country districts. If this provision is going to be passed, there is no reason why it should not be extended to the chairman of the board of supervisors in every county in the State. They have no protection. There is not a daily paper in nearly half of the counties of the State, and they have no means absolutely of publishing these facts to the people. It is a matter of considerable importance, it seems to me. I cannot see how we are justified at this point in surrendering the sovereignty of the State in the slightest degree to the city of New York or any other municipality.

Mr. Dickey — Mr. Chairman, a single word in response to the kindly suggestion of the gentleman from Fulton in reference to myself. I think the majority of this Convention, if not all of them, prefer a roar to a squeal. (Laughter.)

Mr. J. Johnson — Mr. Chairman, I shall try and keep within the three-minute limit. The committee, I think, are very much obliged to the member of the committee who has just spoken. I was very desirous that every member of the committee should address the Convention, in order that the Convention might gather something from what might be said by them of the labor, the care, the thought, the consideration that have been given to this plan day after day, be it good or be it bad. Now, this amendment strikes at the vital part. I will not discuss it further than this: I want it for Brooklyn. I want it as a citizen. I want it as a Republican. I have been ashamed, sir, year after year, of the tale that the Legislature was

responsible for the bills that were passed here. They are not, sir. Consider this the Assembly. Strike out the delegates at large that represent New York, and tell us if this Assembly could defeat a measure as to sewerage or water-works sustained by the whole New York delegation? No. So, sir, the officials of New York come here and obtain the legislation, escape responsibility and load the odium on those that are not really to blame. The thought of this amendment that runs through it and around which all else clusters, is responsibility, responsibility. Let the people have some one in their locality that they can reach, and reach with their votes, and that, sir, is the basis of home government for cities. This, sir, I believe, will be a great enfranchisement to the city in which I have the honor to reside, and I believe that the delegates unanimously in this Convention, from the larger cities, I know not but from nearly all, believe as the committee believed on this point. And so we ask that this work be not broken, but that it go out to give if possible, responsibility, and direct responsibility, where it belongs.

Mr. Dean — Mr. Chairman, I ask for a count.

Mr. Cassidy — Mr. Chairman, I hope the amendment offered by the gentleman from Chautauqua, substituting "majority" for "three-fifths," will prevail. I am reminded of the famous saying of Napoleon the First, "Nothing by the people, everything for the people, and I will furnish it." That seems to be the position of the minority on the question of home rule. And home rule, as furnished by the majority, is purely statutory legislation, and experimental at that. We have no right, Mr. Chairman, to drag statutory legislation by the ears into the Constitution, as you would drag a squealing pig into the parlor, before we have experimented with and proved it. This legislation does not belong to the Constitution. I stated when I first came to this Convention that I believed home rule was a delusion and a snare, a will-o'-the-wisp that men chase, and when they think they have found it they fall upon its neck, as Aeneas did upon the neck of Anchises, and when they strike the ground, they are suddenly brought to their senses.

Home rule means simply this, when carried to its logical conclusion, that every man shall be a law unto himself and a terror to everybody else. I believe that every part of the State should have an interest in every other part, and that it would be just as unreasonable to ask the rural districts of the State to abandon their interest in New York city, as it would be to ask the people living in New York city to abandon their interest in the rest of the State. There are people living in New York State who are deeply interested in

the wealth of New York city. Much of the wealth of New York city is owned by non-residents, and much of the wealth of the country is owned by citizens of New York city. We are mutually interested in every part of the State alike, and so long as we have party rule, so long as we are willing to submit to the rule of the majority, the majority should prevail in the cities as in the rural districts. For that reason, Mr. Chairman, I believe that the amendment offered by the gentleman from Chautauqua should prevail.

Mr. Root — Mr. Chairman, it seems to me, sir, that the adoption of the proposed amendment to this section would make it utterly worthless. What is the sense of putting into the Constitution a provision that the Legislature shall not enact a law upon certain carefully enumerated subjects, unless a majority of the Legislature vote for it? That is all it amounts to. We have that provision now. A majority of all the members elected are required to vote in favor of every measure which becomes a law, and there is nothing whatever to be gained by providing that after the majority has voted for it, and the mayor of some city says he does not like it, the majority shall vote for it again. So this amendment, as it is manifestly intended to be, is totally destructive of the proposed provision. And, sir, as I believe the proposed provision would be a most useful and beneficent one, I am against the amendment. I have observed, sir, that one of the great difficulties in legislation, regarding our great cities, has been that a large number of the members of the Legislature have really been unable to obtain thorough information as to the real state of public opinion in the cities to be affected by the laws proposed. It is exceedingly difficult, to get people to come from New York and from Brooklyn, and from Buffalo and from Rochester to Albany, to hang about the Legislature and await the progress of bills, find out when they will get into committee, and await the opportunity to express their opinions and the opinions of their fellow-citizens regarding them. It is everybody's business to keep watch of legislation; it is, therefore, nobody's business, and in the enormous multiplicity of measures which are brought before our Legislatures, mounting up in the hundreds and the thousands, the people of our cities have practically no idea of the measures which are being passed upon by the Legislature. The Legislature does not get hold of the real sentiment and wishes of the people, except upon occasional measures of very grave importance, which are stubbornly contested. The result is, the people of the cities wake up to find that laws have been passed before they know it, when it is too late for them to protest, too late for them to object, and they take it out in grumbling at the

Legislature; when, if their opinions had been expressed before, the Legislature might have acted very differently. The plan now proposed by this committee secures this, Mr. Chairman. It secures the presentation of every law which relates to the private and local affairs of a great city; every law which relates to what may properly be called its private pecuniary interest, its business interests, as distinguished from its functions as a part of the government of the State. It secures that every such law shall, after it has reached a perfected form, be held before the people so that they shall have an opportunity, through their chosen representative in the city, to express their opinion about it and say whether they want it or not. It restores to them the power in regard to their private corporate affairs, to do what private corporations long had the right to do, to accept or refuse to accept a change of their charter. It provides that if, after this full opportunity for discussion and expression of opinion is had, the chief magistrate of the State shall signify to the Legislature that the people of the city do not want the law changing their private affairs, it shall not be forced upon them, except by a three-fifths vote; the vote of the same number that is required to be present when money bills are passed.

Mr. Chairman, I do not believe that requirement will stand in the way of any measure which ought to be forced upon any city in this State against its will, in respect of these private local matters. I believe the effect of the measure will be to concentrate responsibility. It will be to turn the light of public discussion, public opinion and public knowledge full upon the chief magistrate of every city, and put him to his responsibility for assenting to measures regarding that city's private affairs, or refusing to assent; and if he refuses, it will turn that same light and concentrate that same responsibility upon the Legislature of the State.

Mr. Chairman, I do not believe that the true remedy for evils in our government is to be found so much by changing powers from one officer to another, as by fixing responsibility upon some officer, so that the people may know who is faithful and who is faithless to his trust. (Applause.) I believe, sir, that this provision, as reported by the Cities Committee, will accomplish the great reform of fixing responsibility and compelling legislation regarding these cities, to be done upon a hill-top, in the full light, instead of being done under cover of the confusion and darkness of the legislative turmoil in the last days of the session. And, Mr. Chairman, with these views, believing that this amendment is intended to kill this provision, I am going to vote against it; and I hope every one else who

is really in favor of improving legislation as to cities, will do the same.

Mr. Vedder — Mr. Chairman, notwithstanding the very eloquent and able remarks of the gentleman from New York (Mr. Root), I am going to favor this amendment. I do not believe, Mr. Chairman, that any power other than that which is now by the Constitution given to the Governor, should have the right to veto upon the acts of the Legislature of this State. The Constitution now provides that the legislative power in this State shall be vested in the Senate and the Assembly. That is the legislative branch. The executive cannot interfere in that, except as the Constitution points out that he may veto a measure, and after that the Legislature may, by a two-thirds majority in each branch, pass the bill or measure over his veto. I believe that so far as interference with the Legislature is concerned, that is going far enough, and that no portion of the State should by means of the veto become greater than the State itself; that no one man, elected by a portion of the State, should by the Constitution become greater than the Legislature of the whole State. The Constitution should command, or may command, what the Legislature shall do, and that is binding upon the Legislature. It may also command what the Legislature shall not do, and that is binding upon the Legislature. If these gentlemen representing these cities desire to prevent the Legislature from acting, let them put a provision in the Constitution that in regard to certain subjects connected with city affairs the Legislature shall not act. But if we give the Legislature power to act in any particular in regard to cities, let us make it supreme in the exercise of that power. Now, the chief ground alleged for this provision is that the people of the cities are afraid of their chosen representatives in legislative halls. I have had somewhat of legislative experience, and I say to this Convention that I can remember no Legislature that ever sat in the capitol of this State where the members of either branch or both branches, outside of the city of New York, ever forced upon the city measures which its representatives in the Legislature did not want. New York itself represents in the Assembly of this State one-quarter really of all the members to be elected to it under the present apportionment, and it will represent nearly one-quarter under the system of apportionment which has been suggested. They also have one-quarter of the Senate of the State of New York, nearly one-quarter, and with the city of Brooklyn acting with them, and the city of Buffalo, they have over one-fourth, and no bill will ever be passed affecting the city of New York or the city of Brooklyn, unless the Members

and Senators representing those cities not only consent to it, but favor it.

Now, Mr. Root says that if we say they may pass it by a majority after the mayor has refused his consent, it gives no power whatever other than what they will now have without any such provision. Mr. Chairman, it does. The papers of the city of New York rule the State substantially, and if a measure should be passed by the Legislature and that was sent to the mayor of the city of New York, he would have fifteen days in which to consider that measure and to give his reasons why it ought not to be passed over his refusal to consent. If he were right, the press of New York city would thunder in his behalf, and no Legislature would ever dare to pass the measure over the refusal of the mayor to consent to its passage. It has that advantage. The Legislature of this State, gentlemen, always desires to do right. It may sometimes do wrong. This Convention may do wrong, but not intentionally. And of the thousands of measures that have been passed by the Legislature of the State of New York ninety-nine per cent of them have been voted upon by honest men, and have been carried by honest votes.

Now, in reference to the mayor of the city of New York, or of Brooklyn. Once in a while there is an accident in Brooklyn, and there is a Republican mayor. No such accident has ever happened in New York, and I believe it never will. (Applause.) Now, what about the present Senators and Assemblymen from the city of New York? Is there one of those thirty who come here each year, and nearly all of them belong to Tammany Hall, or of the seven Senators, but that upon this floor and the other does the will without questioning of Tammany Hall? And if they are suffered to vote on a measure affecting the city of New York it is fair to assume that they do so by the consent and with the knowledge of the mayor of the city of New York, and he will stand by them. I never expect to see the time, if this measure shall be passed, when the members, if they are all from Tammany, as they are quite apt to be, from the city of New York, or the seven Senators, that they will ever vote for a measure affecting the city of New York without the consent of the mayor of the city of New York. It would be worse than useless, a waste of time, to send a bill, which they had supported, down to the mayor for his consent or for the refusal of his consent, because he would grant it. I think it is going a good way in giving up the sovereignty of the people, which should be lodged in the representatives of the people in Senate and Assembly convened, to permit even a bill to be sent to the mayor of the

city before it shall go to the Governor, and then to go through what would oftentimes be a mere farce, to vote on it again after having received the reasons of the mayor of the city against it. But it is of some service, perhaps, in that it gives fifteen days for reflection on the part of the Legislature which passed it, and gives them time to think of the reasons which may be interposed, if any are, by the mayor of the city, and that is enough. I have faith in the Legislatures of the State that have sat here in the past and of those that will sit here in the future, that if they should pass upon a bill affirmatively, and the mayor should refuse his consent, giving good reasons therefor, and the metropolitan press of New York city should say that the mayor's reasons were sound and valid, every Member of Assembly and every Senator, particularly from the country, would change his vote, and vote in accordance with the sentiment of the mayor of the city and the metropolitan press of the city of New York.

Mr. Becker — Mr. Chairman, I desire to say a few brief words on behalf of the other cities of this State, outside of New York. When the Committee on Cities proposed its first report, its members, or a majority of its members, believed, and I think they still believe, that either for New York or for any other city in this State, it would be well nigh impossible to build up, nurture and support a healthy public spirit of citizenship, unless the citizens themselves, through their control over their local authorities, were solely responsible for the good government of those cities. For that reason the veto power invested, in the great cities of the State in the mayor, and in the other cities in the mayor and the common council, where common councils do something and amount to something, where they have not been shorn of their powers, as in the city of New York, where it was found by the Fassett investigating committee that 660 laws or rules passed by the common council of the city of New York out of 1,500 related to the granting of peanut-stand licenses and hack stands, and similar trivial matters of that sort purely municipal; but in the wisdom of some of the gentlemen of this Convention, who are so desirous of preserving what they, perhaps, justly believe to be the supreme control of the State over the affairs of these municipalities, the committee conceded, with hesitation, it is true, so much of its original plan as required that the veto power on these local matters should be absolute, but stood upon the provision which is now sought to be deprived of its whole force and effect, namely, that when the members of the Legislature had gone so far as to interfere with the affairs of the city in its purely business matters — for it is only business matters referred to in this provision — and had committed themselves, Mr. Chairman,

mark you, had committed themselves, as they do commit themselves when they pass a bill, to the justness of the measure; that if, on going back to the municipality, its chosen representative should say no, then when the bill came back again, more than that majority which had originally passed it, although a paltry few more, I regret to say, should be required to pass it again before it should go to the Governor.

Now, Mr. Chairman, I do not care to spend time on this matter, but I want to call attention to one thing that I think ought to be called to the attention of this committee, more forcibly perhaps than it has been, if possible. What are these matters in which this provision says that if vetoed by the home authorities, a three-fifths vote shall be required? Why, it is salaries, it is the control of the fire department, it is the control of the streets and the various things that the people of Buffalo, of Erie county, of Chautauqua county, if you please, have no more to do with, as relates to the city of New York or Brooklyn, than any man that sits in this Convention has. What do we care in Buffalo how New York cleans her streets? What do we care how much salary she pays to her policemen, and matters of that sort? And it is solely those matters as to which this veto power is reserved.

What has been the history on these questions Why, I remember in my own city, where, against the protest of every newspaper therein, that my friend talks about, and we have a powerful and an honest and intelligent press, against the protest of the citizens, against the protest of the mayor, the written protest, against the resolution of at least one branch of our common council, the members of the Legislature, who wanted to be renominated the next year, were induced to consent to raise the salaries of one of our local boards; and they followed it up by raising the salary of another local officer, and still another, from $2,000 to $3,500, and from $3,500 to $5,000, and all the protests we could put in, and all the protests the newspapers could make, were absolutely disregarded and pushed aside as availing nothing. It is such measures as that; street opening, street cleaning jobs, and all such things as that, which are given the cover of legislative authority, that this provision is aimed to prevent.

Now, how is it that they are able to pass these measures? Why, Mr. Chairman, simply in this way: because the remainder of the State is not interested in such matters, and knows nothing about them. The local representatives have all to say. They come to Albany and they say, "If you don't give us this thing, you can't have what you want in your city, for your own good, if you please."

They stand together. You scratch my back and I will scratch yours, is the principle that they act on, and history, time and again, has demonstrated it. I do not believe that the Legislature of this State, or the House of Congress, are worse than any other like bodies, but I do not believe they are any better. They have the same weaknesses of human nature that all of us have, and they are too apt, Mr. Chairman, at times to allow those weaknesses to govern them where they are not likely to be held responsible. If my friend, Mr. Vedder, from Chautauqua county, being in the Senate, chooses to vote for some measure for the city of New York, or against, if you please, I do not care which way it is, which his people do not know or do not care anything about, they do not hold him responsible, and there is no way in which they can hold him responsible, because it is a matter they know nothing about and care nothing about. It is purely a local matter, and it is such local matters as those that this proposed amendment is designed to cover; and it is upon legislation on the principle of mutual admiration and mutual support and mutual political affiliation, in which both political parties are equally reprehensible, that this bill is designed to put up the barriers and checks.

Mr. Chairman, it seems to me that some of the action which has been taken here to-day has done much indeed to give the people of this State the idea that we are simply fooling with this question of home rule; that we are trying to give the people of the State a chance to vote on the shadow, and not the substance, of home rule; that we are making a promise to the ear that hereafter shall prove false in the execution of it. Pause, gentlemen, and reflect what you are doing before you defeat this measure. Do not consider that it is designed solely for New York, for it is not. We have other great and growing cities in this State, as deeply, aye, more deeply interested in it than New York city. Do not strike down the last barrier that the Cities Committee have endeavored to interpose against this local legislation, this pernicious legislation about matters of purely business concern.

Mr. Towns — Mr. Chairman, it seems to me that this discussion has gone far enough. I had occasion to express my views upon this subject yesterday; and now I think I may be able to settle this question by appealing to the Bible. I think we need a little Scripture. In the language of Bildad, the Shuhite, and the Book of Job, I want to ask this Convention, "How long wilt thou speak these things? How long will the words of thy mouth be like a strong wind? Should a man full of talk be ever justified? Should wise men utter vain knowledge, and fill their bellies with east wind?

Should vain words ever have an end? How long will it be ere ye make an end of words? How long will ye vex our souls and break us to pieces with words? Who is this that darkeneth counsel by words without knowledge?"

Now, it seems to me, Mr. Chairman, that we have devoted sufficient time to mere words. We of the minority have made a gallant fight, we have done our best, and it seems now that we have done that best so well that we are about to go back where we left off some weeks ago, and are considering seriously whether we shall amend this article by giving the Legislature what it already possesses, as Mr. Root so well remarked, the power to pass a law by a majority instead of by a three-fifths vote, so I think that these words of Bildad, the Shuhite, and of Job, who in his agony cried out against words "leaves and nothing more," should be listened to by this Convention. Let us close this discussion upon this most pugnacious section of Mr. Johnson's production. Let us not constitute this body a body of counselors of confusion; confusion becoming worse confounded. Let us take a vote, and above everything, let us not stultify ourselves by putting into the fundamental law what is the very foundation of popular government by the majority, namely, that a law shall be passed by the majority. It seems to me that it would be the greatest stultification of all the stultifications we have sought to make ourselves guilty of during the pendency of our deliberations.

The Chairman put the question on the adoption of Mr. Dean's amendment to the amendment of Mr. Bush, and it was determined in the negative.

The Chairman put the question on the adoption of Mr. Bush's amendment, and it was determined in the negative.

The Chairman — Are there any further amendments to this section?

Mr. Cochran — Mr. Chairman, I have a substitute.

Mr. Becker — Mr. Chairman, I desire before the Convention closes to-night, by agreement with the minority members of the Committee on Legislative Organization, to offer a brief resolution. It will not require any discussion. It is in reference to the printing of the proposed amendment reported by that committee in regard to apportionment.

The Chairman — Does it refer to this section?

Mr. Becker — I am going to make a motion, if the Chair will pardon me.

The Chairman — In reference to this section?

Mr. Becker — In reference to the whole matter, Mr. Chairman. I am going to move that we rise and report progress.

Mr. McIntyre — I object, Mr. Chairman.

Mr. Becker — We are very desirous, Mr. Chairman, to get the State Engineer at work making certain maps, and for that reason I desire to make this motion. If there is any objection, of course I will have to wait until we come back this evening.

Mr. Bowers — Mr. Chairman, I understand the gentleman from Erie merely wishes to move that we rise, report progress, and ask leave to sit again, to enable him to make a proposition in the Convention that leave be given to print some documents which must be printed, if we are going into debate on the apportionment next week.

The Chairman — Are there any further amendments to this section?

Mr. Cochran — I have a substitute, Mr. Chairman.

Mr. Roche — Mr. Chairman, I would like to ask a question of the chairman of the committee.

The Chairman — Mr. Cochran has the floor.

Mr. Cochran — Mr. Chairman, so much has been said this afternoon in reference to the kind of home rule that the minority want in this Convention, and it has so frequently been said that the home rule they seek is Tammany Hall rule, that I desire to offer a substitute for this present section, a substitute which was prepared by the Committee on Cities and which was reported by them, at least by all of the majority party of that committee. I think if one thing more than another has become apparent to this committee it is that there are two parties in this committee.

The Chairman — The Secretary will read the substitute offered by Mr. Cochran.

The Secretary read as follows:

"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. After any such bill has been presented to the Governor and before he shall act thereon, there shall be twenty days in which, as to any city of 500,000 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 the common council 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."

Mr. Cochran — Mr. Chairman, I desire to say that I think it has become apparent by this time that there are two parties in this committee; those who desire home rule and stand up for it, and those who make a pretense of desiring home rule, and are only stabbing it in the back. I believe there is on this floor no more earnest and honest advocate of home rule than the worthy chairman of the Cities Committee, who has been so slandered and vilified by those who have no desire to work with him, but only a desire to hinder and delay his work. This Cities Committee came before this Convention with a report, and in that report and in their amendment they suggested what they thought was sufficient home rule to allow the cities, and in what particulars they thought the cities should govern themselves. But my worthy friend, Mr. Becker, who signed that report, seems now to have taken another tack and opposes what he advocated on the floor of this Convention a few days ago. In speaking on this section the gentleman from Erie (Mr. Becker) then said: "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, 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."

We discussed the amendment, and during the discussion a new light is brought in on the subject, and some of the gentlemen, who, I believe, are advocating home rule upon this floor and who do not want it, made a suggestion as to what they thought should go into that constitutional amendment. It was returned to the committee, and we find the committee reporting this suggestion embodied in the amendment. I listened with a great deal of attention this afternoon

to see if the worthy chairman of the Cities Committee would advocate this amendment as now proposed by the Cities Committee; but, sir, he has not said one word in support of the amendment which has now been interjected into their original amendment. Its advocacy is thrown upon a new member on the Cities Committee. I will leave this committee to draw its own conclusions, but I submit, sir, that if this Cities Committee reported what was really home rule at first, that they have now taken out of it the only element of home rule that it contained, and I trust that this substitute, which is not prepared by the minority in this Convention, but by the majority and by the Cities Committee, will now be adopted.

Mr. Johnson — Mr. Chairman, lest my silence shall be misconstrued, I wish to say that I believe it would be one of the greatest calamities that could happen to have that amendment adopted at this time.

Mr. Cochran — "At this time" is a good qualification.

Mr. Johnson — I am heartily in favor of the amendment as it stands, Mr. Chairman. It is a marked advance, a prodigious step forward and upward, and we must stand upon it.

The Chairman put the question on the adoption of Mr. Cochran's amendment, and it was determined in the negative, by a rising vote, 30 to 54.

Mr. Roche — Mr. Chairman, I would like to ask the chairman of the Committee on Cities the meaning of the words on lines 22 and 23, "or to such subjects with other subjects." What is their purpose? Why are they put in there? And in connection with this subject, I desire to call the attention of the chairman of the committee to the fact that the Constitution provides, in reference to private or local acts, that the subject shall be expressed in the title, and there shall be but one subject. Here it would appear as if the special acts or special city laws might be incorporated in acts which also contain provisions on other subjects. I would like to ask the chairman the meaning of that.

Mr. Johnson — Mr. Chairman, without that it would be impossible to draft a city charter — unless you could mingle the treatment of the enumerated subjects with those that are not enumerated, it would be impossible to make a law general as to cities. Without that, either one thing or the other would happen; you would pass laws as to enumerated matters without that limitation, or they would not be passed at all.

Mr. Roche — Then, Mr. Chairman, why not, in order to make it clear, in order to remove the possibility of inserting any acts of a

general character, provisions which relate simply to a locality, why not say, "or to such subjects with other subjects of a municipal character," or "relating to the municipality."

Mr. Johnson — Mr. Chairman, if the gentleman will let the matter rest until the evening session I will make a further statement.

The Chairman — The Secretary will read the next section.

The Secretary read section 7, as follows:

"Sec. 7. Nothing in this article contained shall limit or affect the power of the Legislature to annex contiguous territory to any city, or to consolidate contiguous cities, 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."

Recess was here taken until eight o'clock in the evening.

EVENING SESSION.

Wednesday Evening, August 29, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, in the Capitol, at Albany, N. Y., August 29, 1894, at 8 P. M.

Vice-President Steele called the Convention to order.

Mr. Becker — Mr. President, by mutual consent of the members of the Committee on Legislative Organization, I have one or two resolutions to offer, which relate to the maps setting forth in detail for the information of the whole Convention, the lines on which the Senate districts are laid out, also which relate to the printing of copies of the amendments for distribution.

The Secretary read the resolution, as follows:

R. 186.— Resolved, That the State Engineer and Surveyor be requested to furnish the Convention with maps of the Senate districts in New York county and in the remainder of the State, showing the total citizen population in each district, and the total alien

population in the same, and that the expense thereof be paid upon the audit of the Committee on Contingent Expenses.

Mr. Becker — I move that resolution.

Mr. Cochran — May I ask the introducer of that resolution if it contemplates a separate map for the county of New York, and another for the other part of the State. It would seem so from the wording.

Mr. Becker — It does, Mr. Chairman. The reason for that is this: the Engineer had already constructed one map in colors of the whole State. When he got down to New York he found that it was impossible for him to put it in large enough to show the formation of the districts there, and he had to put the population and all that merely in figures. I consulted with Mr. Bowers and some of the other members here, and they have no objection to it whatever.

Mr. Cochran — Is it satisfactory to the minority of the committee?

Mr. Becker — Yes; it was with their consent.

Mr. Cochran — Then it is satisfactory to me.

Mr. Veeder — I did not quite catch what the gentleman said about consent.

Mr. Becker — I will repeat it. I stated that we have already had before us, by order of this Convention, maps which are reduced copies of a larger map, showing the Senate districts under the present apportionment.

Mr. Veeder — The committee has?

Mr. Becker — The committee has and the Convention has. It is for the benefit of the Convention, and there will be distributed to-morrow copies of those maps among the members of the Convention, relating to the present apportionment. In making those, the Engineer found that when he got down to New York county, it was so large to handle and make, that he could not set out the divisions, all the Assembly district divisions, and all that in New York county, so as to show them successfully, and consequently, in talking this thing over with the members, we thought best to have a separate map made, one of the whole State, and the other of New York county and New York city.

Mr. Veeder — How about Kings?

Mr. Becker — I am perfectly willing Kings should be included in that. I think the suggestion is a good one to add Kings.

Mr. Veeder — We should have some knowledge of the geography of these districts.

Mr. Becker — That is just what we desire, Mr. Veeder, and why we make this motion.

The President *pro tempore* put the question on the adoption of Mr. Becker's resolution (No. 184), as amended, and it was determined in the affirmative.

Mr. Becker also offered the following resolution, which was read by the Secretary:

R. 187.— Resolved, That the number of the copies of the amendment to article 3 (O., I. No. 376), relating to the apportionment of Senate and Assembly districts, reported on Monday last by the Committee on Legislative Organization, be increased to 4,000, and that a like number of the tabular statements attached to the report of said committee be printed and bound with such amendments, and distributed under the direction of the Secretary of the Convention.

Mr. Bowers — May I ask the gentleman a question? That does not call for the printing of the report?

Mr. Becker — That distinctly does not call for the printing of the report, and there is nothing whatever in the tabular statements of a political character. It gives simply the figures taken from the census of 1892, from each district. It is an explanation of the amendment.

Mr. Bowers — And the amendment itself?

Mr. Becker — And the amendment itself. It is entirely satisfactory to Mr. Osborne.

The President *pro tempore* put the question on the adoption of the resolution, and it was determined in the affirmative.

Mr. Powell — Mr. President, I have just received a letter from Mr. Hecker, inclosing a telegram, which he received from his wife, stating that one of his children is very low, and he informs me in his letter that he has been compelled to return to Brooklyn on account of his telegram. I ask that he have leave of absence until such time as the health of his child will permit him to return.

The President *pro tempore* put the question on the request that Mr. Hecker be excused from attendance, and he was so excused.

Mr. Augustus Frank — Mr. President, I would like to inquire of the chairman of the Committee on Apportionment why we need 4,000 maps?

Mr. Becker — There is no request for any maps but three — one of New York, one of Kings, and one for the remainder of the State.

Mr. Augustus Frank — I understood the resolution was to print 4,000 copies of the maps.

Mr. Becker — The 4,000 relates entirely to the amendment and the tabular statements, and is an increase in the number from the regular rule of the Convention. It is simply a matter of so many more turns of the press.

Mr. Augustus Frank — I find, in the document room, piles of bags full of documents that we will never take away, and why we need so many of them I do not see.

The President *pro tempore* — The resolution has passed, and it will stand unless a motion is made and carried to reconsider.

Mr. Veeder — Mr. President, I move that the proposition (O., I. No. 384; P. No. 425), general order No. 48, in reference to the suppression of gambling, be made a special order next, after the conclusion of the article known as the apportionment.

Mr. Mereness — Mr. President, I move to lay the motion on the table.

Mr. Veeder — Mr. President, I have not yet surrendered the floor.

The President *pro tempore* — The gentleman is still in order then.

Mr. Veeder — I hope that the gentleman will not make a motion to lay that on the table. I made the motion, Mr. President, for the reason that to-day one of the crying evils is the methods of gambling ——

Mr. Cady — Mr. President, I rise to a point of order, and also to ask for information.

The President *pro tempore* — The gentleman will state his point of order.

Mr. Cady — That a motion to lay on the table is not debatable.

The President *pro tempore* — The Chair will inform the gentleman from Columbia (Mr. Cady) that he entertained the motion to lay on the table, understanding that the gentleman had yielded the floor, but the gentleman stating that he had not yielded the floor, the Chair thought that he had the right to retain the floor prior to that motion, in order to state his question.

Mr. Cady — Do I understand the ruling is against the point of order?

The President *pro tempore* — The ruling will be against the point of order.

Mr. Veeder — I believe I am in order. I do not know to-day, outside of some general propositions pending before this Convention, any subject that requires our attention more than this subject. There is an evil existing in the State known as pool-selling and bookmaking, part of it licensed by legislation and part not, and I submit at this time that subject should be considered and disposed of. Now I am in doubt about our ability to reach this proposition in its order, and under these circumstances I desire that it shall be taken up at the very first opportunity when the proposition can be considered. I have not made this motion as an attempt to sidetrack any other proposition, or to get in the way of a discussion of any other measure that gentleman may regard as more significant. I only ask that when the measures that are already made special orders are disposed of, this proposition may have consideration in this Convention. Why a motion should be made to lay it on the table I cannot understand. It is a very simple matter. It will not occupy more than an hour or two, I think, of the time of this Convention, and I only make the motion in order that the subject may be reached and disposed of, and on my motion I ask for the ayes and noes.

Mr. Cookinham — Mr. President, I move to lay the motion on the table.

Mr. Mereness — I renew my motion to lay it on the table.

Mr. Veeder — On that, I ask for the ayes and noes.

The ayes and noes were ordered, and the Secretary proceeded to call the roll.

Mr. Becker — Mr. President, I am heartily in favor of the principle embodied in the amendment referred to by the gentleman from Kings (Mr. Veeder). I believe that no measure before this Convention can ever be adopted and placed before the people of the State which the mothers and the wives and the sisters of the young men of this State will regard as so much of a protection to themselves as this amendment will be. But I do not think that we ought now to make so many special orders. We ought to consider just how we are going to do things and when we are going to do them. For this reason, Mr. President, I vote in favor of laying this matter upon the table for the present and I shall at another time myself, if no one else does, move to take it from the table.

Mr. Veeder — After the Convention adjourns?

Mr. Bigelow — Mr. President, this amendment comes before the Convention with a report adverse to it from the committee. I do not think it is entitled to precedence. I, therefore, vote aye, to lay it on the table.

Mr. Bowers — I ask to be excused from voting on this measure.

Mr. Becker — I move that the request made by Mr. Bowers to be excused from voting be granted. He is counsel for people who are interested in this matter I understand.

The President *pro tempore* — If there is no objection, Mr. Bowers will be excused.

Mr. Carter — Mr. President, I am heartily in favor of the principle embodied in this overture, but I think it is right and proper that the several matters shall take their course as set down on general orders. Therefore, I vote aye.

Mr. Davies — Mr. President, I am heartily in favor of the principle embodied in the proposed amendment, which the gentleman from Kings (Mr. Veeder) wishes to make a special order, and at the proper time I stand ready to vote for it, but it does not seem to me that it is just the thing now to make it a special order, and I, therefore, vote aye.

Mr. Dickey — Mr. President, like the gentleman from Buffalo (Mr. Becker), I am in favor of this anti-gambling amendment, and to show that I am in favor of it, I vote no.

Mr. Francis — Mr. President, this request is made by an esteemed member of my committee. In conference with him, I not only assented to, but supported, the suggestion that it should be called up for consideration in the manner in which it has been. It will occupy, as he stated, possibly not over half an hour to an hour's time. It is the first of any proposed amendments that has come from our committee, and I shall, therefore, vote no.

Mr. Augustus Frank — Mr. President, I think this is a very important measure to come before this Convention, and should be considered at the earliest possible moment. I am opposed to anything that will cause delay in any way. It seems to me that, as said by the gentleman who has introduced it this evening, there can be no more important measure here. This matter of gambling by pool-selling and bookmaking has become as bad as the Louisiana lottery, and I am told on good authority that the men who are carrying it on in the city of New York are the men who have moved up from Louisiana and quartered themselves in our own State. They not only carry it on under the Ives pool bill in New York,

but in each part of the State, and the agricultural societies get a part of the money. It is demoralizing to the whole State, and if we allow this to go on, and refuse to do anything in the Convention, it will be interwoven in the interests of this State in such a way that you can never kill it. The United States government, as we know, has been at work for years now to root it out of Louisiana and out of the country, and with the greatest effort they have succeeded in doing so, and, as I said a moment ago, the very men who carried on the Louisiana lottery have planted themselves in this State, in another name, and are carrying it on worse than ever. I think it is very important that we should take up the matter. As the chairman of the committee (Mr. Francis) says, it will occupy but very little time, when it comes up at the proper time. We do not ask it this evening, we simply ask it at the earliest possible moment, so that it shall not be allowed to be passed over.

Mr. McIntyre — Mr. President, I, for one, am opposed to gambling in any form whatever. Our statute books are full of statutes now in relation to punishing people who gamble. I do not think this is any place for us to try to get a little notoriety as being opposed to gambling. I do not think that we, as a Convention, should put aside other business for the sake of trying to get something in out of its place. I think all these matters should take their place upon the calendar and be reached in their regular order. This is no more important than other matters. I vote aye.

Mr. Peck — After listening with a great deal of interest to the gentlemen who favor the war, but oppose its prosecution, I have concluded to vote no.

Mr. Veeder — Mr. President, I desire to explain my vote. It has been remarked here that this is a matter of legislation. The Legislature legalized lottery, and to-day the Legislature has legalized bookmaking, and I submit that we cannot leave this question to the Legislature. It is for this Convention to dispose of the question, and, therefore, I vote no.

The motion to lay on the table prevailed by the following vote:

Ayes — Messrs. Abbott, Allaben, Arnold, Becker, Bigelow, E. A. Brown, Cady, Carter, Cassidy, Church, Coleman, Cookingham, Davies, G. A. Davis, Dean, Doty, Emmet, Fitzgerald, Floyd, Foote, O. A. Fuller, Giegerich, Goodelle, Hamlin, Hedges, Hill, Holls, I. Sam Johnson, Johnston, Kellogg, Kinkel, Kurth, Lauterbach, C. H. Lewis, Lincoln, Manley, Marshall, Maybee, McDonough, McIntyre, McKinstry, C. B. McLaughlin, McMillan, Mereness, Meyenborg, Moore, Morton, Mulqueen, Nichols, Nostrand,

O'Brien, Osborn, Parker, Parkhurst, Pashley, Platzek, Porter, Powell, Pratt, Putnam, Redman, Root, A. B. Steele, T. A. Sullivan, Vedder, Vogt, Wellington, Whitmyer, Wiggins, President — 70.

Noes — Messrs. Ackerly, Baker, Banks, Barrow, Blake, Bush, Campbell, H. A. Clark, Countryman, Deady, Deyo, Dickey, Durnin, Farrell, Forbes, Francis, Augustus Frank, C. A. Fuller, Gibney, Gilleran, A. H. Green, Herzberg, Hottenroth, Jacobs, Jenks, J. Johnson, Kerwin, Marks, McArthur, McCurdy, J. W. McLaughlin, Nicoll, Parmenter, Peabody, Peck, Rogers, Sandford, Springweiler, W. H. Steele, Storm, W. Sullivan, C. H. Truax, Tucker, Veeder, Williams, Woodward — 48.

Mr. Barrow — Mr. President, there was a special order set down for this evening in which I was interested. It was postponed at the request of Mr. Goodelle until this evening, and I do not know whether it takes precedence of the general order we were on this afternoon or not.

The President *pro tempore* — The special order, unless it can be acted upon this evening, is dead, unless a motion is carried to make it a special order again.

Mr. Barrow — I would like to ask what becomes of it?

The President *pro tempore* — It goes back to its place on general orders, and must be made a special order by a vote of the House again. If a special order cannot be reached on the day or time for which it was made a special order, by parliamentary rules it loses its position as a special order, and goes back on the calendar as unfinished business on general orders. Does the gentleman wish to make a motion to make it a special order for some other time?

Mr. Barrow — This was to retain its place, as I understand it. It was not on general orders at all. It was a motion that was made a special order for this evening, and to retain its place. I do not understand that that will require a vote to make it a special order for some other occasion. It has been a special order on two occasions, and been postponed at the request of parties opposed to the motion.

The President *pro tempore* — The Chair meant to be understood that, not being reached to-night as a special order, it went on the order of unfinished business.

Mr. Barrow — And would come up immediately after the consideration of the special order which is now before the committee?

The President *pro tempore* — There is a special order in advance to come up immediately after this special order.

Mr. Barrow — I think not. I think this was unfinished business some time ago, before the Cities Committee report was made a special order, and it was simply postponed until this evening. I rather think it takes precedence of the report of the Cities Committee.

The President *pro tempore* — The Chair would inform the gentleman that there is a special order for Monday and succeeding days, immediately after the consideration of the cities article, special order No. 69 (printed No. 439), which follows immediately after. This adverse report was made a special order for this evening, and, not being reached, it must drop back to its proper place on the calendar, unless it is made a special order for some other occasion. That is the way the Chair understands the parliamentary rule.

Mr. Barrow — Well, I do not understand how. This was a motion that was made a special order. It was not on general orders at all.

The President *pro tempore* — The Chair cannot help the gentleman. The Chair would inform the gentleman that the special order, made under any circumstances, naturally follows the two pending special orders. That is the way the Chair understands it.

Mr. Barrow — This seems to be a little different from that. This is a motion to disagree with the report of a standing committee. It has never been upon general orders. Two weeks ago it was made a special order, and was then postponed, by my consent, upon application of the other side, until this evening. It was made a special order for this evening. Now, the special order for this evening came in after this was made a special order for this evening.

The President *pro tempore* — The Chair would inform the gentleman again, or would endeavor to make himself plain, that he sees no other way than for the gentleman to make a motion that this be made a special order for some future time, inasmuch as the present is a continuous special order, and cannot now be interrupted.

Mr. Barrow — Then, Mr. President, I move that this be made a special order to be heard immediately after the consideration of the Cities Committee's report.

The President *pro tempore* — Cannot the gentleman make it follow the special order for the amendment of the Committee on Education? That is the next special order on the calendar of special orders.

Mr. Cochran — The apportionment is set down after that.

Mr. Kerwin — A question of information. I would like to ask the Chair if the special orders, as made, one to follow the other, the Cities Committee, then the education, and then the apportionment, are to freeze out all other subjects which have been made special orders for a particular evening. Is that the ruling of the Chair, as I understand it?

The President *pro tempore* — The Chair understands that there has been no motion made in this Convention for the purpose of freezing out any motion or any member. The Chair can only follow the calendar as it is presented before him. As to the motive with which it was made, the Chair is not able to state.

Mr. Barrow — I have moved, Mr. President, that this be made a special order immediately after the consideration of the cities article now under consideration.

The President *pro tempore* — There is already a special order made for that time. The Chair will put the gentleman's motion to the Convention, although the Chair informs the gentleman that there is already a special order made for the Committee on Education, and that he is informed by the Secretary to follow that is the question of the Forestry Committee.

Mr. Barrow — Do I understand the Chair to rule that where a motion has been made a special order for a particular occasion, that that has to give way to a general order that is made a special order subsequently? Do I understand that to be the ruling of the Chair?

The President *pro tempore* — The Chair sees no other way to rule.

Mr. Barrow — Then I desire to appeal.

The President *pro tempore* — That is perfectly in order. I see no other way than to follow the general orders. The question is on the appeal of Mr. Barrow. Shall the decision of the Chair stand as the judgment of the Convention?

The President *pro tempore* put the question on Mr. Barrow's appeal on sustaining the decision of the Chair, and, by a rising vote, it was determined in the affirmative — ayes, 80; noes, 15.

The President *pro tempore* — Now that the miscellaneous business of the Convention has been finished, the Chair will resign in favor of Mr. I. S. Johnson, chairman of the Committee of the Whole.

Mr. H. A. Clark — Mr. President, just a moment. My family are sick, and I am required at home. I ask to be excused for the balance of the week.

The President *pro tempore* put the question on the request of

Mr. H. A. Clark to be excused from attendance, and he was so excused.

The House resolved itself into Committee of the Whole, and Mr. I. S. Johnson took the chair.

The Chairman — The Convention is in Committee of the Whole on general order No. 13, section 7.

Mr. Roche — I desire to present an amendment to section 7.

The Chairman — The Secretary will read the amendment.

The Secretary — "On lines 3 and 4, page 6, strike out the words 'and as to any district created by law and containing a city.'"

The Chairman — The question is on the amendment of Mr. Roche.

Mr. Roche — Mr. Chairman, I think that the attention of the Convention should be called to these words in lines 3 and 4 of page 6. I doubt if there is anything more important in this entire article than the proposition which is contained in these two lines. There is nothing like this in the present Constitution, nor has there been anything like it in any of the Constitutions of this State that I have ever read. What its meaning is I can only surmise. What it will accomplish, or rather what may be accomplished under it, we may well know from what has been attempted in the past and from what has come under the consideration of the highest courts of this State in connection with the proposition which is now before this committee.

What can these words relate to? There is only one thing that I can imagine, and that is that it is intended to enable the Legislature to create new districts, or rather districts, whether metropolitan or otherwise, out of certain divisions or out of divisions of the State, in order that the Legislature or the Governor may therein provide for the selection, not by local authorities, but by State boards or State authorities, for police commissioners to administer the police government of that district. Am I right in that?

Can this relate to any matter concerning the public health? No; because we have now upon the statute books most efficient laws intended to promote and secure the public health. There is a general law, applicable I believe, to all the cities of this State, except the cities of New York, Brooklyn, Yonkers and Albany, which are governed by special statutes of as stringent a character as the general statute which applies to the other cities. This general statute also governs the towns and villages of this State. In addition to that we have a State Board of Health which may take cognizance of and, which, indeed, is bound to take cognizance of, any delinquency upon the part of any city, town or village board of health, and by stringent

provisions and penalties and removal from office punish the public health officers who neglect an efficient and faithful discharge of their duties in the several political or civil divisions of the State. Therefore, this cannot be intended to make any provision for the creation out of cities, towns, villages or counties of new, and so add to the present Constitution unknown, districts for the purpose of taking care of or promoting the public health in such districts.

Is it intended to provide for the more effectual care of the poor? No; because we now have upon the statute books laws which effectually meet that purpose, and we have the local provision supplemented by the work of the State Board of Charities, which board it is proposed to constitutionalize, and to give them more effective powers relating to the administration of the poor laws of the State and the care of the destitute and poor. Therefore, it is not necessary that there should be any creation of new districts out of any of the present civil divisions of the State for the purpose of taking care of the poor.

Does this relate to education? No; because the present educational laws, both State and local, are entirely ample to provide for the education of all the youth of the State. The system is complete, general and liberal, and the people of the State and of the several counties are willing to make any additional sacrifices or contributions which may become necessary for that purpose. Therefore, this provision is not intended to do anything for the promotion of education, because that is already sufficiently provided for.

Now there is nothing else left of a character which the people might agree that the State should have some jurisdiction over, except the police government of the State, or of different localities of the State.

It is, therefore, it seems to me, intended solely to enable the Legislature to create new civil divisions or districts of the State, and to provide by State authority, either by the Governor, or by some State board, or by the Legislature, for the selection of the police officials who will administer the police government in that district.

Now, why was it necessary to put that provision in this proposed Constitution? Simply because it cannot be effectually done under the present Constitution, as has been decided by the Court of Appeals in the latest case of which I am aware, and in which the Court of Appeals gave a construction to section 2 of article 10 of the present Constitution of this State. Now, section 2 of article 10 was the outgrowth of the feeling that the powers of the council of the appointment and of the Albany regency, which existed in the earlier

days of the political history of this State, and under which local officers, down to those of the least important character, were appointed by central authorities, under which the commissions of every mayor of cities, of every important or unimportant officer of counties, of, in fact, justices of the peace, and of every officer of the militia of the State above the office of corporal, received their commissions from Albany, and from the Governor located here. That system was subject to such gross abuse, it was made use of by political parties of all complexions or by leaders of parties to such an extent, that the people revolted. It was so contrary to the American ideas of government, and particularly of local self-government, that the people of this State, first in the Convention of 1821, and later in the Convention of 1846, gave the finishing touches to its abolition, and inserted instead in their Constitution this provision, which still remains the organic law of this State:

"All county officers, whose election or appointment is not provided for by this Constitution, shall be elected by the electors of the respective counties, or appointed by the boards of supervisors or other county authorities, as the Legislature shall direct. All city, town and village officers, whose election or appointment is not provided for by this Constitution, shall be elected by the electors of said cities, towns and villages, or of some division thereof, or appointed by such authorities thereof, as the Legislature shall designate for that purpose."

Now, Mr. Chairman, the first departure that we have from that plain provision of the statute, and from that very plain and well recognized purpose for which it was inserted in the Constitution, was in the creation of the metropolitan district, in, I believe, the year 1857 under which four counties of this State, including therein the large cities of New York and Brooklyn, were grouped together, and the police government in these counties was put in the hands of certain officials who were selected by State authority. That act received judicial construction in the case of the People v. Draper, and was sustained by the Court of Appeals.

The next case of that character which we had was in the creation of what was known as the Capital Police District, under which Albany, Rensselaer and Schenectady were united. As there was a railroad running from Albany to Schenectady and also one from Troy to Schenectady, the court in effect holds that they were thereby united by a common highway, and that it was proper for the Legislature to create a new civil division of the State — they being contiguous in the manner I have described; and the police government of that extended territory, in which there were at least four cities

and several important villages, was placed under the control of the capital police commissioners who were appointed by the Governor of the State.

The different cities in this district, as was stated by our distinguished associate, Mr. Parmenter, in a few years got tired of that system of police government, and the Legislature wiped it out, and by a local statute, gave to the different cities instead, local police rule, under which the people, or those elected by the people, selected their own police commissioners and their own police force.

It came along, Mr. Chairman and gentlemen, to the year 1873, when the Republicans in my city adopted the very singular course of coming to the Legislature and asking for the abolition of the existing police force; and although the head of the police was the mayor of the city, who was a Republican, another commissioner, who was also a Republican, and a third who was a Democrat, they procured the passage by the Legislature of an act wiping out entirely the existing police force, and creating a new civil division of this State, solely for the purposes of police government. Now, it became necessary to create that civil division. Why? Because they did not desire that the people should have the selection of the police commissioners, nor that the local authorities should have the selection of the police commissioners; for it was believed that the reign of the Republican who was then in the office of mayor would probably be a very short one, and that his successor, who would probably be a Democrat, would give the Democrats a majority in the police force and police government of the city. They, therefore, created one of the strangest districts that is known to political or local history; and in order that there may be no mistake about it I wish to give you the description of that district from the opinion of the Court of Appeals. That court was at that time composed of very eminent men, three of whom were Republicans, one of whom is still upon the bench; and in treating of this law, setting aside and declaring it to be unconstitutional (which the court did) all of the judges, with a single exception, united in the decision. One dissented, evidently not because he thought that the decision was wrong, but on the principle of *stare decisis*, referring to the case of the People v. Draper. This district was composed of the city of Troy, of a little island in the middle of the river which was in Albany county, of what was known as the "Patch," in North Greenbush, and is known as such to-day, and a little piece of the agricultural town of Brunswick, where the festive goat was accustomed to browse and gambol, and where there were also a few habitations, but what there were were far apart. It may be well, in referring

to this decision, to read something from the opinion of the court on this question of local self-government, because I think it will be instructive, and may bring us back to the consideration and recognition of what is in fact and of what is in truth local self-government; and it may not be at all uninstructive to go occasionally to the fountains of wisdom and to drink a little from the waters thereof.

But perhaps, before I read that, I had better say that under this law Governor Dix, who, by the way, approved it against his better judgment, and at the earnest request of some of the most prominent and respectable Republicans of the city of Troy, appointed three police commissioners, and these three police commissioners appointed a new police force. The old police force remained in possession of the station houses, and refused to give up possession, claiming that the act creating this new district was unconstitutional. There was then a police war in Troy; and the only way that they could get out of it was one very ingeniously adopted by Mr. Parmenter, who is here present as a delegate, and his method was to get the old police force to order a certain number of tons of coal, get the bill audited by the old police commissioners and have it presented to the comptroller, who refused to countersign it, and to the chamberlain who refused to pay it, and then to ask the court for a mandamus compelling them to countersign and pay it, and in the course of that proceeding this question of the constitutionality of the statute was raised and was determined by the Court of Appeals, and, as I have said, it was determined adversely to what was called the Rensselaer Police Act, and to the force which was appointed by the commissioners selected by Governor Dix. The court said (55 N. Y., 50):

"The purpose and object of section 2 of article 10 of the Constitution, as is very obvious, was to secure to the several recognized civil and political divisions of the State the right of local self-government, by requiring that all counties, cities, town and village officers, whose election or appointment was not provided for by the Constitution, save those whose offices might thereafter be created by law, should be elected by the electors of the respective municipalities, or appointed by such authorities thereof as the Legislature should designate. As to offices known and in existence at the time of the adoption of the Constitution, this provision is absolute in its prohibition of an appointment by the central government or its authority, or by anybody other than the local electors, or some local authority designated by law. Faithfully observed, and effect given to it in its spirit as well as in its letter, it effectually secures to each of the governmental divisions of the State the right of choos-

ing or appointing its own local officers without let or hindrance from the State government, and none can be deprived of the rights and franchises thus guaranteed to all. The theory of the Constitution is that the several counties, cities, towns and villages are of right entitled to choose whom they will have to rule over them, and that this right cannot be taken from them and the electors and inhabitants disfranchised by any acts of the Legislature, or of any or all the departments of the State government combined. The right of self-government lies at the foundation of our institutions and cannot be disturbed or interfered with even in respect to the smallest of the divisions into which the State is divided for governmental purposes, without weakening the entire foundation, and hence it is a right not only to be carefully guarded by every department of the government, but every infraction or evasion of it to be promptly met and condemned, especially by the courts when such acts become subject of judicial investigation."

The court proceeded in this opinion, as I have said, to refer to this Rensselaer police district, and then says:

"The proposed district is constituted by annexing to or uniting with the city of Troy these small patches of territory — one on the east, a part of the town of Brunswick, principally, as is stated in one of the affidavits, agricultural lands, and containing in all between 500 and 600 acres of land, and on which there is, by count, sixty-nine dwelling-houses of all descriptions; one on the south, a part of the town of North Greenbush, containing about four acres of land, with a single dwelling-house thereon and projecting, as annexed, in a triangular shape from the southern boundary of the city; and on the west a small island in the Hudson river and within the bounds of Albany county, containing about a dozen acres of land, having thereon one foundry, or manufactory of machinery and engines and a row of tenement houses, with ten front doors, calculated for twenty families. The entire territory was less than a mile square in extent, but no part of it was within the boundaries of an incorporated city or village or had ever had or required, so far as appears, any police organization or force, other than such as is common to every town in the State."

The court then continued:

"This act differs from every other act in this very noticeable and important particular — that all the territory embraced within the proposed district could, without interfering with any other political or civil division of the State, and without inconvenience to the inhabitants, have been brought within the bounds of the city and incorporated in it in the performance of the duty specially enjoined

by the Constitution upon the Legislature, to provide for the organization of cities and villages. (Const., art. 8, sec. 9.) Other acts for the creation of civil divisions for political purposes, have only been sustained after a struggle and much hesitation, and by reason of a supposed necessity, and because, on account of the extent of the territory united and its relation to the State and the recognized political organization of the State, it was not competent to readjust the municipal and local governments and incorporate the whole territory under a single city government. It is conceded by all that these new civil divisions are a recent device, and were not and could not have been in the minds of the framers of the Constitution, and, in the absence of an actual and evident necessity, they must, within every principle of interpretation, be held to be forbidden. The Constitution has provided for, or in terms recognizes, every civil and political organization into which it was intended the State should be divided. It provides for Senate and Assembly and judicial districts and the organization of cities and villages, and recognizes the ancient and well-known division of counties and towns; and, if any other division or organization is allowable, it can only be when neither of the others will serve or answer the purpose, or the objects cannot be accomplished by organizing the territory in view under one or the other forms of municipal government authorized by the Constitution."

The court also considers the case of People v. Draper, and it says on that subject:

"It was sought to bring the case within the principles of People v. Draper (15 N. Y., 532), but it comes far short of it in every important element, and is not within the reasoning of the very judge who gave the prevailing opinion in that case, and of whom it is, perhaps, not too much to say that but for his ability and influence the decision might possibly have been the other way. That decision has now stood so long judicially uncondemned, although never, I think, satisfactory to the public or the legal profession, that it might not be proper, under any circumstances to review or overrule it; and it is to be hoped, in the interests of constitutional government by the people, that the occasion to reaffirm its doctrines may never arise. To my mind, the dissenting opinion of Judge Brown, concurred in by Judge Comstock, presents unanswerable arguments why the decision should have been different."

Now, as I said, Mr. Chairman, that plain evasion of the Constitution, which this Rensselaer police district was, was condemned by the Court of Appeals, and the principle decided in the case of The People v. Draper was declared by the Court of Appeals one which

should not be extended any further in the State. Therefore, on the existing Constitution, the probability of the Legislature creating for police purposes any new districts not already known to the Constitution by the union of cities with towns and villages, or by the union of counties, is one which stands condemned by the courts, and it is highly improbable that the Legislature, acting upon these decisions, will attempt to create them, and it becomes necessary, therefore, to give constitutional authority for that purpose, which is done by the proposed amendment to the Constitution.

Why this drive at the cities of the State? Why this attempt to punish the cities of the State? Why this attempt to group them with towns, villages, or other cities, and deprive the electors, or the authorities in the cities, of the selection of their own local officers? For what purpose is this done? Within two days we have heard condemned in this chamber the idea that the Governor of the State should, even after removal, be allowed to appoint police commissioners, or other head of the police force, in any locality. Why, then, keep in this, or insert in the Constitution, a provision under which a partisan legislature, at the instigation of heated partisans in any locality in the State, who may come to the Legislature and ask for the creation of new civil divisions of the State for political purposes alone, and authorize the Governor, or some board, to take the power of appointment from the local authority, the power of election from the electors of that locality, and vest it in the Governor, or vest it in some State board? If you do that, then all semblance, all form of home rule is gone. The article with such a provision in it is a mockery and a delusion. All vitality, all consistency, all the suggested harmony in it, are utterly wiped out and abolished with this provision remaining in this article. Why, I ask, punish the cities of the State? Why make them the targets for this legislative tinkering, this legislative interference, these legislative discriminations? Why, the cities of the State, the centers of population, the centers of wealth, contain men who are just as zealous, who are just as earnest in the cause of constitutional freedom as those who live in any other parts of the State. They are ready at all times to stand forward in the defense of the muniments of your Constitution, and of civil and religious liberty. The friction which is created by the association of man with man, the touching of the elbows by thousands in the cities of the State, is one of the surest guarantees of constitutional freedom, of the enforcement of personal liberty, that we have, or can possibly possess.

Now, I say, Mr. Chairman and gentlemen, that under such circumstances it is very unwise to keep this provision in the Constitu-

tion; to offer to the cities of the State home rule with a string to it, to tie them to the apron-strings of the Legislature, and enable any partisan body, whether Democratic or Republican, to come in under great political stress and excitement and deprive these localities of one of the most important functions of local self-government — the right to select, to control and to manage their own police division and police affairs.

I hope, therefore, Mr. Chairman, that this article will not be submitted to this Convention for adoption, and will not be submitted to the people; and its submission under such circumstances, and with the use which can be made of it, is an insult at this day to the intelligence of the people of the State. There is no better way of defeating this entire article than have it go forth to all the citizens of the State that the Legislature may come in and deprive them of one of the most important rights of local government. I trust, therefore, the chairman of the Committee on Cities will consent to the elimination of these words from the article.

Mr. J. Johnson — Mr. Chairman, the statement made by the gentleman from Rensselaer is so extraordinary that it seems impossible to realize what it really is. There is not word of grant, not one syllable of empowering, not one thought of enabling any one to do anything, in that section. It simply says that the power existing now shall not be impaired. He goes the round of municipal duties, and, having satisfied himself that nothing else is meant, says that it is the police. It is astonishing with a gentleman of the observation, of the acuteness of the gentleman from Rensselaer, that when he was striving to find a latent purpose it did not occur to him that if that had been the purpose, if it had at all been in thought, then the report of the Committee on Cities here, and the provisions as to controlling the police of cities contained in it, was made without cause, and all that has been said in favor of it was useless. It seems to me that the effort to make the police of cities reputable, respectable and safe would be the clear information that that was not what we were after.

Now, sir, I will state what is the necessity of that. It is as to sewers, parks and things entirely different from police that are made the municipal subjects of the Constitution here. Those are subjects as to which it is necessary, or may become necessary in the march of events, that some added powers shall be given to the cities of the State, that some added power shall be exercised outside of the cities; and it was merely to provide that an implication outside of the letter of the provision should not be made. They are words of negation, of negation only; and there is nothing in them that

could possibly cause the effect which is stated by the gentleman from Rensselaer.

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

Mr. Johnson — Certainly.

Mr. Mulqueen — If they are only words of negation, why do you object to striking them out?

Mr. J. Johnson — Because they negative an implication that might arise from making certain subjects the matters of municipal control. Whenever it is necessary that the State should control sewerage, or health, or anything of that kind, in order to prevent a pestilence, the power must not be taken away by implication.

Mr. Mulqueen — Is not that provided for by the last words of section 5, where you say that "the Legislature is not hereby restricted in 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?" The last question addressed to the Chair was as clear as mud to me, and I would like to ask the gentleman if what he claims is not provided for in those last lines of section 5.

Mr. J. Johnson — Certainly not.

The Chairman put the question on the motion of Mr. Roche to strike out from section 7 the words "and as to any district created by law and containing a city," and it was determined in the negative.

The Chairman — Are there any other amendments to this section?

Mr. Mulqueen — I offer an amendment.

The Chairman — The Secretary will read it.

The Secretary — Mr. Mulqueen moves to insert after the word "consolidation," in line 23, page 5, the words "but no such law shall be enacted until a majority of the electors of each city to be affected have voted in favor of such consolidation."

Mr. Mulqueen — I desire, Mr. Chairman, to say but a few words in support of this amendment, and to call the attention of the Convention to the danger of the section as it now stands. I do not think it was the intention of the Committee on Cities that the Legislature should have the absolute power of uniting any two cities against the protest of both cities; and I do not believe they intended that the Legislature should say that a city free from debt should be united with another city perhaps owing twenty million of dollars. And yet, under the section as proposed, the Legislature would have the absolute power to do it. I think it is only fair that where you seek to unite two cities, the electors of each city should have a voice in the consolidation; and my amendment is that before any law

shall be passed uniting two cities the question shall be submitted to the electors of both cities to be affected thereby.

The Chairman — The question is on the amendment offered by Mr. Mulqueen ——

Mr. J. Johnson — That amendment was put in at the suggestion of the colleague of the gentleman, Mr. A. H. Green, in order to prevent the consolidation of New York and Brooklyn (which is now to go before the people) being in any manner interfered with. It seemed a wise provision and is obviously right.

Mr. Hottenroth — I would like to ask the gentleman a question: What is there in this article that would prevent annexing of territory as provided in section 7?

Mr. J. Johnson — Nothing.

Mr. Hottenroth — Then I do not see any necessity for it.

Mr. Cochran — I would like to ask the chairman of the Committee on Cities how the amendment as proposed by the gentleman from New York at all affects the pending law with respect to the consolidation of the cities of New York and Brooklyn.

Mr. J. Johnson — It would make it impossible unless the two cities voted for it.

The Chairman put the question on the adoption of the amendment offered by Mr. Mulqueen, and it was determined in the negative.

The Chairman — Are there any further amendments to this section?

Mr. Bowers — Does that complete the reading of the entire paper?

The Chairman — If there be no further amendments offered, then amendments generally are in order.

Mr. Bowers — I move to strike out all the sections after the first section, and to substitute the report of the minority committee.

Mr. Choate — I raise the point of order that substitutes are not in order until amendments to the general bill have been called for and exhausted.

Mr. Bowers — Then, Mr. Chairman, I offer it as an amendment to the whole bill.

The Chairman — The Chair rules that the point of order is not well taken. He moves to strike out all but the first section.

Mr. Bowers — Mr. Chairman ——

Mr. Vedder — I move that section 5 ——

Mr. Bowers — Mr. Chairman, I had not yielded the floor. I only paused for the ruling upon the point of order raised. I understand the Chair to rule my motion to be in order.

The Chairman — That was the ruling of the Chair.

Mr. Vedder — Mr. Chairman ——

The Chairman — Mr. Bowers has the floor.

Mr. Bowers — On that motion I wish to be heard. There is no necessity for wasting time upon this question. I think Mr. Nicoll has something to say, and desires to be heard in favor of this amendment; and, as I have been heard several times, if the Convention will assent, I will yield the floor to Mr. Vedder.

Mr. Nicoll — Mr. Chairman ——

The Chairman — The gentleman from New York cannot yield the floor in favor of any particular member.

Mr. Nicoll — Mr. Chairman ——

Mr. Vedder — Mr. Chairman, I have the floor.

The Chairman — Mr. Vedder has the floor.

Mr. Nicoll — This amendment introduced by ——

The Chairman — Mr. Vedder has the floor.

Mr. Nicoll — Did not the Chairman recognize me?

Mr. Vedder — He recognized me first.

The Chairman — I had recognized Mr. Vedder when Mr. Bowers gave way.

Mr. Bowers — I make the point of order that Mr. Vedder was only recognized while I had the floor, and that the Chair recognized Mr. Nicoll when I yielded the floor.

The Chairman — The Chair recognizes Mr. Vedder from Cattaraugus. (Applause.)

Mr. Vedder — I move to amend section 5, page 4, in line 4, after the word "six," by inserting "of this article." It now reads, "Except as provided by section six the Legislature shall not pass any law, except general city laws," etc. Now there are many sections "six" in this Constitution, or will be when it is passed; so you had better have it more clearly stated — "Except as provided by section six of this article"— so that there will be no doubt about it.

Mr. J. Johnson — The committee assent to that amendment.

Mr. Nicoll — Now, Mr. Chairman ——

Mr. Cochran — I raise a point of order. One amendment is

before the committee. I think the amendment of the gentleman from Cattaraugus is now in order.

Mr. Nicoll — I beg pardon. I do not want to speak to Mr. Vedder's motion.

Mr. Vedder — I ask the committee to let this pass, as the chairman of the Committee on Cities states that there is no objection to it. Then the gentleman can have the floor. The chairman of the Committee on Cities, Mr. Johnson, consents to it, and the Convention doubtless will.

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

Mr. Choate — I propose an amendment to section 4, as follows: "In section 4, strike out all after the word 'years,' in line 15, to and including the word 'law,' in line 19, and insert as follows: 'Every city shall have a legislative body, consisting of one or two boards, with such municipal legislative powers as may be provided by law. The members of such legislative body shall be elected by the electors of such city, and in cities of the first class such members shall be elected with or without proportional or minority representation, as may be provided by law."

Mr. Bowers — May we hear that amendment read again?

Mr. Nicoll — I rise to a point of order.

The Chairman — The gentleman will state his point of order.

Mr. Nicoll — Are any such amendments in order until after substitutes have been considered?

The Chairman — The Chair holds that it is in order; that the article should be perfected before a motion is made to strike out.

Mr. Cochran — It is a motion to strike out and to amend. It is not alone to strike out, but to substitute.

The Chairman — It does not change it, whether you call it an amendment or a substitute.

Mr. Cochran — It is an amendment to the entire article, that is all.

The Chairman — The Chair has ruled. Mr. Choate will proceed.

Mr. Bowers — We were unable to understand the amendment. He read in so low a tone that we could not hear him.

Mr. Choate — I will get my friend, Mr. Dickey, to read it.

Mr. Bowers — That will be entirely agreeable to our side, as we will be able to hear it then.

The Chairman — The Secretary will read the amendment offered by Mr. Choate.

The Secretary—"Every city shall have a legislative body consisting of one or two boards, with such municipal legislative powers as may be provided by law. The members of such legislative body shall be elected by the electors of such city, and in cities of the first class such members shall be elected with or without proportional or minority representation, as may be provided by law."

Mr. Holcomb — I raise the point of order that the proposition is the equivalent of one passed upon to-day upon motion of Mr. Bush.

The Chairman — The Chair rules that the point of order is not well taken. Mr. Choate will proceed.

Mr. Choate — Mr. Chairman, for the information of Mr. Holcomb and those who may be in sympathy with him, let me say that this is not the equivalent of any proposition or of anything that was voted upon to-day. This morning, under the inspiration of the magic wit of the gentleman from Kings (Mr. Jacobs) there was a great deal of joking in the Convention on the general subject of minority representation, and a vote was taken hastily and without an opportunity to several gentlemen who desired to speak on that general subject to be heard. I had intended to move a reconsideration of that vote, but on further consideration, and after conference with gentlemen entertaining various views, and of both parties in this Convention, I concluded to change the proposition from that which was before the House this morning, and to propose that it should be left to the Legislature under our Constitution in case of cities of the first class (that is, cities of two hundred and fifty thousand inhabitants, or more) to permit proportional or minority representation in the election of members of the common council, or, as I believe it has now been transformed "legislative body," as the Legislature might see fit. If the gentlemen of the committee will indulge me, I will recall what occurred this morning. When this was struck out of section 4 altogether it seemed to me that the whole merit of section 4 was gone; that there was nothing left in section 4 that was not already fully covered by other clauses of the article as proposed by the committee; and I, therefore, proposed to do what seemed to me to be in harmony with the vote which had been so hastily taken, but apparently by a large majority of the body, strike out what remained of section 4. To my surprise, the motion was taken in dudgeon by the chairman of the committee, whom I so much respect and love, and by one of his associates, who seemed very much excited on the subject. Nothing was further from my thought than attacking the residue of the bill, of which I am entirely in favor.

Now, Mr. Chairman, in respect to the proposition that I now present, it is in the view of the committee, having now approved the sections that contemplated conferring upon legislative bodies, in large cities these very great legislative powers, embracing and involving the city of New York alone, what the very well advised representative of the Fourteenth district here, who is allied in blood, or in some other way, to the present city government, declared amounted to an expenditure of nearly forty million dollars per year. Now, if anybody expects that the Legislature and the city of New York combined — for gentlemen will observe that this amendment of mine, this plan of conferring a possible representation upon the minority of the common council of the city, can only take effect upon the consent of the city or by a three-fifths vote of the Legislature — if anybody supposes that the Legislature and the city will combine, or that the Legislature, by a three-fifths vote, will seek to impose upon the legislative body that we have in New York, or upon any that we are likely to have under the present mode of election, these vast powers, he is, I think, counting entirely without his host. We have been doing nothing for the last twenty-five years in respect to the legislative body of the city of New York but to strip it, one by one, of all legislative powers, so that I believe now it merely has the right of a formal confirmation of the tax levy, the right to pass upon the granting of railroad franchises, and the right to supervise the issuing of licenses for keeping dogs. That is all that the people of this State, as represented in the Legislature, and the people of the city, as represented by men of every party, have granted, and so they have made it utterly impossible to have such a legislative body in the city of New York under the present mode of representation. And yet, here we are debating a scheme for the government of cities which prohibits the Legislature, up to a certain point, from legislating for cities on matters which must be legislated upon year by year, and which would naturally be left to the legislative body of the city.

What I propose as possible is, not to put any provision in the Constitution which will require this to be done, but if, in the course of years, or while the matter is still under consideration, it shall be deemed wise by the people of a city, by a majority of the people of a city (and we know well who that majority will be composed of), and by a majority of the Legislature, or by three-fifths of the Legislature, to say that we shall have a legislative body in which there shall be a representative of the minority. And what is that which a representative —

Mr. Veeder — Will the gentleman allow me to ask a question?

Mr. Choate — Certainly.

Mr. Veeder — Are you familiar with the history of the last minority representation in the legislative body of the city of New York?

Mr. Choate — I shall be happy to be instructed about that by Mr. Veeder after I get through.

Mr. Veeder — Are you not familiar with it?

Mr. Choate — I know something about it.

Mr. Veeder — Do you know that the monumental frauds of New York were under just such a board as that?

Mr. Choate — I know something about it. I am now speaking of a possible legislative body for the city upon which large legislative powers may be conferred. It can never be done in my judgment unless the minority of the people of that city have a voice in the common council. Eight hundred thousand people out of eighteen hundred thousand or out of two million people are not to be excluded from the legislation of that city, or they will have no legislation in the city. Now, that can be done by the very admirable method pointed out by Mr. Jacobs and advocated by him before the committee of which Mr. Becker is chairman, in respect to the election of twenty Senators where he proposed that nobody should vote for more than eleven is quite a possibility. At any rate it is within reasonable expectation that some method will be evolved which, in the course of the next twenty-five years, may make it possible for a majority of the people of New York, and a majority of the Legislature, to combine on a plan which shall admit these eight hundred thousand people, these one hundred thousand, or if you please, one hundred and fifty thousand voters to some voice in the legislative councils on the expenditure of money, to which this minority contributes its proportional share. How do we stand under the Constitution as it is? Perhaps the Legislature has now under the existing Constitution power to authorize it; but in two decisions in cases in which the question has arisen in our courts (not in the courts of last resort) it is left a doubtful question. In other tribunals in other States, where the Constitution is in substance as ours now is, it has been held to be prohibitory. It is merely to remove this prohibition, to lay open this possibility of reform, of regeneration of civic life in our great city, that I offer this amendment. And I have purposely made it to exclude the smaller cities, cities of the second class and cities of the third class, unless the representatives of such cities deem it desirable that it shall be

applied to them also. I have made it extend only to those larger cities which need the protection of the Constitution, and where a great minority, representing so much of value, so much of interest, so much of character, are entitled to be protected.

Mr. Jacobs — Mr. Chairman, I would like to ask the President what possible good he thinks minority representation would effect in a board which was determined to do whatever the majority saw fit? Now, I speak from experience. I am confident that he does not. The Republicans in the local boards in Brooklyn have had a minority representation. They have had some very strong and able men acting as the minority, and they have reasoned and argued with the majority; they have had the sentiment of the community with them, and all of the press with them, including Democratic papers, as well as independent and Republican papers, and, sir, they never yet beat a job, they never yet ended a sinecure position, and all they ever did was to make a noise, and noise is not reform. Now, the academic reasons given to us are not real reasons. I have long learned, sir, that all reasoning is not reason. Men who have stood in the front of the battle, who have taken part in it, and who have had actual experience, know what all this talk about minority representation is. It is a creation of the mind; it accomplishes nothing. Now, I do not want to exhaust the Convention on this matter. I have already exhausted myself perhaps, and I am not quite sure whether I have exhausted the Convention, but, if the testimony of men of experience is worth anything as against theory, I raise my voice here to-night and I protest against anything in the shape of proportional representation, or any dreams built upon the fact of some minority being in a board. Why, Mr. Chairman, the history of the city of New York where the gentleman comes from, if he will carry his memory back a few years, is redolent with the corruption which was brought about by this minority representation, when the old board of supervisors was divided six and six, nobody could vote for more than six, and each party selected six men to represent it, and if they left anything in the city of New York over night, it was by inadvertence. (Laughter.) Suppose that I was committed in the exuberance of my youth, in the beginning of this Convention to this proposition. I was wrong then. I am right now. That is the difference. (Applause.) And I cannot be balked as to whether I will be consistent or inconsistent. If I made a mistake then and have found it out, I will retreat, and will not bull-head it through. Now, I hope, Mr. Chairman, that this Convention knows its own mind. This proposition is un-American. It will be productive of no good. It will be

productive of evil. Men, where there is pelf, men with the itching palm, will draw together and make their combinations whether they belong to the majority or minority. The only question will be, who will get into the ring first. That is all there is of it. I have had experience with Democrats and Republicans. I have met honest Democrats who could not be tempted, and I have met Republicans whom I would not trust while I had my eye on them. (Laughter.) Now, we are talking out in meeting; that is all. We are talking facts. We are talking truth, what we know to be so, not what we read about, and what some theorists tell us. I do not believe in idealistic politics. I do not believe in swallow-tail politics either. (Laughter.) I believe in the good hard-headed politics that come from experience. (Applause.)

Mr. Choate — How much of this experience has he had since he tried before Mr. Becker's committee to advocate this very plan?

Mr. Jacobs — I have had the experience of listening to a great deal of talk on this proportional representation, of reading a great number of magazines. Oh, yes, I was taken with it; I am apt to be taken, but when I began to think and revive my own experience, and the experience of others and consult with experienced men, I had pointed out to me the errors of my own ideas, and had suggested quite a number of errors. I have had considerable experience in holding office myself, and I think that it was a very lucky escape I made, because I got in some very bad company. How I ever kept out of jail is a mystery to me. (Laughter.) It required a great deal of caution, and most of the times I voted no for safety, and whether I did any good then or did harm, I never could tell. Now, sir, I am going to say no more. The thing is with you. Your own common sense will tell you whether it will work or not, and I do not know that there is anything more to be said about it.

Mr. Moore — Mr. Chairman, I would like to ask Mr. Jacobs a question, if he is willing to answer it. Do I understand that the gist of the gentleman's argument is that the principal use of minority representation is for trading between the members who are to make up that body?

Mr. Jacobs — Well, when they get a sufficient number of honest men among the majority who cannot, on a count of noses, be sure for jobbery, and there are enough in the minority that can be brought over and fixed to make the combination, you will find that the trade takes place very easily. Though they will part on political questions they will unite for business on purely "business principles."

Mr. Dean — Mr. Chairman, I am grieved that the President of this Convention should rate integrity in this body at so low an ebb that he will propose to introduce a vicious principle into the Constitution, simply because it only affects the city of New York. It is an assumption that those of us who come into the Convention from the smaller cities will be willing to concede something that is absolutely wrong, vicious and un-American, simply because we come from the country districts, and this does not affect them. No man who is governed by principle, no man who has any just conceptions of government, can support this proposition. What is the minority? It is not the gentlemen who go around in the upper circles of the city of New York. You will find that, if this proposition is adopted and ever comes into operation we shall have, not the gentlemen of wealth and influence who have been talking in this Convention, but the gentlemen from the lower wards of the city, the Anarchists and Socialists, all of the elements of disturbance in every large community. It is the rag-tag and bob-tail of every community which will be seeking the patronage and dissipate all the elements of good government. The true theory of representative government, Mr. Chairman, is the intelligent action of the minority out of office, keeping watch of the majority, looking for an opportunity to become that majority. It is not by inducting into the official positions here and there an individual, to be overcome by the majority in those bodies, but by the intelligent action of the entire minority keeping watch of those in power. Instead of the conserving influence of the gentlemen who pay the taxes, we shall have the money of our large municipalities spent by Anarchists and Socialists. A wrong theory of government ought not to be introduced into this Constitution under any pretext whatever. We are here, not for the purpose of following every fad and every theory. We are here for the purpose of enunciating correct principles of government. I cannot see how gentlemen of the conservatism and intelligence of the President of this Convention dare stand up and advocate this doctrine.

Mr. J. Johnson — Mr. Chairman, if in the heat of what seemed an emergency of debate, anything less than the utmost kindness appeared toward the honored President of the Convention, it is certainly much regretted by me. It has been the thought of the Committee on Cities that we were under obligation to learn the sentiments and be guided very largely by the counsels of those in sympathy with this great movement who represented the great city of New York. We intend and hope that that union will continue. I have, sir, a statement which I wish to read, and that will comprise

all that I have to say on this subject. It is from the Sun, that shines for all, not only in New York, but in Albany, which published, as this debate commenced, the following: "Misrule by city council," and it commends to the attention of the Constitutional Convention an address by Mr. Story, of Boston, before the American Bar Association. It then quotes what Mr. Story said as to a decadence, the utter uselessness, the inefficiency and corruption of city councils. It then makes to this Convention this direct question: "At the present time, the idea of increasing the powers of the common council without doing something to elevate the character of such bodies would to most people seem preposterous." That, sir, is from the paper that more thoroughly than any other represents and speaks for the minority of this Convention in the city of New York. It is a statement of the fact that something must be done if we are to have government in New York that is responsible, that something must be done for the city councils, and this, sir, is the only proposition made here or before the Committee on Cities or anywhere else. There are those who believe, I am one of them, that there is great potency for good in this movement; that it will be a grave mistake, a great mistake reaching into the future, not to allow this experiment to be tried. I believe, sir, that if it is tried, great good will result. Let us look at this Convention. Here are eight or nine hundred thousand people entirely unrepresented in this Convention except by the delegates-at-large. The proposition that this Convention will not allow those eight or nine hundred thousand people to have tried for them the experiment at some time, if the Legislature so directs, of having some representation in the board that spends their money, it seems to me is altogether wrong. This is all that has been suggested as the remedy for the defaults and misfeasance of the legislative body in New York; and New York wants it. The cities adjacent, I believe, sir, require it. The city of Buffalo will ask it. Why should they not be allowed to have the experiment tried.

Mr. Holcomb — Mr. Chairman, I would like to ask the gentleman from Kings a question. What does the gentleman mean when he says the city of New York wants this experiment tried?

Mr. J. Johnson — If I had a copy of Johnson's dictionary here, I would send it to you.

Mr. Holcomb — It would need more than a Johnson's dictionary, either the Johnson, of Great Britain, or the present Johnson, who is representing the Cities Committee on this floor to explain your meaning.

Mr. J. Johnson — It would need something on your part, I think.

Mr. Holcomb — I do not know whether it would or not.

Second Vice-President Steele here took the chair.

The President *pro tempore* — The hour has arrived ——

Mr. Holcomb — Then, Mr. Chairman, I will claim the floor in the morning on this proposition.

The President *pro tempore* — The hour has arrived ——

Mr. I. S. Johnson — Mr. President, I offer the following resolution, that the Committee on Rules ——

Mr. Cochran — I understood the Convention had adjourned.

Mr. I. S. Johnson — That the Committee on Rules be required to report at the first session to-morrow ——

Mr. Speer — Mr. President, a point of order. The hour is now ten o'clock. We cannot transact business under the rules after that hour.

The President *pro tempore* — The hour of ten o'clock has arrived. The Convention stands adjourned until to-morrow morning at ten o'clock.

Thursday Morning, August 30 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, at the Capitol at Albany, on Thursday, August 30, 1894, at 10 A. M.

President Choate called the Convention to order.

Prayer was offered by the Rev. S. F. Morrow, D. D.

On motion of Mr. Rogers, the reading of the Journal of yesterday was dispensed with.

Mr. Francis — Mr. President, reluctantly I have to make a request, and I feel that I need not give special reasons for doing so. I ask leave of absence, the first of my absence from duty during the sessions of the Convention. I ask to be excused from this day until Tuesday next.

The President put the question on excusing Mr. Francis from attendance as requested, and he was so excused.

Mr. I. S. Johnson — Mr. President, I offer the following resolution:

Resolved, That the Committee on Rules be required to report forthwith a rule limiting the debate on the question pending in this morning's session, and that no member shall speak more than once, or more than five minutes.

The President — The Chair would inform Mr. Johnson that the Committee on Rules, under the instructions previously received, are ready to report a limit of debate on the cities article.

Mr. Johnson — Then, Mr. President, I ask leave to withdraw the resolution.

Mr. Cochran — Mr. President, may I ask a question for information? May I ask when the Committee on Rules received that instruction to which the President has just referred?

The President — Under a resolution offered by Mr. Cookinham.

Mr. Veeder — Mr. President, I ask that the matter lie over, under the rules, until the next legislative day. Under our rules we are entitled to that. May we have it read again, sir?

Mr. I. S. Johnson — Mr. President, if the Committee on Rules are not ready to report before the Convention goes into Committee of the Whole, I ask to have my resolution acted upon.

Mr. Bowers — Mr. President, there is no rule from the Committee on Rules reported, if you will allow a minority member to state what took place, until you have the report before the House, and then you can act upon it.

The President — Perhaps I can state myself. The Committee on Rules propose the following: that the vote be taken upon the cities article to-day, at a quarter before one o'clock. Mr. Bowers will correct me if I am at all in error. That the time limit for the amendment now under discussion be not to exceed forty minutes. That the residue of the time between that and a quarter before one be allowed for the debate upon the substitute offered by Mr. Davenport, and that time to be equally divided between the supporters of that substitute and the supporters of the article.

Mr. C. B. McLaughlin — Mr. President, do I understand that the Committee on Rules have agreed that there shall be no time devoted to the discussion of any substitute that may be offered except that offered by Mr. Davenport.

The President — That is what they propose.

Mr. McLaughlin — Is that matter before the House now for discussion?

The President — I think it may be considered before the House for discussion.

Mr. Bowers — Mr. President, if the gentleman will pardon me a moment I will explain before the House. The statement of the President is accurate as to what the majority of the committee

determined. The minority members dissented. The matter comes before the Convention in response to a resolution offered by Mr. Cookinham on the eighteenth, bearing generally upon the subject. So far as it bears upon that resolution, I make the point of order that it lie over until to-morrow.

The President — And that may be done, of course.

Mr. Bowers — So far as it depends upon the pending question, I suppose it must now be disposed of, and that was, as stated by the President, the conclusion arrived at by the majority of the committee. We opposed it upon the ground that there is no necessity, as yet, for limiting the time.

Mr. C. B. McLaughlin — Mr. President, as I understand the condition in which this question now is, it is this, that the Committee upon Rules have decided ——

The President — They have not decided, Mr. McLaughlin; they have proposed.

Mr. McLaughlin — That they propose, and which is now before the House for consideration ——

Mr. Veeder — I rise to a point of order.

The President — Will you please state your point of order.

Mr. Veeder — I understand a proposition has been presented here and read by the Secretary — if I am wrong I desire to be corrected — to change the rules, by Mr. Johnson. How does the matter come before us for consideration? If I am not right ——

The President — The Chair does not know anything about any resolution offered by Mr. Johnson.

Mr. Veeder — I understand there was a proposition offered by Mr. Johnson, and read by the Secretary.

The President — That was withdrawn by Mr. Johnson. Mr. McLaughlin has the floor.

Mr. McLaughlin. It seems to me, Mr. President, this is a very unfair decision ——

The President — Mr. McLaughlin has the floor, and ought not to be interrupted.

Mr. Veeder — Will Mr. McLaughlin pardon me a moment?

Mr. McLaughlin — I prefer to finish what I have to say; then the gentleman can have the floor. There is no member upon this floor who has had an opportunity to offer a substitute for this bill except Mr. Davenport. We have had this bill under consideration for a week, or nearly that. There is not a member who has had

opportunity to offer a substitute after the amendments have been considered. I have sat here and listened patiently to the discussion upon this bill. I desire when the proper time comes to offer a substitute for the whole bill, and it seems to me that I should be accorded the privilege, at least, of presenting for the consideration of this body my views upon the proposition. Under the rules, I supposed that I had a right, when this bill had been fully considered, when all of the amendments which had been offered to it had been passed upon, to present to the body for its consideration, a substitute for the whole proposition. Now we are here, confronted at the very first opportunity, at the very threshold of debate, with a proposition from the Committee on Rules that no substitutes shall be offered.

The President — The Chair will state that substitutes and amendments may be offered *ad libitum*. The committee merely propose a limit of debate, and on the time for taking the vote.

Mr. McLaughlin — Mr. President, I understood that the Committee on Rules proposed a rule in which the time of debate should be limited, and which would exclude from consideration any substitute except that which had already been considered. Now, if that be true, how can I offer a substitute? If this rule be adopted, then the limited time of discussion will be used in the consideration of the proposition by the gentleman from New York, or the minority report.

Mr. Root — Mr. President, will the gentleman give way for a suggestion? I suggest, as to this matter, that the Committee on Rules acted without having any knowledge that the gentleman from Essex proposed to offer a substitute; and as after so many days' discussion of this article, a discussion that was out of proportion to the time to which it was entitled in comparison with other matters before the Convention, nothing appeared in sight but the pending amendment and the pending substitute, the committee supposed that they were justified in considering that those matters which were in sight were the only matters to be discussed, and proposed the rule accordingly. My suggestion is, that this matter be recommitted to the Committee on Rules, and that any gentleman who has anything to propose should notify them, and let them propose a rule based upon that knowledge. I move, unless some one is especially dissatisfied with that disposition, that the matter be recommitted to the Committee on Rules, with instructions to report during the afternoon, and that will give opportunity ——

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

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

The House then resolved itself into Committee of the Whole, and Mr. I. S. Johnson resumed the chair.

The Chairman — The Convention is again in Committee of the Whole upon general order No. 13. The question is upon the amendment of Mr. Choate.

Mr. Holcomb — Mr. Chairman, I have some suggestions which I would like to submit to the committee concerning this proposition in respect of minority representation. As was very well said by the gentleman from Kings (Mr. Jacobs), in his exceedingly good speech yesterday, the suggestion of minority representation comes as an exotic to us here in America. It originated in Great Britain, under the chief advocacy of Mr. Hare, the editor, with Wallace, of Smith's Leading Cases, because the crown of Great Britain was afraid, and his suggestion of it was made because that crown was afraid of the people of Great Britain, and it was considered that minority representation would act as a buffer between the people and the crown, and thereby the crown be sustained; and here, in this Convention, the proposition comes from the Committee on Cities and the controlling minds, the controlling power in this committee, that minority representation may act as a buffer between those who, being in the minority, and not entitled to control the cities of this State, and the sovereign people there who are entitled to that control in virtue of the votes which they hold in their hands under the section of the existing Constitution of the State. The whole proposition of minority representation is un-American. It is hostile to every principle underlying our manner of government. We are a people governed by majorities. The minority is a check upon that majority, and a wise and honest minority, as in this State and in this republic, almost the equal in power of the majority, is such a check as will hold the majority always in order. There is no reason why the minority of the people should be represented except as they now are represented, in the honest votes and in honest judgment, in the honest will, honestly expressed at the ballot-box of the whole people. There is no reason in the suggestion made by the President of the Convention last night, that the people will be better governed if the minority, be represented as now proposed — and he described it the minority having the power.

Mr. Mulqueen — Mr. Chairman, I rise to a point of order.

The Chairman — Mr. Mulqueen will state his point of order.

Mr. Mulqueen — My point of order is that members should be compelled to maintain silence while a delegate is speaking.

The Chairman — The point of order is well taken, and, hereafter, order must be preserved while gentlemen of the Convention are speaking to the question.

Mr. Holcomb — I am perfectly willing, Mr. Chairman, so far as I am concerned, to stand upon the traditions of our people. We have always had two parties in city, State and republic. We never had any great man in public life, either in the United States or in the State of New York, who did not insist upon the wisdom and virtue of the existence of two great parties into which the people should be divided, through which the people might discuss matters that related to their affairs, differing upon the details of those affairs, upon the details of their management, but standing as one man when the interests of the Republic or the interests of the State were at stake. I shall not go further into detail, except to repeat that this proposed amendment as it is, is unrepublican, is undemocratic. It is an attempt made by the majority to override the expressed will of the people. It is one of those strange propositions in whose heart rests hostility to the fundamental principle upon which our government stands, the principle of government by the people, giving voice through the majority of themselves. The people themselves control and have a right to have their will expressed in their own way, by themselves. The experiment has been tried before. Mr. Veeder, of Kings, called the attention of the President of the Convention last night to the frauds that were committed in New York, prior to the enactment of the charter of 1873, and he asked the President if those frauds were not made possible — not made possible of perpetration only, but possible of consummation, under the sanction of the then existing statute giving the called-for representation to the minority, the plan now laid before us of minority representation; and I did not understand that the gentleman from Kings received any answer to his question from the President of the Convention. Now, if I remember rightly — I may be at fault — but if I remember rightly, when the chairman of the Committee on Cities presented his report from the committee and this idea was first presented here, the President of the Convention asked him this question, "If this be a good proposition why not make it mandatory upon the Legislature? Why will you leave it to be exercised by the Legislature, or not exercised at its will?" And I do not understand that the chairman of the Committee on Cities gave the President of the Convention any direct or satisfactory

answer. Yet, last night, when the President made his remarks, he took then an entirely back track. Why is this? Why is there this veering and turning by the gentlemen into whose hands, to a very large extent, the destinies of this Convention seem to have been committed, the President who has assumed on so many occasions the control of the debates and the will of the delegates here? Why not stand as he stood then? What is the reason of the change? If two weeks ago it were wise for him, in his judgment, to suggest that if this proposition go into the Constitution at all, it should go in mandatorily. Why is it not, in like manner, wise to-day, as it is conservative? We have trouble enough already with our election system. We have been tinkering with our election laws for a number of years past, and thereby the people have had much laid in the way of the expression of their will through the franchise, until their burdens now are almost intolerable. Add this new scheme to their burdens, give the Legislature the power to say this year, we will have minority representation, and next year we will take it away, and the people cannot know where they will be. We are now able to understand our policies. When the people of the State of New York, whether by accident or design, placed the destinies of this Convention in the hands of the Republican party of the State, they knew what they were doing. They knew what they might expect, and they were in no fear of any unpatriotic action. Nobody would suggest that we may not differ on points of detail but on every principle we should stand patriotically together; the people understood that. Now, give us in practice your minority representation idea; give us an handful of anarchists in the common councils of our cities; give us a handful of populists or anarchists in the Assembly of the State of New York, open the doors of your Congress to them, to the Coxeyites and the other people who tramp over the country, undertaking to redress imaginary wrongs and who so wise that he can fortell the result upon our legislative system? We are safe to-day; we are safe under the ægis of our independence, and under the flag that floats over us all alike. The men who represent us in our Legislatures, as was splendidly said last night by the gentleman from Cattaraugus (Mr. Vedder) who come from the people to represent us as our lawmakers, are honest and upright men, as wise and just as those who are delegated to form our Constitutional Conventions, and equally as patriotic, and in their hands, under our present system, our institutions in this State are safe. No experiments are necessary, or in any way entitled to our sanction, and I am entirely opposed to this innovation. Let us stand firmly in the ways that have been proven.

The Chairman — The Chair recognizes Mr. McLaughlin, of Essex, who rose last night at the same time Mr. Holcomb did.

Mr. McLaughlin — Is a substitute in order, Mr. Chairman?

The Chairman — A substitute can be received at this time and will be acted upon in its order.

Mr. McLaughlin — I offer the following substitute:

The Secretary read the substitute offered by Mr. McLaughlin, in the language following:

"Section 1. There shall be in the several cities of this State a common council or board of aldermen, to be composed of such members and to be elected in such manner as is or may be provided by law."

"Section 2. The Legislature shall by general laws confer upon the common council or the board of aldermen of the several cities of this State, including those that may be hereafter incorporated, such further power of local legislation and administration as the Legislature may from time to time deem expedient."

Mr. Blake — Mr. Chairman, do I understand that the motion of the President is before the House, to reconsider a vote taken by this body?

The Chairman — The question before the House is to insert certain words ——

Mr. Blake — Can that be done until the motion of Mr. Choate is disposed of, to reconsider the vote on this?

The Chairman — The motion was not to reconsider, but to insert certain words that were stricken out, together with other words, which materially changed the subject.

Mr. Blake — Which is equivalent.

The Chairman — The Chair has decided that it was not equivalent.

Mr. Blake — Mr. Chairman, I desire to say a word upon that question. I shall bring within the compass of three minutes what I propose to say on this motion; I will try to. The motion, as I understand it, is seriously made to reverse the judgment and the will of this body, which was yesterday morning clearly expressed, not by a narrow majority, not by accident, not by any misunderstanding, but by an overwhelming preponderance of the gentlemen present in this body, after thorough discussion, or at least after every gentleman who chose to do so had been heard. Now, sir, it seems strange that this committee should, without adequate or preponderating motive or cause, overturn that judgment which was

intelligently expressed, within twenty-four hours. Mr. Chairman, the main reason, I understand, advanced by the President for this extraordinary step, is that the action was hasty, that it was taken under the charm, or spell, or speaking in his language, under the influence and inspiration of the wit and humor of the gentleman from Kings. Now, sir, that declaration, in my opinion, was maladroit, was at least a very poor compliment to the intelligence and judgment of this body. It is true, sir, that the speech of the gentleman from Kings was somewhat colored, tricked out and dressed, but he simply summoned to his aid those helps for the purpose of ridiculing and satirizing and killing what I believe to be a colossal humbug, introduced in the realm of politics in our country by hair-brained Eutopian dreamers — the greatest humbug I say, sir, as has been well-expressed by the gentleman from Brooklyn, ever introduced into our system of politics. But the woof and warp of the gentleman's argument was constituted of truth and fact and logic which was so strong that it flashed conviction to the mind and conscience of every man here. The subject of minority representation was killed. Its body was dead, and it only remained, in the language of the gentleman from Cattaraugus, to carry out the corpse; and now the President seeks to resurrect it, to perform the miracle of resurrection. Now, I have but one word to say seriously on this subject and I have done. I say this is in contravention of the principles of local self-government. I have always been opposed to the theory of minority representation. It is directly opposed to the genius and spirit of popular sovereignty. Minority representation should have no place in our system. As has been well said by gentlemen before, and so wittily expressed by the gentleman from Kings, it is exotic; it is foreign to our soil; it is an anomaly. Mr. Chairman, majority should rule in this free land; then we have full responsibility and a strict accountability for the administration of government. That is the true rule, sir, and no other should prevail amongst us. That is all I desire to say, Mr. Chairman, and I trust that this body will not permit an act of self-stultification, by overturning what it so deliberately adopted yesterday morning.

Mr. Root — Mr. Chairman, I hope the Convention will agree to the motion which is now pending, and in hoping that, I do not ask the members to commit themselves to the principle or the expediency of minority representation or proportional representation or any other device. Let me state, sir, what I consider to be the question now proposed. I think it is this. The government of great cities presents the most difficult

problem which has ever been presented to thinkers, to practical men who have endeavored to secure good government in any form and under any system since popular government was first attempted. It is a problem which has come upon us within the memory of man, for the great cities of the world are growths of our own day. It is a problem which is still in its early experimental stages. It has never yet been wrought out to satisfaction by any people in any country. Good men, men who seek law and order, men who believe that the people can govern themselves, all over the world are cutting and tying, experimenting upon the government of these great masses of people collected in small spaces of territory. We have, Mr. Chairman, in this State, one of the great cities of the world, the great city which we call New York and Brooklyn, in which three millions of people are gathered within a small area. The government of those cities presents this situation, and I beg the gentlemen from city and from country alike to consider it. Especially in the larger portion of that city, for it is but one city, the principle of representative government to-day stands as a failure. We have what we call a common council elected by the people, but year by year we have been taking away from those representatives of the people every power they possess, and we have been vesting it here in a board of sinking fund commissioners, there in a board of estimate and apportionment; here in a board of health, there in a board of police; and while we keep the form of representative government, go through the farce of electing men who are called representatives of the people, we rob them of all power; and the government of the city of New York to-day is an abandonment of representative government. It is a confession, if we are to stand there and call that the best we can do, that representative government in the great cities of this country is a failure. It is as bad as bad can be. Nobody on the face of this earth ever sank lower than the common council which professes to represent the people of the great city of New York. Now, Mr. Chairman, while in all cities of the world men are trying to work out some satisfactory solution of this great and difficult problem, the Legislature of this State, which alone has power in respect to our great city, finds its hands shackled by a provision introduced into the Constitution long before the problem was thought of. One of the ways in which people are experimenting, trying to work out something better, is by means of what is called minority representation, or proportional representation. I do not know whether it will work or not. I know the gentleman from Brooklyn who gave us such an amusing and interesting speech yesterday. I know that

as the result of his wide and varied experience in practical affairs in the city, he came to this Convention convinced that it would work.

Mr. Jacobs — Never.

Mr. Root — He came to this Convention committed, as the result of his experience, to the practical benefits of minority representation, and he proposed an amendment to this Constitution which would have introduced it into the formation of the Legislature of this State, and advocated that, and the speech which he gave us yesterday was the result, not of his convictions based upon his experience, but of some new light which he has got here from theory. For while he has been here he has not been having practical experience in the government of cities. Now, sir, I do not know whether this is desirable. There is one thing about it that I can say. It is, that in a great city it is not practicable to secure the same kind of variety of representation by means of cutting the city up into districts which you get when you take the different counties of the State, or when you take the different towns of a county, for the reason that locality counts for nothing in the city, except in isolated cases. Here and there will be a neighborhood which is homogeneous, the people dwelling about a square, the people in a little section of a street; but as a rule, my next-door neighbor is not the man who lives next to me; he is the man, perhaps, who lives three or four miles away, and whom I meet in business, at church, at the club, in various enterprises. Locality counts for nothing. The lines of demarcation between localities do not differentiate representation, and every man elected to a municipal Legislature represents the whole city as much as he represents the particular division from which he is elected. So, Mr. Chairman, the only logical way in which to elect representatives would be on a general ticket; but if you elected them on a general ticket either one party or the other would have the whole, and the only way to secure any variety of representation in the discussion on contending interests, in the rectification of ideas of a majority at conflict with the minority, such as we get in our Legislature by electing from different counties, is by means of some plan of proportional representation or minority representation. Now, sir, as I say, I do not know whether this will work; but I do know that it is a great mistake to keep the hands of our Legislature tied so that it cannot try to improve the government of this city. It cannot be worse than it is now. It may be better. And I think we ought to set free the Legislature of the State so that it can at least try to make it better.

And for this reason, without committing myself to minority or proportional representation, I think we ought to adopt this proposed amendment and let the Legislature do its best for the cities of our State.

Mr. Bush — Mr. Chairman, I had supposed yesterday when this Convention almost unanimously rejected this proposition, that the matter was settled, at least so far as this article was concerned. But it seems that there was at least one man in this Convention who was not satisfied, and he happened to be the President of the Convention, and lo, and behold, he rises and asks to have the whole matter reconsidered and says: "You didn't know what you did. The gentleman from Kings made you laugh, and, therefore, you didn't know what you were doing. You must reverse your action; you were entirely wrong, notwithstanding the fact that you were substantially unanimous." And we get new light, and the leader of the majority now finds that he is also in favor of minority representation and all the other fads connected therewith. The gentleman who has the honor of presiding over this Convention twits the gentleman from Kings with being inconsistent, and with having changed his mind on this matter. Now, it is only a few days ago that the President of this Convention was discussing the judiciary article which provided that two judges of the Court of Appeals should be elected, and that no voter should vote for but one. But he characterized that as an extremely dangerous proposition. He said it ensured the election of two who were nominated, and that a bad man might be nominated and elected, and, therefore, it was something entirely improper to be adopted by this Convention. And the Convention, in accord with those views, rejected that portion of the article. Now, when this home-rule proposition was brought up in this Convention and discussed by the press throughout the whole State, it was said that the principal benefit to be derived from the article as it was introduced here was this, that separate municipal elections would be held — they should be held — separate and distinct from elections for President or State officers, or any other officers, in whose election any other questions might arise than those relating to purely local self-government; and the object of having separate municipal elections was to prevent party influence from controlling, that a man should be voted for on account of his business ability, of his peculiar ability to administer the affairs of a city. It was supposed that party would not be consulted in that case, and that a purely business administration might be obtained for the various cities of the State. Upon that theory many gentlemen in this Convention were in favor of separate muni-

cipal elections. But if separate municipal elections will not produce that result; if they are already discredited by those in high authority in this Convention, I ask what will it do, and what is the good of them? You say that a man must not vote for a candidate who is nominated simply because they agree upon the tariff question. Every member of this Convention is willing to coincide with your views, to give you separate municipal elections, so that these great business men, as you call them, may be elected to municipal offices. But now you discredit your whole theory in advance, and you say that something is radically wrong in the system. What do you mean? The great majority of the people in the city do rule its affairs. The President of the Convention finds most grievous fault in the fact that while the Republican party in the city of New York has one-third of the votes, it has nothing to do with the government. But, Mr. Chairman, does the city of New York differ in that respect from any other city in this State, or in the United States? Are the Republicans of New York city laboring under any peculiar disadvantage in that respect? Are the Republicans of that city any different from the Democrats of Rochester, or the Democrats of Philadelphia, or of every other Republican city of this State? Do you see Democrats howling for minority representation, so that they may manage to get into the board of aldermen in the city of Rochester? But, now, how insidious is the proposition of the President. He finds that this Convention is overwhelmingly against his pet idea; that gentlemen from the smaller cities of the State, where they have Republican majorities, are absolutely opposed to this. He holds out the luring and tempting bait. He exempts their cities from this provision, and says: "Help me to descend on New York; let the Republican party get in in New York, and we need not let the Democrats get in in your cities." It has been bewailed here that Troy is misrepresented; that a gang of Democrats run that poor city. Why do you not allow minority representation to come in and try itself there? What is the matter with letting good Republicans there benefit by this principle? What is the matter with exempting Troy? The only reason is that you cannot pass your little measure if you exempt the smaller cities of the State. You think they have so little principle that they will vote to impose it upon the larger cities of the State; but I do not believe that principle is so lacking on the majority side of this Convention as to do that.

Now, Mr. Chairman, where has this minority representation idea ever been tried, and where it has been tried, where has it been approved? Is it a wise thing to put into the Constitution of the

State of New York a provision that there is not a section of the whole earth that insists that it is a good thing, where experience has demonstrated that it is a good thing? This is not a new idea in New York State. It has been tried long ago and rejected. Now, I heard a very able Republican in this Convention yesterday say to me: "Why don't you fellows let this minority representation idea go into this section, and then they will all have to vote, and we will kill the whole cities article?" And I am satisfied that that is the purpose of this whole matter, to overload this home-rule measure to such an extent that nobody can vote for it. The purpose is to get the Democrats to vote against the home-rule proposition, to force this minority representation matter, and they say: "Either take the minority representation or do not take the bill at all." I am ready to vote against this bill, if you put that in. But, Mr. Chairman, the responsibility for this home-rule matter is not upon the minority in this Convention. We have no voice here, we are but about one-third of the membership of this Convention. The responsibility for home rule and for every section of this bill is on the majority, and I, for one, am willing to leave it there; but I am not willing to permit you to evade the question and to load down this home-rule amendment to such an extent that it will be thrown out of this Convention, and then say to the people: "We tried to give it to you, but the Democrats wouldn't let us." Now, Mr. Chairman, I hope that the gentlemen of this Convention will stand by their act of yesterday. It was substantially unanimous then, and it will be very strange if they can reverse their convictions on this in twenty-four hours. It is true, as the President says, it was not debated or discussed. Mr. Chairman, it seems like assuming a great deal to say to the members of this Convention, men of experience, excellent lawyers, men who were selected from their several constituencies, to come here for this very purpose, it seems to us strange to say that these gentlemen were literally laughed into this change of mind yesterday, and that one man could do all that. I do not believe it.

Mr. E. R. Brown — Mr. President, I am astonished at the tone the gentleman assumes in discussing this question, in opposition to the motion made by the President for reconsideration. It is not a question of twitting or of recrimination, or of secret party advantage. When I was chosen to this Convention I came here, not for the purpose of home rule or the betterment of the political conditions of the city in which I reside, but I came here, if possible, to contribute by my vote something that would tend to ameliorate the condition of our great cities; and I believe

that the motion of the President, confined, as it is, to cities of more than five hundred thousand inhabitants, strikes the true note upon this subject. For us to attempt to formulate a plan of home rule for cities which shall be foisted upon cities which do not demand it, which have no use for it, which do not want it, amounts to nothing. But for us to formulate a plan which will tend, in some measure, to ameliorate the condition of the great cities of the State is everything, and, as I regard this amendment, it is in that line. Mr. Chairman, we have heard the Democratic members on this floor cry out for absolute home rule, for the establishment of cities which should stand by themselves, independent of the State. Is it not in the line of home rule that the cities themselves should, if they desire, have minority representation, or proportional representation? Is there anything, Mr. Chairman, so savory in the representation in the common councils of our great cities that we should hesitate to make it possible that there should be an improvement in them? I have seen for many years the records of the proceedings of the common councils of those cities, and never yet have I heard a single word, or seen a single word, in praise of the common council of the city of New York. But in the discussion of this question, while we are to bear in mind, first, that we are not disturbing any institution which has thus far rendered itself desirable, and, second, if you pass this amendment, that we will take a further step in the direction of home rule, we should still further bear in mind that if we vote for this amendment, we will not yet vote for minority or proportional representation. We will simply have voted to leave it to these individual cities to act in this respect as they desire. It is far from my purpose to stand upon this floor now and discuss the merits of these systems; but let me say that not only did the gentleman who has so violently opposed this proposition advocate the measure at the beginning of this session, but it is not an untried system in this country. It prevails in various cities. It prevails in at least one State, and it seems to me that any system which has been adopted into the constitutional law of any State in the Union can well be made possible as a system to ameliorate the condition of our great cities.

Mr. Holcomb — Mr. Chairman, may I ask the gentleman a question?

The Chairman — The Chair has determined to rule hereafter, during the discussion of this question, for it is the only prerogative he seems to have, that questions can only be asked after gentlemen who have the floor have concluded their remarks.

Mr. Holcomb — I understand that Mr. Brown has ceased his speech.

The Chairman — If the gentleman has finished. Has Mr. Brown finished his remarks?

Mr. Brown — I have.

The Chairman — Then, Mr. Holcomb, is in order.

Mr. Holcomb — I would like to ask Mr. Brown what State he refers to? Is it not the State of Illinois?

Mr. Brown — The State of Illinois.

Mr. Holcomb — And whether the State of Illinois has not a Governor who is substantially an anarchist? (Applause on the Democratic side.)

Mr. Brown — Mr. Chairman, I am perfectly willing to reply to the gentleman. That State has a Governor who is an anarchist and a Democrat (applause on the Republican side), just exactly as three-fourths, if not nine-tenths, of all the members of the common council of the city of New York are, and always have been Democrats; and this proposition, if it ever shall be taken advantage of by the city of New York, may make is possible to reduce their majority on that board to two-thirds.

Mr. Holcomb — May I ask the gentleman a further question? Then the real motive of this is to reduce the representation by controlling the people of the city of New York in their common council; is that it?

Mr. Brown — I deny that there is any such purpose, Mr. Chairman; but I do asseverate upon this floor, after renewed discussion of this question, I have been able to discover, from the tone of my friends in the minority, that their purpose has not been to secure the best possible government, but has been to put up the bars so that what always has been Democratic, even though it has been bad, shall always remain solidly Democratic and bad.

Mr. Osborn — Mr. Chairman, I do not wholly agree with the estimate of this bill, which is taken by my colleague from Ulster. I consider it quite a nice measure. I think that, with the exception of some objectionable features, it is a measure for which most of us can vote. One of the objectionable features is this feature of minority representation, which this Convention, in its wisdom, removed yesterday. I am somewhat surprised, Mr. Chairman, that the gentlemen from New York, who have had so wide an experience of the elements which go to make up the life of that cosmopolitan city, should have neglected what is, in my judgment, the very

foundation of the political system, the very source of the political disorders of that city. In the city of New York, Mr. Chairman, there are men, many men, of wisdom, of capacity, of character and of experience, who are willing and ready to give their time to the service of the public. The chairman of the Committee on Charities has said upon this floor that he is amazed at the character of the charities of the city of New York, at their vigor, at their public spirit and at their benevolence. There is, Mr. Chairman, in that city an element which is ready to sacrifice itself for the good of the public. What is the reason that it has not shown its capacity in taking an interest in public affairs? It is because, in order to obtain a nomination, it is necessary for a man to go down into the mud of party politics; it is because after that nomination is obtained and the election is had, it is necessary for a man to keep no end of political strings agoing, to give a pass here, to give a permit there, to look after a banana stand or a soda water fountain, and no man of character or capacity is going to place himself in a position where his time must be used in those ways. Now, Mr. Chairman, what is there in this bill which takes the slightest account of that great element of city life in this country? There is nothing. The very element which the President of this Convention is endeavoring to introduce into this Constitution is one which, in my judgment, would put a premium upon men who desired to trade upon votes; would put a price upon the position of alderman or member of the common council which it has never hitherto held. The position of a man who could get into the minority and slide in that way into the common council would be one of glorious opportunity for the many keen and shrewd men who now are willing to sacrifice everything to get into New York city political life. If this Convention wishes to do away with the features of New York city civilization, to which so many sneering references have been made, let it prepare some measure which will form a political body in the city of New York, and in the other large cities in this State, that will be freed from those malign influences to which I have referred; but do not let it stand up and build up in the cities of this State one more body into which may be injected the utmost opportunities for the very evils of which they are so bitterly complaining.

Mr. Becker — Mr. Chairman, the position of a great many gentlemen on this question reminds me of the definition of orthodoxy and heterodoxy. Orthodoxy is the doxy of the man that is advocating a measure. Heterodoxy is the position of the man that takes the opposite side of it. Now, I think that there is a consideration involved in this matter that has not been, perhaps,

brought out here as strikingly as it seems to me should be, upon which the decision of this matter should largely turn. I stand here to say, for one, that so far as my judgment and experience go, unless it should be changed by future argument, I do not believe that either the principle of minority representation or proportionate representation should be applied to political bodies, as such. I would not vote here to introduce the system of proportionate representation into the Legislature of this State, nor to introduce minority representation in the Legislature of this State. They have to do with great political questions which concern the welfare of the whole people of the State, and it is entirely proper, and I think is governed by the great principles of constitutional and organic fundamental laws, to use Mr. Smith's favorite expression, "natural rights," that there should be a majority there, and that the minority, if it got there at all, should be recognized as a minority, but when we come down to the government of a factory, or a bank, or a store, or a business corporation, I say that every stockholder should have some voice in its management. What is the position of these municipal corporations to-day? I do not care whether it is Buffalo, New York, Hornellsville or Troy, they are all purely business corporations. There is no politics in them, except that politics which is represented by the three P's, patronage, plunder and pelf. The only politics there is in New York city, or any other city, to-day gathers around a distribution of the offices and the sale of the franchises, and the only politics there is in any city in this State is of that character, except the additional, and I may say almost still worse politics which uses that patronage, uses the office-holding classes as a tremendous engine for controlling votes on general questions, on general election day. Now, those considerations, Mr. Chairman, influence me to believe that in these local bodies which have control of these business matters, there should be a representation permitted to every stockholder. As it is now, the question comes up, who are the stockholders? In the great body politic of this State, dealing with the laws which restrict a man's social actions as a member of the social compact, every man, whether he owns a dollar's worth of property or whatever be his station or condition in life, is a stockholder, and he is represented there, directly down to the taxpaying community in the great cities; in some of the cities of this State where they predominate, they do constitute a part of the body politic. But in some of the other cities, where the great masses, the tremendous volume and majority of the masses, do not pay any taxes, and, to use an old mining expression, have no stake, except a grub stake, they are not stock-

holders in the institution. To be sure, I do not go so far as to say that they are not interested in good government. Of course, they are interested in clean streets; they are interested in fair police protection, although I say here openly I believe it was a great mistake ever to intrust the police of this State, the great arm of government protection for the whole body politic, to any branch of the body politic. But, taking the question from the standpoint from which I look at it, it seems to me that the gentlemen here who desire to preserve the theory of party representation, which has been so eloquently portrayed by all the gentlemen, not excluding Mr. Jacobs, that they can preserve the full force and effect of their argument, and still concede minority representation, or some form of proportionate representation to the taxpaying elements in the great cities without violating the principle.

Now, I cannot spend the time upon this question to make a very long speech, but when my friends get up here and talk about Democratic doctrine I would like to cite very briefly a few great expounders of Democratic doctrine who have, in one way or another, declared in favor of this proposition.

In this State the Constitutional Convention of 1867 was elected under a law which made provision for minority representation (Laws 1867, chap. 194, sec. 2), and this provision was inserted in the act upon a suggestion made by Governor Fenton in his annual message (Assembly Journal of 1867, p. 16). The Constitution of the State itself provided for minority representation in the Court of Appeals as at first elected (art. 6, sec. 2). From 1873 to 1883 the aldermen of New York city were elected under statutes which made provision for minority representation. (Laws 1873, chap. 335, sec. 4; Laws 1878, chap. 400.) But much doubt was expressed by the Court of Appeals as to the constitutionality of these statutes. (People v. Kenney, 96 N. Y., 294; People v. Perley, 80 N. Y., 624; Demarest v. Wickham, 63 N. Y., 320.) Governor Hill evidently found nothing un-American in minority representation, for, in his annual message of 1887, he recommended that the Constitutional Convention be elected in such a manner as to give representation to the minority. He said: "It is suggested that the Convention should consist of 110 delegates, of which sixty-six should be elected by districts, two from each congressional district, and forty-two should be elected from the State at large, no elector being permitted to vote for more than fifteen delegates, and the forty-two delegates receiving respectively the highest number of votes should be elected. If it should be deemed desirable to further adopt the system of minority represen-

tation, it might also be provided that in voting for district delegates each elector should vote for only one delegate, and the two candidates receiving, respectively, the highest number of votes in any district should be elected." (Public Papers of Governor Hill, 1887, p. 17.)

The original act passed by a Democratic Legislature, relating to the election of delegates to this very Convention, contained a provision for minority representation (Laws 1892, chap. 398), but these provisions were subsequently repealed because of the general belief that they were unconstitutional. Minority representation is also provided for in the choice of election inspectors in towns. (Laws 1890, chaps. 569, 619.) Under the existing law there are four inspectors, no voter may vote for more than two, and the presiding officer must appoint two additional inspectors, who must be the persons who have received the next largest number of votes for the office. Minority representation, therefore, exists to-day under the statutes of this State in the choice of election inspectors in towns, or does exist, unless the bi-partisan act of last winter has interfered with it. We have elected our justices of sessions for half a century by a system of minority representation, and nobody has ever been heard to complain, although its constitutionality has been questioned.

Article 4, sections 7 and 8 of the Constitution of Illinois provides: "In all elections of representatives aforesaid each qualified voter may cast as many votes for one candidate as there are representatives to be elected, or may distribute the same, or equal parts thereof, among the candidates he shall see fit."

In Michigan it is provided (Laws 1889, No. 254): "In all elections of representatives each qualified voter may cast as many votes for one candidate as there are representatives to be elected, or may distribute the same among the candidates as he may see fit." This act was subsequently declared unconstitutional in the case of Maynard v. The Board of Canvassers (84 Mich., 228), in which, if the gentlemen care to get a better light on this question, they will find fully explained in a brief, but clear statement, the several methods devised for obtaining minority and proportional representation.

In Ohio, by an amendment to section 1998 of the Revised Statutes, passed April 21, 1894, it was provided that in certain cities four police commissioners should be elected, but that no voter should vote for more than two of them. This act was subsequently declared unconstitutional. (State v. Constantine, 42 Ohio, 437.)

Cumulative voting in corporate elections is allowed by constitutional provisions in the following States: California Const., art. 12,

sec. 12; Nebraska Const., art. 11, sec. 5; Missouri Const., art. 12, sec. 6; West Virginia Const., art. 11, sec. 4.

In Pennsylvania, in 1872 and 1873, statutes were passed allowing cumulative voting for certain officers.

Now, look at some of the names that are attached to the rolls of the Proportional Representation Society of this country. Let me read just a few of them. They are not all theorists. They are men of experience in government affairs, practical experience, men who are honored and respected, have been presidential electors, have been candidates for Governors of their States, some have even been favorably considered as candidates for the presidency; ardent, outspoken, earnest in their advocacy of applying this principle, at least, so far as the government of these great business municipal corporations are concerned: Hon. Charles Francis Adams, of Massachusetts; Robert Treat Paine, of Boston; Samuel B. Capen, William Lloyd Garrison, and here is a choice name for our Democratic friends to think of, Hon. William M. Springer, M. C., Washington; Hon. Tom L. Johnson, Cleveland; Hon. Clinton Furbish, Prof. Felix Alder, of New York; Simon Stern, of New York; Henry George, of New York, and so on down through a long list. What is this system of proportional representation that is talked of? It is not simply minority representation. If I had my choice, I should not choose minority representation in preference to proportional representation. This amendment provides that the Legislature may, if it chooses, permit either one of these two methods to be adopted. Now, there are two theories of municipal government. One is to centralize everything in your mayor and take it away from your people, as you have done in New York, as you have done in Brooklyn. There is not a single thing done in New York city by its common council, its elective body; everything is done by the mayor and the boards, some of whom are elected for a longer term than he is; some as long as six years. What kind of popular government is that? Government that is put upon the city of New York by a concensus of opinion of both Democrats and Republicans, and that is the only salvation for the taxpayers of that city. In our city we had a board of aldermen, elected by districts, and we found that that did not work well, so we elected another board called the council, to which there are nine members elected from the whole city, three each year, the effect of which has been that in the upper board we manage to get some of our very best citizens. We would gladly have inserted — and I know whereof I speak, for I was connected with the revision of the charter in which that provision was inserted — we would have gladly inserted the pro-

vision in there that some portion of that board should be elected by some system of proportional representation, but we could not do it; the Constitution stood in the way. Now, what is proportional representation? And before I pass on that question I wish to consider the other form of municipal government. The other form, which is the true form, is to have a great central body representing the whole city, or very large districts, and rotating in office, part of them going out one year and part of them the next year, charged with the whole duty and responsibility of local self-government, and I should say, if possible, serving without pay, as the London county towns' councils do and the Berlin council, if I am not mistaken. Now, the object of the Proposed Representation League as stated in its Constitution, is to "promote the reform of legislative assemblies by abandoning the present system of electing single representatives from limited territorial districts by a majority or plurality vote, and by substituting the following: First, all representatives shall be elected at large on a general ticket, either without district divisions, or in districts as large as practicable; second, the elections shall be in such form that the respective parties or political groups shall secure representation in proportion to the number of votes cast by them, respectively." So, if the Republicans, we will say, in the city of Buffalo, should cast more votes than the Democrats, they would have more representation, and *vice versa;* but, on the other hand, in the governments of these great cities, those that could not cast the most votes would, at least, have some one in the council representing their interests, as taxpayers and citizens of the city.

Now, I cannot spend the time of this Convention longer on this question. I have talked longer now than I meant to, but what I meant to emphasize as distinctly as it was in my power is this, that there is a vast difference between a Legislature or a Congress, where great questions of public policy are at stake and passed upon, and in which the whole mass of the citizens are equally interested, and a municipal body in a business municipal corporation, dealing purely, simply and absolutely with business concerns. I believe there could be some form adopted in which it would be always certain that there would be some minority representation in these municipal business councils, as in the boards of directors of railroads, or banks, or the like business corporations in which there would be checks and safeguards placed around the spending of public money, someone to stand up for and fight for the interests of the taxpayers. It is true that there would be, at times, as there will always be, whether you elect by majority repre-

sentation or minority representation, it makes no matter, there will be deals; there will be divisions; no matter by what partisan vote people are elected, in a ward or district, assembly district, if you please, for the aldermen of New York are not elected by wards any longer, they are elected in assembly districts, people elected to a council from separate districts in that way, no matter which party elects them, who if there is plunder to divide and the stake is sufficiently large, will join hands and make combinations; but it does not follow from that that if you could get representatives in there from large districts by some system of minority or proportional representation, that because those members are elected in that way they will be any more likely to make combinations or divisions than those elected from the districts. Now, we plead for this, not because it is an experiment. It has been tried. It has been tried in Switzerland, it exists to-day in Germany, and I, for one, am not going to stand here and stultify myself by the assertion that we should reject everything that comes from the other side of the water because it comes from there. What ridiculous nonsense. Our own Constitution and the free principles that it is based on came from the Magna Charta. As well might the gentlemen that stood up in the Constitutional Convention with Jefferson, and Madison, and Hamilton have said that many of the things that were put in the great fundamental organic law of our country should not be put there because they were copied after something abroad. Experience teaches, time works great changes of feeling and experience. The original idea and unit of municipal government was the town, in which all the people came in, and all voted upon what should be done; but the tremendous growth of these great cities, springing up like mushrooms, into whose lap the wealth of nations is poured, affording opportunities for corrupt combinations for the sale of franchises and the giving away of city property, has totally changed the condition of affairs. The whole people cannot vote on these questions; they are not represented. What, then, is the remedy? Simply to permit some small portion of them, if the Legislature, in its wisdom, sees fit, to be represented in a local body and to build up a strong local assembly for the handling and management of the business affairs in which the citizens are interested.

Mr. M. E. Lewis — Mr. Chairman, when the Cities Committee presented its report originally, something like three or four weeks ago, I was entirely satisfied with that report. In that report was the proposition which was stricken out yesterday upon the motion of Mr. Bush, namely, that minority or proportional representation

might be tried as an experiment, if the Legislature of the State of New York saw fit to try it in any of the cities of the State. Various and numerous amendments were presented to that article, as it was originally reported, amendments presented by gentlemen who had given but very little consideration to the subject. Some of those amendments, having been submitted to the committee when the report was recommitted, had been incorporated in the report and in the article which the Committee of the Whole is now considering. Not one of those amendments, Mr. Chairman, incorporated in the article which this committee has now reported has tended to strengthen or better that article, as it was originally reported. In my judgment, every amendment that has been made to the article, as it was originally reported, has tended to weaken that article. I refer not especially to the amendment in relation to the three-fifths; I refer not especially to the amendment in relation to the police subject; I refer not especially to any amendment, but to all. Every amendment has weakened the entire article, and to-day the article is not nearly so good an article as was originally reported by the chairman of the committee. In the committee we recommended the article with the proposition for minority or proportional representation. We did that on the theory that it had not been tried in the State of New York, that evils existed in some of the great cities of the State, and that it was advisable to permit the Legislature to try the experiment of proportional or minority representation in some of these cities, with the idea that, if it was found to be a cure for those evils, it might be applied to all the cities of the State. That proposition commended itself to the members of the committee only upon that theory, and that alone. And that proposition was yesterday hastily, I think, stricken from the article. As a member of the committee, I do not wish to be understood as favoring the proposition and making it compulsory as to all the cities of the State. Far from it; but, as a member of the committee, willing to try whatever may seem to promise good for all the cities of the State, I would be in favor of putting that proposition back into the article just exactly as it was before the motion of Mr. Bush was made, just as I would be in favor of putting back into the article every proposition that has been stricken out from that article. I think the article, as I said before, is weaker now than it has ever been before, and, if the amendments continue very much longer, the value of the article will be entirely destroyed.

Mr. Veeder — Mr. Chairman, are amendments in order? An amendment to the amendment proposed by the honorable President?

The Chairman — An amendment to the amendment is in order.

Mr. Veeder — I offer the following amendment.

Mr. Becker — I rise to a point of order.

The Chairman — The gentleman will state his point of order.

Mr. Becker — I understood that the Chair held yesterday that amendments to the section proper must be exhausted before Mr. Choate's ——

Mr. Veeder — I rise to a point of order. The gentleman is not stating any point of order, but catechising the Chair.

The Chairman — The Chair rules that the point of order is not well taken. The Chair did not so rule yesterday.

Mr. Becker — I understand, then — perhaps I should not have premised it, Mr. Chairman — it was out of no disrespect to the Chair, however — I understood that Mr. Choate's proposition was offered as a substitute; if it were not, of course, I am wrong.

The Chairman — Mr. Choate's amendment was to insert certain words which the Chair held included such words that it made a substantial difference, and it was not an equivalent question. The Chair now rules that an amendment to that is in order.

Mr. Veeder — I move to strike out of the proposition, or the amendment, proposed by Mr. Choate, the words "in cities of the first class." Now, if the principle claimed by the gentlemen who are the majority of this Convention is a correct one, I cannot understand why they confine this principle to only two or three cities of the State of New York. If it is well to have minority representation in the city of New York, and in the city of Brooklyn, and, perhaps, the city of Buffalo will be included in the first class, why is not this principle a proper one for all the cities?

The Chairman — The Chair would be obliged to hold that if those words were stricken out it would be an equivalent motion.

Mr. Veeder — Pardon me, Mr. Chairman, I think the Chair is in error. My proposition is for minority representation in every city. The one ruled out or voted upon, for which the substitute is now offered, is a proposition for no minority representation. But mine is for minority representation for all cities.

The Chairman — Mr. Veeder will please send his amendment to the Secretary's desk.

Mr. Veeder — I can only send a copy of the resolution with my pencil drawn through the words that I refer to. Now, to make it clear, Mr. Chairman, if this principle of minority representation is a

good one, or a proper one, for any city, why should it not apply to all cities? I do not believe the gentleman from New York is sincere, who talks so harshly about the citizens of New York. I believe New York is a very intelligent city, and there is not a word that he has uttered upon the floor of this Convention that he has not uttered there to the citizens of New York, and there is not a word that they have not repudiated, and the gentleman as well. Now, sir, if there is sincerity in the proposition, make this the rule, that every city shall have minority representation.

Mr. Spencer — Mr. Chairman, as a member of the Cities Committee, I desire to say for myself, that I hope the amendment proposed by the gentleman from New York (Mr. Veeder) will be approved. I cannot see any reason why we should permit the three great cities of the State to avail themselves of the benefits of this provision, and should exclude the other cities. If it is a correct principle, as he says, why not apply to all? I cannot see my way clear to any other conclusion, and I appeal to the gentlemen of this Convention in behalf of the general proposition which underlies these amendments to regard the arguments that were made here a few days since, in respect to the amendment which was adopted in relation to the elective franchise, and which permitted, or was passed to permit, the use of machines in elections, a machine that it is well conceded by every one has never yet been invented, and the inventor of which has never yet been born. Now, sir, if we are willing to inject into the Constitution a provision which opens the door to improvements; if we are to open the door, as I say, for an opportunity of improvement, to permit inventors of machines to have a chance at the methods of our elective franchise, why shall we not open the doors also for the inventors of better systems of economy, to apply the results of their brains to the machinery of civic municipalities? I can see no reason why, if we vote for one proposition we should not vote for the other. One is equally consistent with the other; and, furthermore, the principle which this amendment seeks to permit to be applied to our municipalities has been tried already in our great business corporations. I think every gentleman on this floor who is familiar with corporation law will agree with me that substantially the provision that is here sought to be permitted to be applied to cities has already been applied to limited liability corporations, and we know that it has worked well there. It has not worked great reformation, but has served as a check to prevent evils and frauds, and to easily detect wrong is one of the best preventives of wrong. Now, sir, I believe that the gentlemen in this Convention who

regard themselves as belonging to the minority, and who in the interests of New York city feel inclined to resist this proposed amendment, have failed to appreciate the fact that it cannot be applied to their cities without the consent of the cities, unless the Legislature passes it by a three-fifths vote; and I ask what probability is there that the Legislature, by a three-fifths vote, will ever saddle this provision upon the city of New York, unless it be agreeable to that city? I am not willing, for one, Mr. Chairman, to have it said that we vote here to put this proposed amendment upon the the city of New York because it belongs to one political party, and that we refuse it to other cities of the State because they belong, or many of them, to another political party. I believe that we should act fairly and squarely in this matter, and if we adopt this provision, we should make it apply to all of the cities alike.

Mr. J. Johnson — Mr. Chairman, I regard the amendment by the gentleman from Kings, if adopted, as killing, by indirection, the proposition made by the gentleman from New York. I was for the measure as reported by the Committee on Cities. That was stricken out yesterday. There is now a second proposition, standing on different grounds, fairly before this committee; and we ought to have a vote on it; and to kill it by indirection does not comport with the dignity or the importance of the subject. And since I am on my feet on this question, I want to say, with all the force and intensity that I am able, that I appeal to the members of this Convention in the cause of good government, in the cause of better representation, in the cause that we fight for almost — I appeal to them to give us an opportunity in the cities that we have the honor to represent — give us, we appeal to you, gentlemen, give it to us that this is possible — repeal as to common councils, and in the large cities, the prohibition of the suffrage part of the Constitution. We ask it. Argument is exhausted. No one has attempted to answer the argument made by the gentleman from New York (Mr. Root), that locality representation does not give variety of representation in the cities. There is no answer to it. I consider, sir, that the defeat of the resolution offered by the President, or the adoption of the resolution offered by the gentleman from Kings, would be fatal to the work of this committee, and as we believe, sir, to the work of this Convention.

Mr. Veeder — Mr. Chairman ——

There were numerous calls of "question."

The Chairman — The Convention not having limited debate,

whenever a gentleman rises and is recognized, he will be heard, until that course is taken by the committee. (Applause from the Democratic side.)

Mr. Veeder — I want to ask the chairman of the Committee on Cities, if the amendment suggested by the President prevailed, what cities would be affected by it other than New York and Brooklyn?

Mr. J. Johnson — Buffalo.

Mr. Veeder — Is it not applied to cities of a population of over half a million?

Mr. J. Johnson — The amendment applies to cities of the first class, of over 250,000.

Mr. Cochran — Mr. Chairman, I think this subject has been very thoroughly discussed, and I do not desire to take up the time of the committee any further than to repeat what I said yesterday as to what it seems to me the action of this committee indicates. I said yesterday that it seemed to me there was a party in this committee who did not desire to give home rule to cities, unless they gave it with a big string. I mean by that, sir, that there are those here who are willing to give home rule and to use it themselves, but when the other party comes in to rule, they desire to be in a position of controlling those who ought to rule under the amendment which they want to have adopted for their own benefit. To illustrate what I mean, sir, we will assume that the expectations of our Republican friends in this committee are realized and that the Republicans are in control of the Legislature during the coming year. The worthy President of this Convention saw fit yesterday to say, and I think he said it truly, that in the city of New York, the Republicans, probably, would never control the city legislature. We can, therefore, assume that in the city of New York, at least, this measure of minority representation is intended solely for the benefit of the Republican party in that city. We will now illustrate how the string works. The minority in the common council of the city of New York desires some measure passed. They have not sufficient votes. They go to the majority. The majority accedes to the request of the minority and the string is not pulled. But let the majority refuse to accede to the request of the minority on that board, and the minority proceed to the city of Albany, and under the amendment which this Convention yesterday interjected into this present section for the first time, they override the action of the local common council and of the mayor of that city; and I say, sir, that it permits the minority in any local legislative body to control the majority and to control the government of that city. And I

submit, sir, that it would be a very unwise thing for us to interject any such thing as that into this Constitution. My friend from New York (Mr. Root), however, says that it is immaterial whether we believe in it or not. That is not the question. What we want to do is to leave it to the Legislature. Let them say whether the city shall have it or shall not have it. Why, sir, it is such an evasion of what our duty is here that I am astonished to think that the gentleman would stand up here and advocate such a measure; and I cannot do better than repeat the words of that gentleman on a question very similar to this, namely, the female suffrage, when an attempt was made by certain delegates in this Convention to evade the question, as to whether they should or should not recommend female suffrage, but leave it to the people; and my friend, Mr. Root, of New York, spoke as follows:

"Now, we are met, sir, by the 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 to a weak and shuffling evasion, and thus throw back upon the people the determination which they charged us to make in this Convention. I hope, sir, that this Convention will discharge the duty of determining this question with manliness and decision of character."

I think, sir, that it is apparent to all that if we leave this to the Legislature, it is only because the delegates in this Convention are afraid to put into the Constitution such a measure as is advocated here, and I think, sir, that we should, as Mr. Root said at that time, discharge our duty "with manliness and decision of character," and if we do not believe in it, if we do not believe in proportional or minority representation — and that we do not was clearly shown by the vote of this Convention yesterday — I say it is our duty to vote down the amendment offered by the President of this Convention.

Mr. Root — Mr. Chairman, the Committee on Rules is ready to perform the duty imposed upon it by the Convention.

Mr. Bowers — Mr. Chairman, I rise to a point of order ——

Mr. Root — And to enable it to do so, I move that the committee now rise, report progress, and ask leave to sit again.

Mr. Bowers — I rise to a point of order. The gentleman from New York is not speaking to any motion.

Mr. Root — I made one.

Mr. Bowers — When I made my point of order he had made no motion to rise and report.

Mr. Root — I have now. I call for the question.

The Chairman — The Chair recognizes the fact that the gentleman has made a motion to rise, report progress, and ask leave to sit again.

Mr. Bowers — And I submit now, the point of order ——

The Chairman — Mr. Bowers has the floor to a point of order, which is always in order.

Mr. Bowers — I now make the point of order that when a point of order is made it shall be determined as of the time when made, and the situation shall not be altered by a gentleman making a motion afterwards.

The Chairman — The Chair holds that the point of order is not well taken.

The Chairman put the question on the motion of Mr. Root, to rise, report progress, and ask leave to sit again, and it was determined in the affirmative.

President Choate resumed the chair.

Chairman Johnson — Mr. President, the Committee of the Whole have had under consideration proposed constitutional amendment No. 451, entitled to provide for home rule for cities, have made some progress in the same, but have not gone through therewith, and have instructed the chairman to report that fact to the Convention, and ask leave to sit again.

Mr. Speer — Mr. President ——

The President (Mr. Speer continuing to demand recognition) put the question on agreeing to the report of the Committee of the Whole, and it was determined in the affirmative.

Mr. Root — Mr. President ——

Mr. Speer — Mr. President, may I not be recognized here?

The President — The gentleman will be seated.

Mr. Speer— I want to be recognized. I have been asking repeatedly to be recognized. I wanted to ask for a roll-call on that. I have a right to be heard, and I arose and addressed the Chair in a respectful manner. I think we might as well kill this proposition now on the calling of the roll, and I ask for a roll-call on the motion to rise, report progress, and ask leave to sit again.

The President — If the gentleman does not take his seat the Sergeant-at-Arms will see that he does so.

The Chair recognized Mr. Root.

Mr. Root — Mr. President, the Committee on Rules has instructed me to report to the Convention the proposition that further debate upon the amendment which is now in Committee of the Whole relating to the affairs of cities, be limited as follows: That thirty minutes further time be allowed for the presentation and discussion of amendments, and that speeches be limited to five minutes; that thirty minutes further time be allowed for the presentation and discussion of substitutes, other than the minority report, and that speeches thereon be limited to five minutes; that one hour and a half further time be allowed for the discussion of the substitute proposed by the minority report, and that speeches thereon be limited to twenty minutes, and that at the expiration of the time so limited, the vote be taken in the Committee of the Whole.

Mr. Veeder — On that I demand, under rule 56, that the matter be laid over till the next legislative day.

Mr. Root — Mr. President, I have not yet yielded the floor.

Mr. Veeder — The Chair has recognized me. Mr. Root had sat down.

The President — The Chair did it by mistake. Mr. Root has the floor and will keep it until he is done.

Mr. Root — Upon that report I move the previous question.

Mr. Cochran — I demand the ayes and noes.

Mr. Bowers — I rise to a question of privilege; that is, I desire to state that the minority members of the committee dissent from that report.

Mr. Blake — I further object to the consideration of that rule to-day.

The President — Upon what ground?

Mr. Blake — And if I am sustained by twenty-four I shall insist that it lie over.

The President — On what ground?

Mr. Blake — Under the provision of rule 56.

Mr. Root — I raise the point of order that the only question now before the House is the roll-call.

The President — The Chair rules that, under rule 56, Mr. Blake's point of order is not well taken; that this matter comes under the proviso at the end of that rule, which excludes the matter of the twenty-four votes.

The demand for a roll-call made by Mr. Cochran was sustained.

The President put the question upon the ordering of the main

question on the adoption of the report of the Committee on Rules, and the Secretary proceeded to call the roll.

Mr. Blake — Mr. President, I desire to be excused from voting and will give my reasons. I insist, sir, that upon the proper construction of rule 56, this roll-call is entirely out of order. I insist that that rule, "all questions or motions authorized by this rule shall be decided at once, without delay or debate," means when it is proper to consider that rule, but being objected to, if the objection is sustained by twenty-four, it must go over for twenty-four hours, until the next legislative day. With that statement, sir, of my construction of the rule, which I think to be correct, with all due respect and deference to the decision of the Chair, I withdraw my request, and vote no.

Mr. Bowers — Mr. President, I dissented from this report because, while the subject has been very fully discussed, I feel that there ought to be a little more time given to the discussion of a minority report. Feeling, however, that after three days' discussion has been had, the time has arrived when it is fair to vote upon these questions, I should not have been inclined to press at any great length, the opposition to the report in the form in which it came. I expect at the hands of this Convention reasonable time for debate. I shall take no part in any unnecessary delay at any time; and as I think we may dispose of this question and get ahead with the work, I shall vote aye.

Mr. Cochran — Mr. President, I desire to say, sir, that I would have voted for any rule which will place any reasonable limit on the debate of this question, and I had even so agreed with several of the members of the minority of this Convention; but I submit, sir, that when a rule is brought in in the manner in which this was, when a gag is put on the minority of this Convention, when members are not recognized on the floor when they are entitled to it, it behooves the manhood of every member on this floor to stand up and vote against it, sir, and I vote no.

Mr. Goeller — Mr. President, I desire to be excused from voting and to explain my reasons. I am actuated by the belief that if we delay progress much further upon this subject, we will be thrown into considerable confusion, and we will impair the consideration of other weighty matters to come before the Convention hereafter. For that reason, Mr. Chairman, I withdraw my request to be excused from voting, and vote aye.

Mr. Mulqueen — Mr. President, I hope that the impression that was made upon us on the opening day of this Convention will not

be forgotten, when our President said, and I believe that in the discussion, consideration and decision of the great questions of policy and principle that should come before us, we should not be actuated by any partisan spirit whatever; fearing, Mr. President, that we are, but hoping that the inability of the President to see Democrats on the floor, when they seek to exercise their privileges, will not continue to the end of this Convention, I am willing that the debate should be limited, and shall, therefore, vote aye.

Mr. Peck — Mr. President, I desire to explain, in a very few words, my vote. I do not wish my vote to be construed as favoring or approving the methods by which this vote has been reached; at the same time I do not wish to in any way impede the work of this Convention, and I, therefore, vote aye.

Mr. Smith — Mr. President, I would like to explain my vote. I think that consistency is more important than pace in this Convention, and I believe that every delegate here has an equal right (laughter), and I will add, a natural right (laughter) to be recognized and to express his opinion. I have observed in watching this debate that it has been a compound; that no method has been observed, no analysis observed, but that judicial officers and executive officers and representatives, so far as respects minority have all been mixed up in a compound and thrown at the Convention together, and the result is that the minds of the delegates are more or less confused. The human mind is so constituted ——

The President — Will Mr. Smith please confine his remarks to the subject which is within the rules, explaining his vote.

Mr. Smith — Yes, Mr. President, if I am beyond the limited time I will stop.

The President — Not at all; but within the limit allowed, gentlemen should confine themselves to the question.

Mr. Smith — The human mind is so constituted that it cannot see clearly and distinctly more than one thing at a time, and if you confuse it by a great mass of compounds, you do not act with consistency. I am in favor of more time to discuss this thing than the committee have allowed, and I vote no.

Mr. Veeder — Mr. President, I desire to explain why I shall vote as I intend to vote. Firstly, I do not desire to delay one minute further the consideration or the closing of the debate on the cities article. If we do not understand it at this time, we never will. But I do believe, sir, that if there are any rules of this Convention they should be observed by all of us. Rule 56 entitles any delegate who objects to the consideration of a report of the Committee on Rules,

if his objection is sustained by putting it to a vote, to lie over for one legislative day, as I read it. Now, the Chair declined to recognize me to make that objection, but ——

The President — The Chair did not decline to recognize Mr. Veeder, and did not see him.

Mr. Veeder — That is peculiar, because he called me by name. The Chair mentioned my name, and then recognized Mr. Root. But no matter, we will not quarrel about that. I submit that if we act fairly in these matters, we will reach a clear conclusion on all subjects. I vote no.

Mr. Bush — Mr. President, I ask the privilege of explaining my vote. I am in favor of limiting debate in the manner proposed by the Committee on Rules. For the purpose of the precedent I have taken the interpretation of rule 56 placed upon it by the Chair. Rule 56 provides that any member may object to a report of the Committee on Rules, and if the objection is sustained by twenty-four members, the consideration thereof shall lie over for one day. Mr. Blake objected to a consideration and was ignored, and the question decided immediately. A member was recognized, and the Chair overruled his objection. That ruling was entirely wrong, if the rule means anything. A report of the Committee on Rules may be presented at any time, but if the consideration of the report is objected to by any member, and sustained by twenty-four others, it must lie over for one day. That is the only protection that the minority have. Otherwise, the chairman of the Committee on Rules can do absolutely as he pleases in reference to debate in this Convention, and there is no way on earth to stop it. I vote aye upon this question.

Mr. Veeder — Mr. President, I make the point of order that, under rule 56, upon the coming in of a report of the Committee on Rules, and being under consideration, the previous question is not in order.

The President — The Chair holds that the point is taken too late, that it is not in order, and not well taken.

The call of the roll being completed, the President announced that the previous question was ordered by the following vote:

Ayes — Messrs. Ackerly, Allaben, Arnold, Baker, Barhite, Barnum, Barrow, Becker, Bigelow, Bowers, Brown, E. A., Burr, Bush, Cady, Carter, Cassidy, Church, Clark, G. W., Coleman, Cookingham, Countryman, Crosby, Danforth, Davies, Davis, Deady, Dean, Dickey, Doty, Durnin, Emmet, Floyd, Foote, Forbes, Frank, Augustus, Fuller, C. A., Fuller, O. A., Galinger, Gibney, Giegerich,

Gilbert, Goeller, Goodelle, Hawley, Hedges, Herzberg, Hill, Hirschberg, Holls, Jacobs, Jenks, Johnson, I. Sam, Johnson, J., Johnston, Kellogg, Kerwin, Kimmey, Kinkel, Kurth, Lauterbach, Lester, Lewis, C. H., Lewis, M. E., Lyon, Manley, Marshall, Maybee, McArthur, McCurdy, McDonough, McIntyre, McKinstry, McLaughlin, C. B., McMillan, Mereness, Moore, Morton, Mulqueen, Nichols, Nicoll, Nostrand, O'Brien, Ohmeis, Osborn, Parker, Parkhurst, Peck, Phipps, Platzek, Pool, Porter, Powell, Pratt, Putnam, Redman, Roche, Root, Sandford, Spencer, Springweiler, Steele, A. B., Steele, W. H., Storm, Sullivan, T. A., Tekulsky, Tibbetts, Truax, C. H., Vedder, Vogt, Wellington, Whitmyer, Wiggins, Woodward, President — 114.

Noes — Messrs. Banks, Blake, Campbell, Cochran, Davenport, Devo, Gilleran, Green, A. H., Green, J. I., Holcomb, Hottenroth, Marks, McLaughlin, J. W., Meyenborg, Parmenter, Peabody, Rogers, Smith, Speer, Tucker, Veeder — 21.

The President — The question is now on the adoption of the rule proposed by the Committee on Rules, prescribing a limit to debate on the cities article.

Mr. Bowers — Mr. President, I have an amendment I would like to offer.

The President — The previous question has been ordered, and the gentleman is too late, for that reason.

The President put the question on the adoption of the rule proposed by the Committee on Rules, and it was determined in the affirmative.

Mr. C. B. McLaughlin — Mr. President, I offer the following resolution:

The Secretary read the resolution as follows:

R. 188.— Resolved, That the Committee on Rules be instructed to report a rule changing or modifying rule 57 so that the ayes and noes cannot be taken on a question or proposition unless by request of twenty-five members.

Mr. McLaughlin — Mr. President, upon that I move the previous question.

Mr. Bowers — Mr. President, I make the point of order that that has to go to the Committee on Rules.

The President — The Chair so holds.

Mr. Root — Mr. President, I move that we now go into Committee of the Whole on the general order under consideration.

Mr. Vedder — Has the resolution of Mr. McLaughlin gone to the Committee on Rules, Mr. President?

The President — Yes.

Mr. Vedder — I move that the Committee on Rules be discharged from the further consideration of that motion, and that it be reported forthwith.

Mr. Cochran — I object, Mr. President.

Mr. Bush — Mr. President, the motion of the gentleman from Cattaraugus is not in order, we not being under the head of reports of committees. That is the only place where a motion to discharge a committee can be made.

The President — The Chair does not so understand. Mr. Vedder's motion is in order.

Mr. Vedder — Mr. President, I move the previous question upon my motion.

Mr. Bowers — Mr. President, I make the point of order that you cannot by this means avoid the effect of rule 56, that on the objection of twenty-four members no report from the Committee on Rules shall be considered until one day has elapsed.

The President — The gentlemen evidently do not understand the motion of Mr. Vedder, which is to discharge the Committee on Rules from the consideration of the matter which has been sent to them, and that it be taken up for consideration by the Convention, and upon that Mr. Vedder moves the previous question.

Mr. Cochran — Upon that, Mr. President, I call for the ayes and noes.

Mr. Cochran's call was sustained.

The President — Gentlemen, as their names are called, who are in favor of Mr. Vedder's motion for the previous question made by him will say aye, and those opposed will say no.

The Secretary proceeded to call the roll.

Mr. Bush — Mr. President, I ask permission to explain my vote. I protest against changing the rules in this ill-considered manner. The rules are made for the protection of minorities, and for the regularly and orderly conduct of the business of this Convention; and the very first time that any conflict arises, the majority instead of referring the matter to the Committee on Rules, who are, by this Convention, selected to consider all those matters, attempts to change the rules of this Convention without even five minutes debate on the proposed change. That is abso-

lutely unheard of, and partisanship run mad. The simple fact that this provides for an increase of only ten members upon the question of calling for the ayes and noes is of no consequence. It is the precedent you are establishing here, which, within two weeks, will probably tear the rules of this Convention all to pieces, if you are going to adopt this method. Ordinarily you cannot change a rule of any body except by a two-thirds vote, but that was overlooked in this Convention. Mr. President, I protest against this method of procedure, and that is all I can do, because we are in a tremendous minority here. I vote no.

Mr. Cookinham — Mr. President, at last the lion, or the tiger rather, has crawled out from under the ass's skin, and I have been surprised that the gentlemen who sit upon this side of the House have so long been deceived by the ass. I vote aye.

Mr. Hottenroth — Mr. President, during the session last night, and the entire session of this morning, we discussed very deliberately the question as to whether minority representation is the proper thing in cities. If it is the proper thing in cities, I think it ought to be the proper thing in this Convention. The Republicans have taken that position on this question, and I believe that at this time we can express a wish to have at least minority representation. The previous question is moved on a demand or a limitation of time; time, I might say, that has taken up on the other side of the House discussing the question as to what extent of liberality they should exercise toward cities; that time was taken up by them, and if it is the purpose now to limit the minority in discussion, that is the only power we have; and if you believe in minority rule or in minority rights, give us that right now, or at least a part of it.

Mr. Mulqueen — Mr. President, I am proud in the recollection that I opposed the adoption of this particular rule. I remember how eloquently the gentleman from New York, Mr. Bowers, told the minority of this Convention that he wanted to be supported, because by that report the minority would be protected in their rights. Now, Mr. President. this is the beginning of the end of all deliberations; and you are turning this body from a Constitutional Convention into a political convention. You may do it if you will; make your Constitution a partisan measure, and ask the conservative people of this State to change their fundamental law simply to oblige the Republican party. I vote no.

Mr. Platzek — Mr. President, I will hardly be accused by the gentlemen of the majority of having attempted to impede in any way the progress of the work here, either by indulging in long

speeches or by absenting myself from the Convention at any time. The record will show that, on each occasion when adjournment was asked for, or when the work of this Convention was to be progressed, I voted with the gentlemen of the majority. I did it under the assumption that every man here on his oath was as fair and conscientious in the discharge of his duty as I believe I have been and still hope to be. When I voted for the adoption of the rule I did it under the assumption that the majority would not deprive us of the only protection that we had under that rule. I regret most exceedingly that the suggestion has come from the gentleman from Cattaraugus (Mr. Vedder) for the purpose of depriving us of the only safeguard we have, and with that view, and feeling as I do, I for the first time since I have been a member of this Convention, will vote no on a proposition of this kind.

Mr. Root — Mr. President, I wish to explain my vote. I have sat here day after day and week after week, and have seen gentlemen who have called themselves of the minority of this House, calling for the ayes and noes upon questions, the decision of which was not in the slightest degree in doubt, solely for the purpose of obstructing and delaying the proceedings of this Convention; and while there are among the gentlemen, who call themselves of the minority, many who are doing their full duty, I believe a majority of them are doing their full duty, in endeavoring to secure the effective work of this Convention, I believe it is our duty now to see that a factious minority of the minority shall no longer frustrate the will of the people of this State that we shall revise and amend this Constitution. For that reason, sir, I am in favor of so changing this rule in accordance with regular parliamentary procedure, that while the minority so-called shall, if they wish, call for the ayes and noes, factious opposition and delay will be rendered more difficult than it is now.

Mr. Smith — Mr. President, I wish to explain my vote. We are now having an object lesson of what is meant by minority representation. It is made manifest that it is meant that the minority shall be called into a convention or an assemblage for the purpose of being gagged and choked, and, therefore, I vote no.

Mr. Tekulsky — Mr. President, I desire to explain my vote. I am opposed to this motion because it is continually making changes in the rules, and it is very hard for the delegates here at present to understand them. I myself am opposed to any delay. I have voted every time with the people here who have desired to progress the work of this Convention, but in this case I am opposed to this

measure, because I think that you will find it has not been the minority that has always called for the ayes and noes. I deplore the fact that a few moments ago the ayes and noes were called on a question that was unnecessary, and I am recorded as voting against it at the time. I do not believe that it is a proper time now to change the rules, as they have been used here from the day we adopted them up to the present time, and I, therefore, vote no.

Mr. Vedder — Mr. President, I ask to be excused from voting. The resolution introduced by the gentleman from Essex (Mr. McLaughlin) was entirely proper. The motion which I made after it had been referred to the committee was entirely proper, and one that can be made at any time, to discharge any standing committee from the further consideration of any matter which may have been referred to such committee, and we are proceeding in order. The minority upon this floor, whoever they may be, have rights, and the majority have rights, and we are simply asserting the rights of the majority. The majority rule by their votes. The minority have the right to vote, which they exercise. The majority have the right to vote, and they exercise that right, and the result will be declared by the President. Everything has been in order, as it shall continue to be in order, so long as I sit in this Convention and have a voice in these proceedings. No one can object to it. The minority have not an exclusive right here, a right which they may demand, to take up the time of this Convention by talking. The gentleman from New York (Mr. Cochran) opposed the rule a moment ago by saying it was a gag law upon the minority, shutting off debate.

Mr. Cochran — He repeats it.

Mr. Vedder — Well, if he confesses that the stream of what the senior Senator from New York has called "yawp," has proceeded from that side, and it is a gag upon them, let them be gagged awhile as we have been gagged sometimes. I withdraw my request, and vote aye.

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

The President — The Chair holds that questions are out of order while the roll is being called.

Mr. Veeder — I desire to explain my vote. I deny the right of any gentleman in this Convention to impugn the motives which govern us in our action. Mr. Root has no right to say to any delegate here that he is acting improperly. I have called for the previous question myself on occasions. I have not occupied the time of this Convention very much in debate. My friend from Cattarau-

gus has occupied more time in debate, as he called it, than any other member on the floor. But, sir, I have called for the ayes and noes here, not for delay, only that the people may know throughout the State how gentlemen vote upon certain propositions, and for those reasons, we have a right to the ayes and noes. If the gentlemen desire to impose upon the people of the State improper measures in the organic law, let them be willing to go on the record that we may tell the people how they voted, and not go home and plead that they did not vote so, or that some one is mistaken in his assertion. Let them go on the record on every proposition. It will not take any very great amount of time. I vote no.

Mr. Moore — Mr. President, I desire to explain my vote on the question. We have been now about nine days on the cities article. Mr. Johnson (I. S.) himself sat in the chair seven days, and I must say that while I do not impute to Mr. Johnson a desire to be more favorable to the minority than to the majority, I must say that the Record will show that he recognized them two to one, and, therefore, I cannot see that the minority have anything to complain of in the passage of such a rule as this. I vote aye.

The previous question was ordered by the following vote:

Ayes — Messrs. Abbott, Ackerly, Allaben, Arnold, Baker, Barhite, Barnum, Barrow, Becker, Brown, E. A., Brown, E. R., Cady, Cassidy, Church, Clark, G. W., Cookinham, Countryman, Crosby, Davies, Dean, Dickey, Doty, Floyd, Foote, Frank, Augustus, Fuller, C. A., Fuller, O. A., Galinger, Gibney, Gilbert, Goodelle, Hamlin, Hawley, Hedges, Hill, Hirschberg, Holls, Jacobs, Johnson, I. Sam, Johnson, J., Johnston, Kellogg, Kinkel, Kurth, Lauterbach, Lester, Lewis, C. H., Lewis, M. E., Lyon, Manley, Marshall, McArthur, McDonough, McIntyre, McKinstry, McLaughlin, C. B., McMillan, Moore, Morton, Nichols, Nostrand, O'Brien, Parker, Parkhurst, Phipps, Pool, Porter, Powell, Pratt, Putnam, Redman, Root, Spencer, Springweiler, Steele, A. B., Steele, W. H., Storm, Sullivan, T. A., Tibbetts, Vedder, Vogt, Wellington, Whitmyer, Wiggins, Woodward, President — 86.

Noes — Messrs. Banks, Bigelow, Blake, Bowers, Burr, Bush, Carter, Cochran, Coleman, Danforth, Davenport, Deady, Deyo, Durnin, Emmet, Giegerich, Gilleran, Goeller, Green, A. H., Green, J. I., Herzberg, Holcomb, Hottenroth, Jenks, Kerwin, Kimmey, Marks, Maybee, McLaughlin, J. W., Meyenborg, Mulqueen, Nicoll, Ohmeis, Osborn, Parmenter, Peabody, Peck, Platzek, Roche, Rogers, Sandford, Smith, Speer, Sullivan, W., Tekulsky, Towns, Truax, C. H., Tucker, Veeder, Williams — 49.

The President — The question now is on Mr. Vedder's motion that the Committee on Rules be discharged from the further consideration of the resolution (No. 188) offered by Mr. C. B. McLaughlin, relating to the modifications of rule 57, that it be considered forthwith, and on that he moved the previous question.

Mr. Cochran — I desire to debate that, and under rule 50 it will have to lie over one day.

The President — The previous question has disposed of that point; besides it is not well taken, because it relates to the disposition of business before the Convention, the business of this day and every other day.

Mr. Cochran — Will the President allow me? I submit that the previous question was only on the question as to whether or not the Committee on Rules should be discharged from the further consideration of the proposed rule.

The President — Mr. Cochran, this is not debatable. The previous question is ordered, and there is nothing to be done but to have the motion put.

Mr. Bowers — Mr. President, I rise to a point of order. That resolution as it now reads differs from the statement made, undoubtedly in error, when I called attention before to rule 56. That resolution, as now read, requires this Convention to act forthwith on such report. That cannot be done without a direct and intentional violation of the provisions of rule 56.

The President — The previous question has been ordered, and the Chair has no alternative but to put the question. It is not debatable or the subject of discussion.

Mr. Bowers — May I finish the statement of the point of order?

The President — The point of order is overruled.

Mr. Bowers — Before it is stated?

The President — Well, you stated it once.

Mr. Bowers — Well, it is just as well, perhaps.

The President — If you wish to state it again, you may do so.

Mr. Bowers — I have not yet stated it. If you will allow me, I will state it.

The President — Very well, you may state it.

Mr. Bowers — The rule reads that it will be in order to call up for consideration at any time, a report of the Committee on Rules. Any member may object to its consideration until the next legislative day, and if sustained by twenty-four other members, considera-

tion shall be so postponed, but only once. The previous question has been ordered, but the rule prevents the motion from being put if it has the effect which it unquestionably has in the way it is worded.

The President — The point of order is not well taken, for this reason, that this is not a calling up, in any sense, of a report of any Committee on Rules or anything else. It is simply a motion to discharge the Committee on Rules from the consideration of a matter that has been referred to them, and that it be considered forthwith by this Convention.

Mr. Cochran — On that I call for a division.

The President — There is nothing to divide upon.

Mr. Cochran — Will the Chair pardon me? There are two questions. First, shall the Committee on Rules be discharged; second, shall it be considered forthwith?

The President — The previous question has been ordered on the resolution as it stands, and the question now is: shall this resolution offered by Mr. Vedder be adopted?

Mr. Cochran — I ask for a division of the question.

The President — It is too late.

Mr. Bowers — I ask for the ayes and noes.

The ayes and noes were ordered, and the Secretary proceeded to call the roll.

Mr. Bowers — Mr. President, in my judgment, this is a mere evasion of rules under which we should have been permitted protection until by proper action of the Convention they had been changed. It is perfectly true that the opposition to-day shows the propriety of the course of the Committee on Rules, and shows that they gave protection which is now sought to take away from them, and that without the slightest consideration as to what is granted by the rules themselves. The whole intent of these rules was, that every motion of this nature should go to the Committee on Rules, and by it be reported, and that one day's time should be given to the minority, if they opposed a change in the rules, to be heard. That is deliberately thrown to the winds, and the Convention proceeds to rob them of a protection which is theirs by right, until on a proper vote it has been taken from them. If you had proceeded in the regular order, and changed the course of procedure from fifteen to twenty-five who could demand a call, we might have complained, but we could not feel as we feel now, that you pay no attention to the rules, and deliberately deprive us of such parts of the

rules as is for our benefit, while you retain for the advantage of the majority those parts which are beneficial to them. It would have been very little to have allowed this to stand until to-morrow morning. You could have carried the vote through just as well to-morrow morning as now, if it was found essential in the further interests of this Convention to make the change from fifteen to twenty-five. But, by what I cannot characterize as other than a device, it is proposed now to break down our solemn rules. We can only accept it as a statement from the majority that hereafter the rules and protection, and order and decorum of this Convention are to be thrown to the winds, as they deem best for their own interests. I deprecate the situation. I regret that you will not wait to change this rule until to-morrow morning, and thus have some pretense of obeying the rules. You can do just as you like. We cannot prevent it. It may just as well be understood that if we proceed on such a course as this, this Constitutional Convention as a deliberative body has ceased to exist, but we are directed simply by the votes of the majority. I vote no.

Mr. Cassidy — Mr. President, I think very highly of the minority in this Convention. It is composed of sixty odd members. The work of that minority has been impeded by fifteen or sixteen members, and inasmuch as this resolution merely asks that a respectable number of the minority may call for the ayes and noes, I wish to vote for this resolution in their interests. Here are sixty of them. Many of them, I believe, are in a hurry to discuss these questions, but a small faction of fifteen impede the work of the minority, and I wish to have the work of the minority hastened. Therefore, I vote aye.

Mr. Cochran — Mr. President, the gentleman from New York (Mr. Root) has seen fit to characterize those members of the minority who have called for the ayes and noes as a factious minority. Now, I, for one, sir, have frequently called for the ayes and noes, and not for the purpose of delaying or obstructing the business of this Convention, and no one better than the gentleman himself knows it. I am afraid, however, that there is a tendency to consider that every member of the minority is factional and desires to be an obstructionist, if he does not agree with certain views of certain gentlemen of the majority. I, for one, have not always agreed with the views of the gentlemen of the majority, and I desired to have them put their views on record and to let the people know how they voted on certain subjects, and have for that reason

requested the ayes and noes. If the gentleman from New York knows of any case where I have obstructed the business by calling for the ayes and noes, I demand of him that he point it out, or otherwise exclude me from those he has designated in general terms.

I also submit here that my point of order which I made a moment ago, that this was divisible, was a proper point of order, but like many others that the minority have made to-day, it was overruled. I call the attention of the Chair to the rule which provides ——

The President — That has nothing to do with your reason for your vote.

Mr. Cochran — I am explaining my vote. Rule 55 provides that if any question contains several distinct propositions it shall be divided by the Chair at the request of any member. I submit, sir, that there were two propositions involved. The first was that the Committee on Rules be discharged; the second was that we consider it forthwith. If there are not two propositions, separate propositions, embodied in that resolution, there never will be two in this Convention.

The President — That would have given the gentleman (Mr. Cochran) an opportunity to call for the ayes and noes again.

Mr. Cochran — I might have done it, as I have done heretofore, if I considered it proper. The Chair well knows that I have never called for the ayes and noes under any other circumstances.

Mr. Hottenroth — Mr. President, the idea of minority representation, as we have it suggested now, seems to indicate this principle, that wherever the majority and the minority agree, the minority can have its way; but I think when the majority desires to have its way, they ought to at least be willing to be recorded, and that at the suggestion of fifteen members. I vote no.

Mr. Kellogg — I wish to explain my vote, and the reason is that the minority yesterday voted against minority representation, so we are giving them what they want. I vote aye.

Mr. Maybee — Mr. President, I desire to explain my vote. I have no desire to offer any factious opposition to the progress of the work of this Convention. I think my course in the Convention hitherto is evidence of that fact. The number fifteen is a larger number than is required in almost any legislative body that I know of, to sustain a call for the ayes and noes. In many of the State Legislatures only one member is necessary to sustain that call. In some of the other States, only five, and so far as my observation has extended, ten is the largest number in almost any legislative

body that is required to sustain a call of that kind. It seems to me, judging by the procedure of other legislative bodies and the history of legislation generally, there is no good reason why any such proposition as this should be adopted. I, therefore, vote no.

Mr. C. B. McLaughlin — Mr. President, I desire to be excused from voting, and will state my reasons. If any illustration is needed why this resolution should be adopted, it has been made manifest in this House this morning. The discussion relating to the cities has now progressed here for nearly six days, until nearly every member in this body, irrespective of party, no matter what they may think upon the proposition, has reached a conclusion that we should finally vote. And yet a few of the minority, for the purpose of delay, when their own party does not sustain them, can obstruct these proceedings and call for the ayes and noes. For what? To take up time. Nothing else, as it seems to me, and it furnishes one of the best illustrations why the number should be increased to twenty-five. That cannot hurt the minority. You have a much larger number than that, if the time comes when the question shall be taken by the ayes and noes. It would be a strange proposition if you could not get twenty-five of your own members to support you. If you cannot get twenty-five, then the delay should not be had. I withdraw my request, and vote aye.

Mr. Mereness — Mr. President, it was whispered about here in the early stages of this Convention, that the only hope of the Democracy of this State was that the Republicans, who are in the majority in this Convention, might make such a mistake that at the fall elections the Democracy would have a slight possibility of success at the poll. I am very glad to say that up to within a very few days the deliberations of this body have proceeded regularly and in order, but the proceedings during this week have been sufficient to satisfy any fair-minded man that something must be done in order to facilitate the proceedings of this body. Whether the advent in this city of the gentleman whose birthday was celebrated yesterday had anything to do with the uneasiness that has been manifested by the so-called minority during the present week, of course, I am unable to say. While I regret that it has been necessary to resort to so forcible measures to facilitate the proceedings of this Convention, I feel compelled to vote aye on this question.

Mr. Platzek — Mr. President, I desire to explain my vote. I have no objection to increasing the number necessary to call for the ayes and noes, but I do protest most earnestly against the manner in which we are compelled to take that dose at the hands of the

majority. There would have been no harm if this proposition had gone to the Committee on Rules, and they had reported it here in the morning. I am convinced that they would have been unanimous upon it. It is undue, unseemly, unjust haste, and I am obliged to dissent therefrom. The only object of calling for the ayes and noes is to stop the members of this Convention from going through that door when they are too afraid or too cowardly to go on record on any question, whether it be corporate or labor, or otherwise. It has been suggested by my friend, Mr. Mereness, that probably the celebration of a birthday yesterday might have had something to do with it. I will say for myself, that the advent of the senior Senator of the State of New York to this community has added a large amount to the average brains that exist here. I vote no.

Mr. Smith — I object to the making of a new law to cover a case after it has arisen. The laws should be made to govern cases as they arise, and not after they have arisen. My reading of history has told me that the making of laws to meet particular cases partakes of despotism. It is the way that despots conduct government. In all liberal governments, laws are made to govern the masses of the people. Their transactions are to be adjudged by those general laws. Now, I object to waiting until a case arises, and then making a law to fit the case. If that mode is proceeded with, we shall only be delayed more, in objecting to that irregular way of proceeding, than we will to go along the regular way. I vote no.

Mr. Tekulsky — Mr. President, I deplore the position that we are compelled to take in this matter by having every person ready to call for the ayes and noes. I do not believe that it is right for the gentlemen to call for the ayes and noes except on important questions. I do not desire to help any one to delay the proceedings of this Convention, but I am opposed to the continual changing of the rules. I believe that the ayes and noes should be called only on very important questions, where delegates desire to go on record, and I do not believe that on every trivial question that comes before this Convention, some one should rise and demand the ayes and noes. It is easy to tell whether a majority are for or against it. I am opposed to the continual changing of rules. I, therefore, vote no.

Mr. Veeder — Mr. President, I desire to explain my vote. I submit that this resolution for this change in the rule is wholly unnecessary. As Mr. McLaughlin says, we can obtain twenty-five

members for the ayes and noes as well as we can fifteen. The true rule should be in excess of the number of Democrats on the floor. If there are sixty, you ought to make it sixty-one necessary to call for the ayes and noes. I vote no.

Mr. Vedder's motion was adopted by the following vote:

Ayes — Messrs. Ackerly, Allaben, Arnold, Barhite, Barrow, Becker, Bigelow, Brown, E. A., Cady, Cassidy, Church, Clark, G. W., Cookinham, Countryman, Crosby, Davies, Davis, Dean, Dickey, Doty, Floyd, Frank, Andrew, Fraser, Fuller, C. A., Fuller, O. A., Gallagher, Gibney, Gilbert, Goodelle, Hamlin, Hawley, Hedges, Hill, Hirschberg, Holls, Jacobs, Johnson, I. Sam, Johnson, J., Johnston, Kellogg, Kinkel, Kurth, Lester, Lewis, C. H., Lewis, M. E., Lyon, Manley, Marshall, McArthur, McDonough, McIntyre, McKinstry, McLaughlin, C. B., McMillan, Mereness, Moore, Morton, Nichols, Nostrand, O'Brien, Parker, Parkhurst, Pashley, Phipps, Pool, Powell, Pratt, Putnam, Redman, Root, Spencer, Steele, A. B., Steele, W. H., Tibbetts, Vedder, Vogt, Whitmyer, Wiggins, Woodward, President — 80.

Noes — Messrs. Banks, Blake, Bowers, Burr, Bush, Campbell, Chipp, Jr., Cochran, Danforth, Davenport, Deyo, Durnin, Emmet, Forbes, Giegerich, Gilleran, Goeller, Green, A. H., Green, J. I., Herzberg, Holcomb, Hottenroth, Jenks, Kerwin, Kimmey, Marks, Maybee, McLaughlin, J. W., Meyenborg, Mulqueen, Nicoll, Ohmeis, Osborn, Parmenter, Peabody, Peck, Platzek, Roche, Rogers, Sandford, Smith, Speer, Tekulsky, Towns, Truax, C. H., Tucker, Veeder, Williams — 48.

Mr. McLaughlin — I now move the adoption of the resolution introduced by myself, and on that I move the previous question.

Mr. Bowers — I renew the point of order which I stated a few moments ago, under rule 46, that this cannot now be considered.

The President — The Convention has ordered it to be considered forthwith. The gentleman's point of order is not well taken. The question is on Mr. McLaughlin's motion.

The President put the question on Mr. McLaughlin's motion, and, by a rising vote, it was determined in the affirmative — ayes, 77; noes, 44.

The President — In view of the offensive and disorderly remarks made by several gentlemen in explaining their votes, the Chair will now state his construction of rule 56, and the grounds for it. The proposition that any member may object to a consideration until the next legislative day, and if sustained by twenty-four other mem-

bers the consideration shall be so postponed, but only once, relates to a calling up for consideration a report from the Committee on Rules, which was not the matter before the House. The matter before the House arose under the proviso which excludes that particular feature. It is provided that when ordered so to do by the Convention, when a standing committee shall make a report on a constitutional amendment or other subject, the Committee on Rules shall report a rule limiting the time for debate. Now, the proposition here was, there was a report from a standing committee, the Committee on Cities, under discussion, and an order was made directing the Committee on Rules to report an order for debate. It was wholly independent of the previous part of the rule. The Chair took pains to consult with Mr. Bowers, the learned leader of the minority, upon the question, who fully concurred with him, before the ruling was made.

Mr. Root — I move that the Convention now go into Committee of the Whole on general order No. 13.

Mr. Bowers — I did not hear what the President said. I understand you to say that I concurred in the report that you made this morning as to rule 56?

The President — I said that Mr. Bowers concurred in the ruling.

Mr. Bowers — I protested at the time it was made on the floor of the House.

The President — Not only concurred in the ruling, but asked the Chair to make it, and explained to him the entire reasonableness and rightfulness of it.

The Convention took a recess until three o'clock.

AFTERNOON SESSION.

Thursday Afternoon, August 30, 1894.

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

The President — Before the pending question is taken up, the Chair desires to make a statement, which is certainly due to Mr. Bowers, in reference to a misinterpretation which has been put upon a statement made by the Chair just before recess. The statement made by the Chair referred exclusively to the operation of rule 56, or the construction of it as had been claimed in reference to the order brought in by the Committee on Rules by direction of the Convention for limitation of the debate on the pending cities bill.

It was in reference to that point alone that the Chair made any statement whatever. The conversation that Mr. Bowers referred to was in reference to that alone, and the colloquy that took place between the Chair and Mr. Bowers was in reference to that alone. I have read, or heard read by the stenographer, the actual words that were uttered. I understand, however, that it has been construed by some members, perhaps many, as imputing to Mr. Bowers inconsistent conduct in reference to the point he made. No such suggestion was made, or intended to be made, nor could have been made, because the position taken by Mr. Bowers upon the floor was entirely consistent with what had occurred between him and the chairman previously. His point referred to Mr. Vedder's motion. Mr. Vedder's motion was as unexpected to the Chair as it was to Mr. Bowers. Mr. Bowers's point was that under the operation of rule 56, Mr. Vedder's motion would necessarily have to go over on his complaint or his demand, for a day. It was in reference to that alone that Mr. Bowers spoke upon the floor, and the Chair had no intention of suggesting any inconsistency whatever. Perhaps the Chair was a little in error or out of parliamentary order himself in calling the attention of the Convention to anything that had taken place between himself and a member before the meeting and in committee, and if so, he extends to Mr. Bowers his full apology for it. (Applause.)

Mr. Smith — Mr. President, I would like to be excused from attendance on Saturday and Monday next.

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

Mr. Roche — Mr. President, I ask leave of absence from the sessions of Saturday and Monday morning.

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

Mr. Bigelow — Mr. President, I regret to be obliged to ask to be excused to-morrow and Saturday, to attend the funeral of a valued friend in a neighboring State.

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

Mr. Hottenroth — Mr. President, I desire to present the minority report, if in order, of the Committee on Canals, and ask that it be printed and placed on the files.

The President — Mr. Hottenroth presents the minority report of the Committee on Canals, and if there is no objection, it will be

printed and placed upon file, and any delegate can move amendments thereto when the report comes up for consideration.

Mr. Towns — Mr. President, I desire to be excused until Monday.

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

Mr. J. W. McLaughlin — I have a telegram from Mr. McClure, saying that on account of serious illness of one of his children, he is obliged to remain away, and he asks to be excused until the health of his child will permit his return.

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

Mr. Johnston — I move that the privilege of the floor be granted to Honorable R. P. Bush, a former Speaker of the Assembly of this State, and also to Honorable Archie E. Baxter, of Elmira.

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

Mr. Deyo — Mr. President, I ask to be excused from attendance on Monday next.

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

Mr. Root — If there is no other business of this description, I move that the Convention now go into Committee of the Whole on general order No. 13.

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

The Convention thereupon resolved itself into Committee of the Whole, and Mr. I. S. Johnson resumed the chair.

The Chairman — The Convention is again in Committee of the Whole on general order No. 13.

Mr. Moore — Are amendments in order?

The Chairman — Amendments will be in order, but there is an amendment already pending.

Mr. Moore — May not a second amendment be offered now?

The Chairman — Mr. Moore's amendment may be handed up, but not acted on at present.

Mr. Moore — Then I will hand up an amendment to this bill. I move to strike out all the sections of the bill after the first section, and insert in lieu thereof the constitutional article recommended by the Senate Committee on Cities.

The Chairman — The gentleman will put his amendment in writing and send it to the desk. The question now before the committee is on agreeing to the amendment of Mr. Veeder to the amendment offered by Mr. Choate.

Mr. Lester — Mr. Chairman, when the debate upon the proposed amendment offered by the Committee on Cities began, it was stated by the gentleman from Cattaraugus (Mr. Vedder), that this amendment contained seven distinct and independent propositions looking to the better government of the cities in this State. I have sat here in my place and seen one after another of these amendments rejected by this Convention, by the united voice of the Democratic members of the Convention, with the occasional aid of the Republican members, until, if I mistake not, nothing whatever remains of the original amendment save only the single proposition to divorce general and municipal elections; and this proposition would have shared the fate of all the others had it not been for the confidence of the Democratic members of the Convention in the ability of the Democratic party to maintain its ascendancy in municipal affairs in the city of New York, and the added hope that under the influence of this proposition a greater Democratic wave might sweep from New York in every even-numbered year over the whole State. Now, sir, that very reason is a reason why I am opposed to this proposition, standing as it does alone now in the proposed amendment to the Constitution. It is a reason why I never can give my vote to that proposition, standing alone, because I believe that any slight benefit which might accrue to municipalities of the State from this proposition would be more than compensated for by the disadvantages that would accrue to all the rest of the State. I have sat here in silence and seen these propositions, one after the other, thrown out of the Convention because they came neither from the city of New York, nor from a county that contained a city; and I believed that my duty in the Convention could be best performed by my holding my peace and listening to those who might be presumed to be better qualified to speak on those subjects. But, sir, I have seen this measure, which its promoters a few days ago believed to be a Samson in strength, for the redemption of the cities of the State from the misgovernment of the Philistines slumbering in the lap of the Delilah of conciliation and concession; and I have seen it shorn of its strength, and I have seen it deprived of its sight, and in its present condition, unless some of its virtues be restored by the adoption of some of the amendments which are now pending in the House, it is good for nothing but to be taken to the pillars of this edifice of municipal reform which the Committee on Cities have striven to erect here,

to the end that it may tumble the whole edifice into ruins, and bury itself forever beneath the wreck.

Mr. Goodelle — Mr. Chairman, I desire, for information, to ask Mr. Choate, the proposer of this amendment, a question, if he will permit me.

Mr. Choate — Certainly.

Mr. Goodelle — On turning to section 10 of article 2 of the Constitution I find this language:

"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 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 elective by the people."

What I desire to ask is, if this proposed amendment be adopted in the Constitution, whether or not the section which I have read will necessarily have to be amended, or, if not, reconstructed in order to fit itself into and make the proposed amendment available?

Mr. Choate — In my opinion it would not be, because this would be a special exception to that comprehensive rule applying to all.

Mr. Goodelle — But the language here is that "every citizen shall be entitled to vote for all officers that now are or hereafter may be elective by the people."

Mr. Choate — I would very much prefer to strike out the word "all," but it seems to me that where two provisions appear in the Constitution, one such as you have read, and one such as the amendment that I have proposed, both must stand together, and it would necessarily be an exception to that rule.

Mr. Holls — Mr. Chairman, I did not intend to take up more of the time of this Convention on the question of this amendment. I understand that the direct question before the House is on the amendment to the amendment offered by Mr. Veeder. Am I correct in that?

The Chairman — Yes.

Mr. Holls — That amendment extends this principle of proportional or minority representation to all the cities of the State. There seems to be a feeling that the experiment which is permitted by this section had best be allowed to be confined at first to cities of the first class, and for that reason I think the amendment to

the amendment offered by Mr. Veeder should be voted down. I do not, however, wish to add anything to the argument which I had the honor of making in favor of proportional or minority representation as a permissive method in the Constitution yesterday, except to repudiate the use of one word which has been applied to this entire amendment, and that is the word "un-American." I do not believe that any word in the English language has been so abused in this Convention as the word "un-American," and to me the accusation of favoring or arguing for anything un-American is not trifling. I would not do it consciously or willingly. Now, sir, according to the idea of Americanism, which seems to obtain on the other side of the chamber, and which I am sorry my friend from Kings supported by his wit and his ability yesterday, the only truly American hen would be one which is hatched from the egg which she had herself laid. It would be utterly impossible to take anything from the other side of the Atlantic, whether good, bad or indifferent, and not have it repudiated by that side entirely. Their idea of American politics seems to be dishonest politics, but, to my mind, sir, it is a thousand times more American and patriotic to try, even in a mistaken way, to work for the decent, the honorable, the honest in politics than to apologize for corruption by attributing it to excess of party zeal. To my mind it is a sad spectacle, if even in jest, so honorable and high-minded a man as my friend from Kings refers to his public services, with reference to his being kept out of jail. I do not believe he is just to himself. I do not believe that American politics necessarily means corruption. If it were not — to quote our American Addison, George William Curtis — "the American eagle would not be a noble bird, soaring to the sun, but a buzzard, stooping to carrion." I, for one, repudiate that idea. The idea of permitting minority representation in the cities of this State is fairness, rather than politics — nothing more and nothing less. It means that the mere plurality shall not call itself the majority and assume to act accordingly. It means that every man, no matter to what party he belongs, shall be represented in the popular government. Now, nothing could be more truly Democratic, and nothing could be Republican to a higher degree. For that reason, Mr. Chairman, I reiterate the hope that the amendment of the President will be adopted, and that the amendment to the amendment will be voted down.

Mr. Bigelow — Mr. Chairman, I confess to have been pained at the tenor of a large portion of the remarks to which I have listened. I have been pained to find how much more of passion than of deliberation has been exhibited, and, may I add, without disrespect,

how much more heat than light has been manifested. This is a deliberate body, and it is no suitable place for throwing political accusations across the House from one side to the other for partisan purposes. I have not sympathized with it at all on either side, and I do not think that any of us will look back upon this debate with particular satisfaction, so far as it has been infected by this partisan spirit.

Now, I did not rise to lecture any of my colleagues exactly, but to say a few words merely upon what seems to be the purpose of the majority of the Convention, politically speaking. They say they want to secure the representation of the minority in the various departments of the government. I wish some members of the House would tell me in what body the minority is not represented in this country. I think it is a great delusion to talk about minority parties not being represented. So far as I am able to understand of the constituents represented in governments, the minorities are always represented for what they are worth. I hear people talking idly about the master's vote being canceled by that of his domestic servant, and about his being overrun and overwhelmed by the votes of people whom he thinks are less enlightened and less intelligent as to public affairs. But it is a very great mistake to suppose that the influence of the master's vote is necessarily disproportionate to the vote of those who are inferior to him in intelligence and enlightenment. I do not suppose that any one would pretend that the vote of the distinguished President of this Convention is swamped or drowned by the vote of his coachman or groom. He is heard and listened to and respected by thousands of people, while his groom has probably but a single vote. So it is that people who can write have influence through the press. If a person has an argument to present to intelligent people in favor of or against a political measure or man, shall it not have its weight upon those who hear it, and does it not have its weight? It is through those processes that the minority are heard and that the minority are represented. Therefore, to talk about the minority not being represented, and to say that every man's vote is limited simply to the power that he has at the ballot-box, is an entire misapprehension of the whole system of representative government.

With the greatest respect for the motives of those who are insisting on minority representation, I wish to say that I think they are entirely mistaken about what they are going to accomplish in this way. They profess to wish to secure representation. Practically they are going to disfranchise the people, and, if they succeed, place the power of the government in the hands of a privileged

class. We have heard that already somewhat explained here. Anybody who will look over the history of the State of New York since the commencement of bi-partisan commissions has been instituted and learn how the process of political deterioration and corruption has gone *pari passu* with that down to the present time, will be obliged to admit that the moment you take a step to prevent a party being continually and directly responsible for its conduct to its adversaries, that moment you place it at the mercy of the worst class of society.

The Chairman — The Chair is very reluctant to inform the gentleman that his five minutes are up.

Mr. Towns — Mr. Chairman, I wish to offer an amendment to section 4.

The Chairman — Mr. Towns offers an amendment, but it cannot be considered at this time.

Mr. Towns — When may I offer it?

The Chairman — There is an amendment, and an amendment to that amendment, already pending.

Mr. Mulqueen — Mr. Chairman, I cheerfully give my time to the gentleman from New York (Mr. Bigelow). I have a right to five minutes under the rule, and I hope that the House will listen to such a distinguished member of this Convention as the gentleman from New York. I have five minutes, which I will use myself, if you decline to let me give the privilege to Mr. Bigelow.

Mr. Root — I ask unanimous consent that Mr. Bigelow may have Mr. Mulqueen's five minutes.

The Chairman — If there is no objection, the time of Mr. Mulqueen will be granted to the gentleman from New York. Mr. Bigelow will proceed.

Mr. Bigelow — I am obliged to the Convention. When I rose to speak I was not impressed with the force of the limitation rule that is in operation. When I took my seat I was saying that this policy practically disfranchises the people; and that the process of deterioration in our politics has gone *pari passu* with the introduction of bi-partisan commissions, which is another form of what I would call the same disease. There are many gentlemen in this Convention who will, perhaps, remember the condition of politics in the city of New York in 1868. We then had a board of aldermen in the city of New York elected upon the system of half Republicans and half Democrats. There were six Democrats and six Republicans in the board of aldermen. The leader and head

man in the Democratic section was William M. Tweed; the leader on the Republican side was Hank Smith. Now, if any one will take the trouble to analyze the operation of the doctrine of bi-partisan commissions and of minority representation under the principle of this act, they will find that in its ultimate results it comes exactly to the result which we there witnessed in 1868. Let us have a party that is responsible. If you put a third, or a fourth, or whatever the number may be, of one party, and the majority of another party together, "a trade" is inevitable. There is nobody responsible. The burden is shifted from one side to the other as the emergencies of politics require, and nobody is held to account for what is done. That has been the misfortune of our politics for the last thirty or forty years. It has been this attempt to put things under the control of commissions which were non-partisan, and where neither party could be held responsible for what was done. I believe thoroughly in party government. I should very much regret to see the government administered without party differences and without party discipline, for the very reason that it would be certain evidence that there was not genuine, patriotic political vitality in either party.

Mr. A. H. Green — Mr. Chairman, I do not rise to criticise anybody here, nor to remind any one of his duty. I suppose that every gentleman in this Convention understands his duty and expresses himself in the way that seems proper to him. It is not, however, quite agreeable to those here who represent the city of New York to hear their city abused and denounced in terms that, I regret to say, have been heard in this body, nor is it unnatural that such criticisms should be resented with some warmth. Indeed, it would be almost dereliction of duty did any of the members of the city fail to defend the fair fame of those whom they represent. I hope we shall hear no more abuse of the people of that city whose natural advantages are unequaled, either in a commercial, economical or picturesque aspect. It is the pleasure of a lifetime to our friends from the country to come there, and we are always glad to welcome them.

I do not propose to enter upon the discussion of this subject of proportional, minority or other methods of representation. That has already been very ably and sufficiently done. I do not believe that it is a remedy for the deficiencies of our city government; and I recognize readily that many improvements may be made. I do not think the remedy which is proposed goes deep enough, and, indeed, I have hardly heard it suggested on this floor. It has been claimed by its advocates that eight hundred thousand of the people

of the city are not represented at all in our local legislative boards, in fact, that we have no legislative board in any proper sense. We have already had an experiment with minority representation in its largest sense, and I allude to the subject that Mr. Bigelow has already mentioned as not occurring in the board of aldermen, but in the board of supervisors. In a former board of supervisors of the city of New York, consisting of twelve members, the six who had the highest number of votes at the election were selected, and, with the six having the next highest number, being one-half of the whole, made up the board. Here the minority had one full half of the board. The people, who, it is claimed, are not represented — the minority — say, one-third of the electors, were represented in that body by a number equal to the representatives of the other two-thirds of the electors. The result was a history of monumental wrong-doing and corruption. Let this have whatever weight it is entitled to have.

The Chairman — The question is on agreeing to the amendment of Mr. Veeder to the amendment offered by Mr. Choate.

The Chair put the question on the adoption of the amendment, as stated, and, by a rising vote, it was determined in the negative — ayes, 50; noes, 53.

The Chairman then put the question on the adoption of the amendment offered by Mr. Choate, and, by a rising vote, it was determined in the negative — ayes, 53; noes, 55.

The Chairman — The question now is on the amendment offered by Mr. Moore, which the Secretary will read.

The Secretary — Mr. Moore moves to amend by striking out all after the first section and by inserting instead the amendment to the Constitution recommended by the Senate Committee on Cities, to be section 26 of article 3 of the Constitution, to read as follows:

"The Legislature shall enact general laws for the government of all cities in this State, and no municipal corporation shall hereafter be created by special act, nor shall the Legislature pass any act relative to the government of any city in this State, except by way of amendment to the general laws."

Mr. Parkhurst — I move to strike out the enacting clause, as an amendment to an amendment.

Mr. Mereness — I raise the point of order that there is no enacting clause to a proposed constitutional amendment.

The Chairman — The Chair holds that the point of order is well

taken. The question is on the amendment offered by Mr. Moore. The time allowed for debate, thirty minutes, has expired.

Mr. Moore — I think I should have time to debate my own substitute.

The Chairman — The rule is otherwise.

Mr. Moore — Will the Chair please state the rule?

The Chairman — It is that after a debate of thirty minutes upon an amendment only five-minute speeches shall be allowed.

Mr. Choate — May I ask to have the rule read? As I recall it, it was that thirty minutes were allowed for amendments, and then a certain time was to be allowed to amend the substitute proposed by Mr. Moore and the substitute proposed by Mr. McLaughlin.

The Chairman — The Chair understood Mr. Moore to offer an amendment, not a substitute.

Mr. Moore — Then I offer it as a substitute now, that I may come within the rule and the ruling of the Chair.

The Chairman — Does the gentleman withdraw his amendment?

Mr. Moore — I withdraw it as an amendment and offer it as a substitute.

The Chairman — The amendment of Mr. Towns will be read.

The Secretary — The amendment of Mr. Towns is to add to section 4 the following:

"After the adoption of this Constitution no city in this State shall have any board or department placed under the control of more than one person. The Legislature shall immediately pass laws necessary to carry this provision into effect."

The Chairman — The question is on the amendment offered by Mr. Towns.

Mr. Towns — Have I time to speak on that?

The Chairman — The time has passed for speaking on amendments.

The Chairman put the question on the adoption of the amendment offered by Mr. Towns, and it was determined in the negative.

The Chairman — Now substitutes are in order.

Mr. Moore — Is my substitute now in order?

The Chairman — No; Mr. McLaughlin's substitute is first in order.

Mr. Dickey — I ask that it be read.

The Chairman — Mr. McLaughlin is recognized as having the floor. The Secretary will first read the substitute offered by Mr. McLaughlin.

The Secretary — "Section 1. There shall be in the several cities of this State a common council or board of aldermen, to be composed of such members, and to be elected in such manner as is or may be provided by law.

"Sec. 2. The Legislature shall, by general laws, confer upon the common council or board of aldermen of the several cities of this State, including those that may be hereafter incorporated, such further power of local legislation or administration as the Legislature may from time to time deem expedient."

Mr. McLaughlin — Mr. Chairman, after the lapse of the many long hours which have been devoted to the discussion of this proposed amendment, I have no desire to inflict upon this body any further discussion upon the subject. I simply desire, speaking for myself and for no one else, to go upon record in this body, in respect to what seems to me to be a wise principle for this State to adopt. The substitute which I have proposed simply reaffirms the principles of the present Constitution relating to the several counties of this State. I have copied the section of the Constitution relating to the different counties of the State, and made it applicable to the several cities of the State, simply substituting for the words "board of supervisors" the words "common council or board of aldermen."

We have listened here for many days to the discussion upon both sides of this House as to what seems to each of the gentlemen to be a wise policy to be adopted by this State as to the government of the great cities of this State, and the discussion clearly demonstrates that upon vital principles these gentlemen are not agreed. The great cities of the State, and, indeed, the great cities of this continent, are now passing through an experimental stage, which, before the passage of the century, it is likely the problem will be solved, but at this time to incorporate into the fundamental law of this State a provision saying what these cities shall do and shall not do, I consider to be very unwise. It seems to me to be a very unwise principle to put into the Constitution of this State that the State shall surrender to the cities of the State sovereign capacity, to manage and control them as they may see fit. We have for years in this State had a law, or had a provision of the Constitution, which relates to the counties, and that has been a wise policy on the part of the

State. If it is good government for the counties of the State, which differ in population and differ in conditions as do the cities of the State, it seems to me the same rule should be applied to cities and not another. Gentlemen upon this floor have argued that you cannot pass a constitutional amendment unless the great cities of the State vote for it. Under the present apportionment of Members of Assembly and of Senate, you cannot pass a bill in either body unless the cities of the State want it passed. It seems to me when we are asked here to adopt and put into the fundamental law of this State a provision that the State shall surrender to the cities the sovereign power to manage and control those cities at this time is unwise. The substitute which I have offered simply confers upon the board of aldermen or common council the power of local self-government, as the Legislature may from time to time deem wise. That can do no harm. It may do good. If it is unwise, if that power is granted to the board of aldermen or to the common council, then the Legislature can take that power away; or if it is given to them wisely, and is found for the best interests of the cities, it can be used as well as to adopt here an inflexible provision, which if once given, may for many years work injury to the cities of the State.

Mr. Vedder — I want to ask if the proposition submitted by Mr. McLaughlin is offered as a substitute for the entire measure.

Mr. McLaughlin — It is.

The Chairman — The Chair so understands it.

Mr. Moore — Mr. Chairman, I wish to call the attention of this Convention to the fact that in 1891, after a long and patient investigation, a Senate committee of the State of New York, after months of labor, decided to recommend that the Constitution of this State be amended, in substance, as follows: "The Legislature shall elect general laws." I amend that by saying that "the Legislature shall enact general laws for the government of the cities of this State, and no municipal corporation shall be hereafter created by special act, or shall the Legislature pass any act with reference to the government of any city of this State, except by way of amendment to such general laws."

Now, Mr. Chairman, this recommendation of the Senate committee recognizes the great fact that a Constitutional Convention is not a Legislature; that it is not convened for legislative purposes; that it is not convened to go into details which more properly belong to a legislative body. The substitute which I propose to take the place of the rest of this article will cure every difficulty, so far as this Convention is concerned.

I believe that the principle upon which this State has acted for years and years — that the legislative power is vested in the Senate and Assembly — is the true principle for the Convention to work upon. This city bill is full of legislation. I believe that in some aspects it is even vicious, as well as legislative. Therefore, I have proposed, as a substitute for the whole bill, section 1, which is the amendment recommended by the Senate committee. At the conclusion of this elaborate report, the Senators say somewhat as follows: They recommend its passage upon the grounds of the facts which they unearth during their examination. It was made after a most careful and elaborate study of municipal questions, and I believe this substitute of mine embraces the real organic law, leaving the details of it, leaving all the minor steps out, and leaving it where the people want it to be left — in the hands of the Legislature of the State. I believe, as other men have said here, that there are honest men in the Legislature of the State of New York. I see men here to-day, who have been Members of Assembly and Senators, who are honest men; and I do not believe that the people are afraid to trust the interests of cities, or to trust the interests of this great State, to the members of the Legislature. Therefore, Mr. Chairman, I move to strike out every section of this bill of the Committee on Cities, except the first one, and to substitute therefor this tried amendment, this amendment established and found to be the right thing by established facts by this Senate committee.

Mr. Powell — Mr. Chairman, I had hoped, although the representative of the second largest city of this State, that I might be permitted to witness the debate upon the amendment which we now have before us without participating in it at all. But when gentlemen of the majority, who hail from the large cities of Port Henry and Plattsburg express their views about the effect which this amendment will have ——

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

The Chairman — Not until the gentleman gets through.

Mr. Powell — No; my time is too short to permit me to answer questions. There has been too much of that in this Convention already. When the gentlemen from these large cities, representing the Republican majority, attempt to lay down doctrines for the government of cities like New York, Brooklyn and Buffalo, and taunt those of us who favor the amendment which has been introduced by the Committee on Cities, with the statement that the representatives from these great cities are not agreed as to what they want, then, sir, I think it time for us to cry a halt, and

to remind these gentlemen of the fact that the only difference between the delegates from these large cities as to what they require is a difference between the Republican delegates from these large cities and the Democratic delegates from the same. I think there is no exception to the statement that the Democratic members from all these large cities are not only anxious, but they are exceedingly anxious, that this amendment introduced by the Committee on Cities shall be passed by this Convention and submitted to the people of the State. And I beg leave also to suggest that if the gentlemen will fix their minds for a moment upon the opposition to this proposed amendment that has come from the minority, they will discover a very peculiar state of affairs. The first opposition that we have to this proposed amendment comes in the nature of ridicule, not ridicule upon the propositions of the proposed amendments ——

Mr. Mulqueen — I raise the point of order that the question now is on the substitute offered by the gentleman from Essex, and not the minority report.

The Chairman — There are two substitutes which will be acted upon — the substitute offered by Mr. Moore and the substitute offered by Mr. McLaughlin. Then the question will be on the substitute offered by the minority.

Mr. Mulqueen — And that any criticism on the minority report is now out of order.

Mr. Powell — I presume the gentleman will admit that I have the right to discuss the amendment itself. That is what I am doing.

The Chairman — The point of order is not well taken. Mr. Powell will proceed.

Mr. Powell — Not a ridicule of the ideas which are suggested in this proposed amendment, but a ridicule which is based upon a careful examination of the grammar and dictionary, and upon mere idioms of language. Then the next thing we hear in reference to this article is the plaintive cry of the much-abused or alleged abused minority. And then, last of all, we closed our discussion of this matter substantially yesterday afternoon with a criticism which was brought from Scripture. The very last argument adduced against this amendment was a scriptural argument taken from the Book of Job — the words of a man who had never seen a great city in all his life, and who lived probably before any great city had ever been built. And, finally, when we sift this scriptural argument down to its last analysis, we find that the last argument of the minority against this proposed amendment is a disquisition on the subject

of "winds" and of the "east wind," but I believe after all that this essay on wind was about as closely related to this amendment as any of the arguments that were made by the minority. In the midst, however, of all this confusion there was one bright flash which I am happy to say emanated from the gentleman from Brooklyn, from my friend Mr. Jacobs. The only argument whatsoever on the part of the minority that I have been enabled to find (and I have listened carefully) was that which came from the lips of Mr. Jacobs; and his sole argument was that the fault with this amendment is that it does not carry the principle of home rule quite far enough to give to the great cities of the State absolute, unqualified, unlimited home rule. That is the argument of Mr. Jacobs, who argues, I think, from the position of a very confident enthusiast. I admire his words and the oratorical power with which they were placed before this Convention. But, gentlemen of the Republican majority, I ask you how much that argument is worth. Remember that in the great cities of our State there is a constant increase of pauperism, of crime, of anarchism and of socialism — an increase the ratio of which is much larger than the ratio of increase in population.

The Chairman — The Chair is obliged to call the attention of the gentleman to the fact that his five minutes have expired.

Mr. M. E. Lewis — I ask unanimous consent to permit the gentleman from Brooklyn to occupy my time.

The Chairman — Unanimous consent is asked that the gentleman from Brooklyn may occupy the time of Mr. Lewis. Is there any objection?

Mr. Meyenborg — I object.

The Chairman — Is the objection insisted upon?

Mr. Meyenborg — I will withdraw the objection.

The Chairman — The objection is withdrawn, and Mr. Powell will proceed.

Mr. Powell — I simply wish to add a single suggestion. I ask the members of the majority to bear this fact in mind, and it is a fact plainly and squarely before them, and I ask whether or not it would be wise to grant this unlimited absolute home rule to our great cities. I think there was a great deal of wisdom in the suggestion of the President of this Convention, when he said some days since that he believed it might be necessary for the sovereign power of the State, exercised through its Legislature, now and then to reach down into our cities and help them out of their dilemma. And

why should we, the great cities of the State, in our dilemma, hesitate to go to the sovereign power and ask for assistance? I object to the suggestion that our cities are to be built up into separate States or principalities. Why, gentlemen of the Republican majority (and I am speaking now for you), the life of our cities comes from the country. If you were to cut off the supply of young men who come from the farms and country villages into our great cities, constantly bringing a new supply of vitality, our citizens would become imbecile, and would pass away. Look at the constitution of the delegation from Brooklyn and New York to this Convention. Of the twenty-three delegates who are here from Brooklyn there are twelve who were born outside of that city and only eleven who were born in it. Of the thirty-six who come from the city of New York there are only twelve who opened their eyes in infancy in that city, and twenty-four were born without her borders. As we gain our life from the country, so I believe we have the right sometimes to go back to the delegates from the country in the Legislature of the State and ask them for their advice and counsel. And, Mr. Chairman and gentlemen, the charm of this amendment lies in the fact that while it does not go to the extent of divorcing our great cities from the sovereign State, it does go just far enough to protect them from petty impositions on the part of the Legislature. I submit that that amendment has been drawn with wisdom, and I submit, also, that the Republican members from our great cities, with unbroken unanimity, demand its submission to the people, and ask you not to let any subterfuge take its place. We ask it — we who are in the minority, a struggling minority — the Republicans of the great cities of Brooklyn, of New York, and of Buffalo; and we hope you will not turn us away with something which has the appearance of fruit, but within which there is simply rottenness and corruption. Give us this amendment which this committee has proposed; give it to us just as it is, and it will help us to a better and nobler city life.

Mr. Dickey — Mr. Chairman, my type of statesmen was the great and lamented Roscoe Conkling. He was frank, open and outspoken, and never believed in any shams. What is the pretense here, or the excuse for the Republicans in pretending to give home rule to the cities when they do not mean to do anything of the kind in the way that the Democratic party ask for it and want it. Hadn't we better be fair and straight and honest? We, as Republicans, cannot afford, and it is not the Republican creed, to give absolute home rule, so that the cities might govern their own affairs without any control from the State Legislature. And, there-

fore, as we do not mean to do it, why do we not say so in a manly way, and not make believe or pretend something? My own notion about the matter is, as I said yesterday, that the relief for the cities is to elect, and continue to elect, Republican legislators, so that they may give that measure of relief when it is wanted. That is exemplified strongly by the result of the last election, and by the fact that we then had a Republican Senate and Assembly, and Tammany has been on its good behavior ever since. We have got two Republican police commissioners already in the city of New York where we had only one before. And, besides, they are turning out the corrupt police officials, one after another, and they are looking about now to find the best and noblest man they can get to accept the nomination for mayor — and looking for him outside of their own ranks — in order to get better government. Had we not better keep that control over them instead of giving them this measure of minority representation; which is but a sham, a make-believe, and which accomplishes nothing as a matter of fact? Why, Tammany is reforming already! Look at the first-class, intellectual representatives it has sent to this Convention. Why, as I meet them and talk with them, and get acquainted with them, I am surprised, if Tammany is as bad as they make us believe it is, that it has any such representatives in its membership. Why, all of them, and every one of them, would pass any time and anywhere for a first-class Republican.

The Chairman — The question is on agreeing with the substitute offered by Mr. Moore; that being only to a portion of the article, it will be first voted upon.

Mr. Becker — Mr. Chairman, I will detain the Convention with but a word. All of the powers that the Legislature ought to have over the affairs of great cities have, against the protests and obstructions of our friends of the minority by previous votes in this Convention, been reserved to the Legislature. The only powers which are in any way by this article granted to the cities are certain powers of attending to their own affairs, to their own business matters; and as to these powers this amendment divides the cities into three classes. If it becomes necessary for the Legislature at any time to pass laws relating to those purely business matters, such as sewers, the fire department, streets and the like, it can pass a general law applicable to any one of these classes of cities, and there will then be no necessity of asking (as I read this amendment) for any approval of the authorities of that city. If, however, the Legislature undertakes to go down into that city, to "monkey it," if I may use that expression, with respect to its purely business or local affairs,

such as relate to its streets, or relate to any of these departments, or like those we denominate in this bill, we want that those laws shall have plainly marked upon their face a characterization of what they are, namely, special laws, and when those special laws come down to be passed they must be submitted to the locality, and the locality shall have the right first through its officers to say whether it wants those laws or not. Applying that to my own city, if I undertook to put up a job, as they undertook to do for the street cleaning in the city of Buffalo, that bill before it became a law, would have to be submitted to the mayor, it would have to be published in the papers, and the citizens would all get notice of it and have an opportunity to be heard; the press would have an opportunity to be heard; and then after that, the mayor and common council both would have to give their assent before it could become a law. But even as to that, as to these matters, under the amendment presented by the President and debated heretofore, it takes only a three-fifths vote to overrule as to any of these matters. Now take it under the bill that is proposed here, for fifty members in the Senate; and there are thirty-two members to-day in the Senate; and how easy for any of the great cities of the first class, New York, Brooklyn or Buffalo, how easy to get the thirty. The same proportion prevails as to members of the Assembly. As I said yesterday, the tendency is, in these local matters, for members outside of the locality to be guided by the wishes of members in the locality. Now, we have given some measure of home rule. It is not as much as I would like to see, but it may build up a great municipal sentiment of patriotism, and induce the good citizens to come and take an interest in municipal affairs as they ought to; for so long as they can fall back upon the bosom of the Legislature for support and sustenance they never will take as much pains to protect their interests as they ought to do. Well, this amendment does give something, it gives notice, it requires a public hearing; it requires that as to all those purely business matters, in which the people of the western part of the State and the people of the middle part of the State are not concerned — it provides that as to these matters the locality shall have some chance to say what they want, and if they do not do it, then, after that, the Legislature still has another chance. And that is all that this amendment does.

The Chairman — The time is up for the discussion of these amendments. The first question is upon agreeing with the substitute offered by Mr. Moore to strike out all of the first section and insert the words you have heard read by the Secretary.

The Chairman put the question on the adoption of the substitute offered by Mr. Moore, and it was determined in the negative.

The Chairman then put the question on the amendment offered by Mr. McLaughlin, and, by a rising vote, it was determined in the negative — yeas, 62; nays, 65.

The Chairman — The amendment is lost, and the Secretary will now read the substitute offered by the minority.

The Secretary read the minority report, as follows:

A minority of the Committee on Cities, dissenting from the proposed amendment (introductory No. 369, general order No. 13, printed No. 451), reported by a majority of said committee, do respectfully submit the following as a minority report and substitute:

ARTICLE —.

All cities are classified according to the last State enumeration, as such enumeration shall from time to time be made, as follows:

The first class includes all cities having a population of two hundred and fifty thousand or more; the second class includes all cities having a population of less than two hundred and fifty thousand, and of more than fifty thousand; the third class includes all other cities.

The Legislature shall enact general laws for the government of cities, so that all cities of the same class shall possess like powers and be subject to like restrictions. Such laws shall include in their provisions that the electors of every city shall elect a mayor vested with the chief executive authority and common council vested with sole legislative authority to legislate for all city purposes, including the following subjects: Streets, parks, public places, docks, markets, water-works, sewers, public buildings and property, the character and structure of buildings as to safety and security, salaries of all officers and employes paid out of the city moneys, ward boundaries, local assessments, finances, including the issue of municipal securities and obligations, the raising and the appropriation of moneys for city government and public purposes lawfully charged upon the city and such other matters as are the concern of the local government of cities. The Legislature shall not enact any law relating to cities as to any of the subjects enumerated in this section except as hereinafter provided.

The Legislature may enact general laws for each class of cities relative to all subjects which, though concerning the State at large and the people thereof generally, are intrusted or to be intrusted to

the administration of cities or any officer thereof, or any local officer elected by the electors or appointed by the authorities thereof.

All heads of departments, city officers and employes, including members of the police and fire forces and all officers and employes whose powers and duties are limited to the territory of the city or to a part thereof, shall be chosen by the electors or appointed by the authorities thereof.

The Governor, after notice and a hearing upon written charges, may, for cause, remove the mayor of any city.

The Legislature shall not pass special or local laws for the government of any city, except with the approval of the mayor of the city affected.

No city shall hereafter be incorporated by special law, but the Legislature shall enact general laws for incorporating cities. Cities heretofore incorporated may become organized under such general laws whenever the majority of the electors voting thereon at any general or special election shall vote in favor thereof, and such general laws shall make provision whereby the questions of the organization of any such city under the general laws applicable thereto may, from time to time, be submitted to the electors therein.

Nothing in this article contained shall limit or affect the power of the Legislature to consolidate contiguous cities, but no such law shall be enacted until a majority of the electors of each city to be affected have voted in favor of such consolidation.

August 25, 1894.

WM. B. DAVENPORT.
A. BLEECKER BANKS.
EDWIN C. ROWLEY.

I concur in the above, and I would gladly favor the further extension of the principle of home rule, to abolish all State interference with the local affairs of cities, and to give to every city the power to construct and to amend its own charter by the votes of its citizens.

W. McM. SPEER.

Mr. Jenks — Mr. Chairman, I shall speak to the report of the minority of the Committee on Cities.

General Garfield said that the sweetest flowers were those which blossomed over the garden wall of politics. It, therefore, gives me great pleasure to congratulate the chairman of the Committee on Cities upon the perseverance and the integrity which he has shown in formulating this measure of the majority. (Applause.) Notwithstanding the assaults that have been made upon it I beg to assure him that he is to be felicitated upon some of its features, and in the spirit of the eminent Bostonian, who said that not three men

in the whole city of Boston could have written Hamlet, so I say of him that not three men in the Convention could have produced so meritorious an article; and if I may go back to a Bible story for a moment I would urge him to take to mind the editor out west, who, speaking of a rival journalist, said, "We still notice the infidel attack of the aesthetic editor across the street; but nothing that he can say can affect the Bible, or its immortal author, Thomas Jefferson."

I criticise not the execution of the bill, but the principle which lies behind it. I criticise it in that it proceeds from a radically wrong theory as to the government of our cities. The gentleman from Tioga (Mr. Clark), who has been a pink and white tyrant, has told us very frankly that they do not claim that this article gives home rule to cities. With that I thoroughly and entirely agree; and the charge I make against the article as it stands to-day is, that instead of giving home rule to cities it warrants legislative license for interference of the broadest kind.

In the short time permitted I cannot go into the details, but I want to point out to the committee, if it will give me attention, why I make this charge and accusation against the bill presented for our vote. The charge then I make is, that it does not afford home rule to cities, but simply gives legislative power to enact general laws for the purposes which, in the words of Mr. Root, are entirely the affairs of a domestic public corporation. In other words this empowers the Legislature, in express terms, to enact general laws regarding cities, as to streets, sewers, water-works, ward boundaries, parks and public places, salaries. Everything that a domestic corporation can best do by vote of its stockholders is kept away from the stockholders and committed to the control of a junta, or a body of strangers, in the capitol. Now, what is worse? I need not go into detail. There the article stands, and he who runs may read. And not only has the committee done this, but it has made this extraordinary provision — and here is the fatal defect in the bill to which attention has not yet been called upon the floor by any speaker. The provision is that the laws relating to any of the subjects thereinafter set forth are "general city laws:" and then the act goes on in section 5 to provide that as to such certain specified subjects these laws must be general. Then it provides that laws other than "general city laws" relating to any of the subjects, which are enumerated in section 5, or "to such subjects, with other subjects," are "special city laws." As to such "special city laws" there is a provision requiring the approval of the mayor, or a three-fifths vote of the Legislature in lieu thereof. Now, if a statute does not relate to sewers, if it does not relate to water-works,

if it does not relate to parks, or to any other subject specified, or if it is not joined with any other subject, it is neither "a general law" nor "a special law," which requires a three-fifths vote of the Legislature for the approval of the mayor. In other words, as this article stands to-day, it permits the Legislature to pass laws by majority vote in matters of city bonds, in matters of city appropriations, in matters of public improvements, in matters of the creation of offices and in matters of police. So that, instead of giving us a coherent scheme for the rule of cities, it really vests in the Legislature many matters of local municipal government. And this is the scheme of progress that we are asked to vote for on the ground that it is home rule.

Mr. Brown's police amendment is worse yet. True, it takes away from the Governor the power of appointment of the head of the police, but it relegates the filling of a vacancy to the Legislature making the laws for that purpose. For a police officer of the city is not a city officer. Next, as to this three-fifths vote. In the words of Mr. Becker, of Buffalo, this is merely a matter of log-rolling. Members of the Legislature who are not from the city of Brooklyn, or from the city of New York, are confronted with some measure affecting the local municipal government of either city; but what vital concern is theirs? In the eloquent words of Mr. Johnson, writing his report for the Committee on Cities, "If anything goes wrong, the local officers come and say that it is the fault of the Legislature, and impose the blame upon the member from St. Lawrence county; and the member from St. Lawrence cares nothing for it so long as it does not affect his interests." "Out of thine own mouth do I condemn thee, Jew." Talk about Moses and the lintels of the doors! When the children of Israel went out into the desert of Zin, did Moses give them relief by the *dilettanti* spoutings of a syphon bottle, or did he strike the living rock that the water might burst upon the throbbing parched air and that all might drink thereof? But they say that this article will give power to the common council to legislate. What have they left to legislate about? The licensing of a yellow dog. The erection of a dog pound. The name of a street. The keeper of a bath. Power to legislate! Why, to quote, they make the board of aldermen "like marionettes, marking time in a vacuum."

In our salad days, before Veeder learned to differ from Vedder upon questions to adjourn, before Dean discovered the previous question, or thought it had been passed on the first day of the session, the great man who presides over this Convention made a speech in which he said, with mellifluous accents, "It is not for me

to suggest any possible measures, but it will be strange indeed if the assembled wisdom of the delegates of this great State shall fail in uniting upon some provisions that shall enable the people of the great cities of this State, each to conduct and govern its own affairs without the necessity of perpetually resorting to legislative interference and aid." (Applause.) And I applauded. And then smarting as he did under the insinuations of the master of invective from Kings, President Choate rose later, yet before the tramels of politics were upon him and before the shackles of party questions had bound him, and said, "Will Mr. Becker allow me to ask him a question?" It 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 sincerely protest — that the good citizens are in a hopeless minority. "I," said Mr. Choate, "believe them to be in the great majority." Well, I appeal now from the President drunk to the President sober. The President also said in his speech on that occasion, you cannot make men good by statute, but you can put responsibility upon them. Upon the theory of John Stuart Mill that the first object of good government is to put upon the shoulders of men responsibility, that they may learn, and, learning, they may act, perhaps this was said. What we want, then, is not in the cogent words of the chairman of the Committee on Cities, a member from St. Lawrence making laws in relation to the speedways of the city of New York, but responsibility put upon the citizens of the city, and all your cumulative and minority voting may then go to the winds.

Sir, give your common council full powers of local municipal government, then make your common council large enough to make it representative, and then say to the people in the city, "Here is your responsibility; collect your taxes, spend your money," and then the good men that Mr. Choate knows of in the cities of New York and Brooklyn will rise in their might, and that majority will rule. That is the true secret of local government — although the gentleman from Hesse shakes his head. (Laughter.) What we want is, not that the Bedouins of the street should be kept from voting; not that the right shall be given solely to the men who toil in cities, but we want the responsibility so put as to summon all good citizens. As the three hundred of Leonidas saved Sparta, as the six hundred at Balaklava vindicated the might of Britain, so may we yet hope that the four hundred of Ward McAllister will redeem New York. Let these *dilettanti* men remember that if

Mr. Balfour plays golf, he has also led the House of Commons; and that Rosebery sat in the London county council before his horse carried his colors to the front in the Derby on Epsom Downs.

Now, gentlemen, the plan of the minority of the committee is logical for this reason: there are two great powers, one is the power of the State in all matters which concern the State and the people generally. Those are the police powers. They are, for example, the powers of excise, the powers of health, the powers of charities, the powers of police; and all these matters do not concern a municipality alone. As to these matters I say to you frankly that the Legislature must have supreme control, for I am not seeking to make feudal cities, or those like the cities of Spain of the Middle Ages; and so I say lodge those powers in the State, and give full control to the Legislature, where it belongs; but as to municipal matters, as to matters of local rule, as to sewers, water-works, the paving of streets, the paying of officers' salaries out of the taxes raised in the cities — as to all these and those akin which are but local business affairs, I say the proper thing to do is to intrust them on the principle of Mr. Choate, or John Stuart Mill, so as to put the responsibility upon the people of the cities, and there let the responsibility rest. Why, they talk about the cities of this country as though they were Sodoms and Gomorrahs to be organized and governed under special laws of the Legislature. But it is not so. I believe that when cities are vested with those powers they will rise to the opportunity. At least it is not fair to draw a parallel between their common councils, vested with limited power, which every man of affairs condemns and despises because they have no power, and local legislatures granted full legislative powers for local rule. If you wish to have the Governor remove the head of police, I say it is a proper exercise of the power of the State; but the moment you let the Governor come down into the city with power not only to remove, but to appoint, where he removes you are substantially making him the mayor of the city, and the Governor only has to press the political button at Albany, so that he can rule the local affairs of every city of the State. This then is the principle of the minority report. Give the cities of the State the local right to regulate their own affairs. Give to the great State of New York power to pass general laws as to all matters which concern not the cities or the citizens thereof alone, but all the people throughout the State. The city of New York is made up of people, as are the towns, hamlets or villages of the State of New York. It is not the reservoir of a sewer, receiving people different from those of the

east or the west. Remember the lines of Tennyson of the country boy along the highway, who,

"Near and nearer drawn,
Sees in Heaven the light of London flaring like a dreary dawn."

This is the picture of thousands who come to win fame and fortune in our city streets. There may be many men in this Convention who are fathers, with sons who will flow into this great city, there to make their living and their fame. Whether a man sings his song to the swing of the axe in the great forests of the Adirondacks; whether he passes his life in that city whose roar sounds with diapason of Niagara; whether he lives and toils in either of those great cities connected by the mighty bridge, that bright rainbow of commerce; whether he breathes the violets of the morning on his way to the furrowed field or toils homeward counting the silent stars, he is a citizen of the State, and wherever he may be, he loves her, and prays God bless the commonwealth of New York. (Applause.)

I did not intend to be led into rhetoric, but I have this matter at heart. I am serious when I say that it is not a pleasant thing for me to sit here in this Convention and see men who come from the great cities, whose life has been spent there, whose toil there has achieved for them wealth, fame, power and might, rise here and at the dictates of party organization decry the city to which they owe their all. Not invective but emigration is what we want of them.

If they love not the city that gave them sustenance, fortune, fame and power God knows there is no writ of *ne exeat* upon them — let them leave the city they defame.

I would have none of this. And we of the cities owe too much to the cities to yield their good to the petty interests of any political party. Is this justice, is this patriotism, is this right? The other day I quoted those lines of Macaulay, which to me seemed to breathe the true municipal spirit. You remember in the same poem that although Horatius nerved himself and the two who stood beside him to their heroic task by asking:

"Now, who can meet death better than by facing fearful odds.
For the ashes of his fathers; for the temples of his gods."

Yet when he was left by even the faithful two, and after the heat and fury of the battle were spent and his deed which saved his city was done, he was moved to his supreme heroic effort by other thoughts. Self-sacrifice first, self-preservation second. He saved his own life because, "He saw on Palitinus the white porch of his home."

Mr. Lauterbach — Mr. Chairman, I was born and bred and, during my whole life, I have lived in the city which you have mentioned. I know it, and I love it. I think I know the admirable qualities which control it in its administration, and I think I know the defects that have crept into its administration. We are Americans, and, first of all, owe our loyalty to the federal government, and next, to the Empire State, extending from the Atlantic ocean to the St. Lawrence river, and from the Hudson river to Niagara Falls, and embracing the most magnificent territory that was ever bounded by the limits of a State; a State which contains within itself, at its foot the ocean, the most magnificent rivers in the world, the great Falls of Niagara, lakes unexampled in beauty; forests and mountain; in fact all that can be conceived of in the domain of nature. I am proud that I am a citizen of that State, and proud that I am a citizen of its great Empire city; and as a citizen of that city I have always recognized the fact that its greatness is not due to itself alone, but that it is largely due to the fact that it is the greatest city of the great Empire State to which it owes so much of its magnificent position as one of the great metropolises of the world. It is because of its lying at the foot of the river and connecting with the Erie canal, because the great mountain ranges that separate the east from the west cease to be a barrier almost at the very boundaries of the State, making it the pathway for railway communication directly and without impediment. It is because all these and other conditions have existed, and because the interest of every community throughout the whole State has always been excited in favor of its beloved metropolis, that the city of New York has become what it is. It is a great city. No one shall belittle it. I have been a scholar in its public schools and graduated at its free academy, and I know that its educational system is beyond compare. As has been suggested, I am familiar with its noble charitable institutions and know that they are unequaled on the face of the earth. In every respect, all that can be said favorably of any city can be said and must be said in favor of New York. But there are influences that retard its progress. It is not surprising that the great metropolis that suffers itself to become the recipient of masses that are self-exiled, or subjects of involuntary exile from every quarter of the European world, should to some extent receive injury during the period that elapses before that enormous immigration becomes assimilated. It requires a long time sometimes to Americanize those so often unfitted and generations undeserving who receive its hospitality, and do not become fully identified with its methods and its aims. That is the chief difficulty we have had to

contend with. The ramifications of that drawback have been various. It had manifestation during the civil war, when the necessities of the government required that a draft should be enforced. I have seen that unharmonized element opposing, to the extent of applying the torch to arsenals, to hanging negroes to lamp-posts in defying the federal government, and the government of the State of New York, until crushed into submission by the State. I was a lad when Fernando Wood was engaged in carrying out this principle of the autonomy of the city government to its fullest extent by bringing about the actual secession of the city from the State, and making it not only the autonomy which Mr. Jenks suggests, but the sort of autonomy that must naturally result from any such divorce as that which is suggested here, the actual separation of the two political bodies. I have seen the municipal police in control of that city, under that autonomy, and it was only by an appeal to the Legislature at Albany, and the enactment of the metropolitan police law, which was referred to by Mr. Roche yesterday, that defeated the project and secured the salvation of the people in that great emergency. (Applause.)

When the Tweed iniquities took place, and whenever before and since that period misapplications of power by those who were in control of the city manifested themselves, there was the feeling that there should be, as there could be, an appeal to other citizens of the same Empire State, to whom the glories of that city, and of every other city, as of the State itself, was dearer than any selfish interest. And the appeals were never in vain. Again and again, as the result of investigating committees, as the result of the appointment of commissions, never with any injury to the city, but always for its benefit, the intervention of the central power of the State was invoked, representing all the elements of the State, the newly arrived and the American-born, the men who were indigenous to the soil and the men who came to it but a few months before, all exercising the same rights of citizenship, but not all with the same degree either of intelligence. My friends, the Democrats, know that the exigency has occured again and again, when they themselves have been glad to know that there was some other power that could be addressed than the local power, the power of the temperate, unprejudiced, unselfish judgment of other citizens of the same Empire State.

We have had some scandals. We would have had thousands of additional scandals had it not been for the knowledge that on the first Monday in January in each year there would be assembled in

Albany a Legislature, composed of men gathered from every corner of the State, who would, and could pass in review the conduct of local authorities, and who could and would put a check to whatever menaced or abused the rights of the State or any of its citizens. Has that central power ever been abused? You will recognize that it has been of use, that it has been of service; that successful appeals have been made to it by the people in emergencies; but where, in all this period of time, has there even been a single case of abuse? I have heard one instance mentioned. The salary of the police was increased last year. These servants of the public came to the Legislature and they begged for that increase. There was no use in the patrolmen of the districts appealing to the wardmen; there was no use in going to the pantata, the captain of the district. These were engaged in more lucrative pursuits, and so they came to Albany and filed his petition, and it was granted by the Legislature. The bill went to a Democratic Governor, and the Democratic rulers of the city of New York were asked to make their opposition. Heaven knows there was no difficulty in securing vetoes of Republican measures from the Democratic incumbent of the gubernatorial chair last year. But the bill was promptly signed. The salary was raised. And I have heard much of the iniquity of the interference of the Legislature in the affairs of the city of New York, because this bill, signed by a Democratic pen, and without, so far as I know, one word of objection from local Democratic influences, became a law.

I have no resentment against those who are not of the same political party as I am. The representatives that you see here are fair representatives of the Democratic party of the city of New York. They are honorable men. I know its present executive. He is one of the best equipped officers that the city of New York has ever had. He gained his experience as the head of the department of public works, where he was an example of efficiency and ability; and in his whole career, so far as I know it, he has shown the same eminent characteristics. I know others who are in office and they are men of the same sort as those you see here — able, willing to undertake labor, and able to do it successfully. But they are all the better, good as they are for the knowledge that, apart, from the organization which they control, or which controls them, apart from the local self-interests which surround them, apart from surroundings from which they cannot sometimes extricate themselves, that there is a check upon an exercise of their power, that they are not unbridled; that they are not unlicensed; that they need not listen to the behests of every member of their own organization, or of every powerful politician, but that they can say, "we are not the absolute

rulers of this city, there is a Legislature to be consulted, to be advised with and considered, and we dare not abuse our power." And if, now and then, an abuse creeps in, if, from a lack of regulation of certain vicious tendencies, social evils which exist in every city, the police are placed in conditions of great temptation, which should not come to them, and they are tempted, as men sometimes will be tempted, when local power is not strong enough to check it, or those who exercise it have themselves become corrupted, a resolution at Albany, the appointment of a committee, a visit to the city of New York, an examination into its affairs, sweeps aside the iniquity and assists those who are honest in the conduct of affairs, while punishing the dishonest. There are as many honest men among the Democrats as there are among the Republicans, and the province of the Legislature is to assist them in accomplishing the regeneration and salvation of the city, in clearing out the plague spots, and making things right which have gone wrong.

I would like to dilate upon the subject if possible, but my time is limited. I do want to say that I have looked upon the city as superb in all its accessories, including its officials generally; superb in its method of management, including not only its local legislature, but including the general Legislature of the State. New York is great; Rochester is prosperous; so are Buffalo, Brooklyn, Albany — all the cities of the State — but these cities are what they are because they are integral parts of the Empire State and are subject to the manner, method and character of government that has prevailed since this State has been created. (Applause.) That form of government I would maintain without change as to essentials, with but slight changes in detail, without listening to the dictates of those who present their vagaries and their Utopian notions of independent local government; men with isms, fads, peculiarities and untried experiments, who are never happy with what exists, but who are always desiring some change; who find nothing good in any but themselves; and who are never satisfied with what has been accomplished, when once accomplished, even if it is of their own suggestion and creation. (Applause.)

I presume that my peculiar views, if they are peculiar, upon this subject have been known, for I have not been asked to interest myself especially in the affairs of the city of New York or in any of the other affairs of importance and magnitude that ordinarily would be called to the attention of a citizen of that great metropolis, because, perhaps, I am not in sympathy with these new-fangled, untried notions that have never gone further than the territory of

theory. I am willing to take existing things as they are, and improve them in detail, if improvement be necessary; but I would look to ourselves for suggestion in that respect, and not apply to the residents of Utopia or dreamland for advice. (Applause.)

When the patient labor, the unexampled energy and care that were bestowed upon the subject by the Cities Committee resulted in the proposed "cities" amendment, I was as appreciative of their work as any fellow Republican in this chamber. Never has a committee applied itself with such earnestness, with such desire to do right, with so much hope that they would accomplish a new departure that would be of great service to the city. They looked for some controlling principle. Some one suggested home rule. It was a name to charm by. It has a euphonious and captivating ring. But what does it mean? Will you have home rule for wards, for counties, for towns? Are you going to have the principle of home rule applied to all of these? Is New York to be a walled city? Is not New York city a part of the Empire State's own territory? The State is our home. Everything that is done within the boundaries of the State is home rule; home rule of a long established, always reliable and easily conceivable character, interlacing the local government with the general government, for the advantage of both. (Applause.) You want home rule? But has the true doctrine of well regulated home rule ever been interfered with in practice? If so, where and when? Gentlemen of the Democracy, what we have to present to you under the name of home rule is unsatisfactory, is it not? You have said it again and again. It is not an autonomy you say. It is not independence. You do not want it. (No, no; from the Democratic side.) Gentlemen of the Republican party, do you want it? What for? What object is to be accomplished? Why separate and segregate any one branch or more branches of the cities business from any other department hereto? Why not keep the whole under harmonious regulation? Why not make the Legislature continue to do what it has done, without even discussing this matter of home rule, or this pretense of home rule, as the Democrats call it. This abandonment of sensible State supervision, as I call it. It is condemned on both sides. Nobody wants it, apparently, on either side, as it is now emasculated by Democratic amendment.

The Chairman — The Chair has to announce that your time is up.

Mr. Dean — I ask unanimous consent that Mr. Lauterbach may proceed until he gets through.

Mr. Johnson — Let it be taken from the time allowed.

The Chairman — It will not be taken from the time allowed, but, if unanimous consent is given, the session can be extended for a few minutes.

Mr. Dickey — Until he gets through.

The Chairman — Is there any objection to Mr. Lauterbach's proceeding? If not, he may continue. (Applause.)

Mr. Lauterbach. — I thank you. Now, it must be confessed that out of these ideas submitted to the committee, so laboriously and industrially studied by them, there have grown some things that perhaps it may be wise to experiment with. I think there is a concession on both sides of the chamber that perhaps it is a wise thing to separate local from general elections. The rest of it, as amended, is now of no consequence. We upheld it because we thought it would give us what has been called upon this side of the chamber, "minority," or "proportional representation." I have been told that that sort of representation is to be the great panacea for all ills, and I was willing for the sake of that portion of the bill to swallow all the rest; but when the Democratic motions came, resulting in its elimination, I had no further use for the whole project; unlimited authority over the fire department and of the parks, was to be accorded, yet within the year I have heard serious criticism of those departments — probably unfounded. Mr. Henry Winthrop Gray was a member of the board of fire commissioners. He resigned because, as he stated, its methods were corrupt. He is an honorable man, and we all know him in the city of New York, and know that he would make no allegation of that kind if he believed it to be untrue. Pass this measure and let an investigation next winter of the New York fire department be asked for; they will say very properly, "What have you, Messrs. Legislators, at Albany, to do with our fire department. We are an autonomy in that respect. Home rule has given us the right to control this fire department and our dock department, and our park department"— of which there has been criticism as to the expenditure of a million of dollars in a month or two last winter — probably unfounded criticism. To Republicans we give the disadvantage of losing all control; and to Democrats, it will give you the disadvantage of losing a forum to which they could appeal. Better, far better, for you, my Democratic friends, that there may be a legislative committee appointed to investigate any charge against any department of the city of New York, many of which have been found to be completely unfounded, than to be deprived of a fair opportunity for vindication. But you want, as I want, that those supervisory rights shall continue to be exer-

cised so at least to enable you to receive justification, if for no other reason, when unfounded aspersions are made, I was willing, I repeat, to have taken home rule with minority representations, but without it all my interest in it is gone for the rest of this session. If I should, without it still, be asked to vote for this measure by my conferrees, I would be as loyal now as I have always been. I will vote with you. I don't think you will ask me to do so, but if you do, I am ready to make the sacrifice. But the incentive is gone. Now there is but one thing left — the separation of elections clause. In my opinion, viewed from a partisan standpoint, that is not good Republican policy, though it is good Democratic policy; yet I will vote for it. It is said we may put up a better local ticket, and vote for better local tickets in years when there are no national or State questions involved. Possibly that is so. My opinion is, and my notion was confirmed by what my friend, Mr. Holls, said when he spoke in favor of compulsory voting, the necessity of compelling people to go to the polls, for he referred to Republican voters. I know some people will never vote at local elections — and I do not refer to the affiliates of my friends on this side of the chamber — for they will go to the polls 365 days in the year and wish there were 366 to be so utilized (applause); but of the gentlemen on the other side of the chamber — my side — I cannot say the same thing. But I am willing to run my chances on that. It may be possible that the injury that may come to the Republican party from the apathy in local elections will be counterbalanced by the fact that perhaps all good citizens will get together and nominate good and pure local tickets, irrespective of the machine of either one side or the other. I am not going to swear that that is going to be so (laughter), but if it is, let us make haste to secure it; let us at least make the experiment, and if I could have my wish accomplished it would be, now that minority representation is dead, that the remainder of the measure which the Democrats affect to be unwilling to take, and which I in my heart of hearts do not want to give, shall not be given by us nor taken by them; that the first section as to separate elections, with its amendments may be passed; but that the rest of the work of the Cities Committee may remain as a landmark, so that when a fuller knowledge as to the administration of the affairs of cities shall have been developed, when we are better able to cope with these questions, when we can more thoroughly understand the theories of Mayor Low and of the other gentlemen who so earnestly advocate them, it will be of service, it may even stand as an imperishable monument to the intelligence, the skill, the ability and the earn-

estness of as good committee as ever represented a Constitutional Convention. (Applause.)

The President resumed the chair, and announced that the hour of five having arrived, the Convention stood adjourned until 8 P. M.

EVENING SESSION.

Thursday Evening, August 30, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, in the Capitol, at Albany, N. Y., Thursday evening, August thirtieth, at eight o'clock.

President Choate called the Convention to order.

Mr. Cookinham — Mr. President, I offer the following resolution:

The Secretary read Mr. Cookinham's resolution as follows:

R. 189.— Resolved, That the proposed constitutional amendments hereinafter mentioned be made special orders for August thirty-first, at ten o'clock A. M., in the order stated below, and that they each be considered in Committee of the Whole until disposed of, except that general order No. 74 in regard to apportionment take precedence of all other business after it is reached on the day now fixed for its consideration.

The President — Gentlemen will give attention to this as it is a rule proposing the order in which amendments shall be considered.

The Secretary continued to read as follows:

First.— General order No. 3, relating to home rule for cities, unless sooner disposed of.

Second.— General order No. 61, to amend article 9, relating to free common schools.

Third.— General order No. 72, to amend the Constitution relative to forest preservation.

Fourth.— General order No. 63, to amend the Constitution by addition of new article relative to the waters of Niagara river.

Fifth.— General order No. 53, to amend article 7, section 3, relative to canals.

Mr. Veeder — Mr. President, I rise to a point of order. If this is one of to-day's sessions, then I submit that immediately upon the assembling of the Convention, we should proceed with the special order. If it is not a continuation of the session, then, by the rules, the general order of business must be preserved.

The President — The practice of the Convention has been different from the beginning. At the beginning and close of every session, it seems to the Chair that the necessary business of the Convention requires an opportunity for motions or resolutions to be offered. That has been pursued and it has been availed of by almost all the members of the Convention in asking for excuses, and other motions, and will be adhered to unless overruled by the House.

Mr. Veeder — Mr. President, do I understand that because we have been committing errors and violating the rules of the Convention that we shall continue to do it?

The President — The Chair has announced his decision, which will be maintained unless overruled by the Convention.

Mr. Veeder — Mr. President, what disposition does the Chair make of my point of order?

The President — The point of order is not well taken. The Secretary will continue.

The Secretary continued the reading of the resolution, as follows:

Sixth.— General order No. 54, to amend article 7, section 6.

Sixth and one-half.— General order No. 58, to amend article 7, sections 1 to 5, relative to canal debts.

Seventh.— General order No. 67, to amend article 5 of the Constitution.

Eighth.— General order No. 74, to amend article 3, relating to the apportionment of Senate and Assembly districts.

Ninth.— General order No. 32, prescribing the period of citizenship as a prerequisite of the right to vote.

Tenth.— General order No. 34, relating to the registration of voters.

Eleventh.— General order No. 64, to amend article 2, relating to the use of money for political purposes.

Twelfth.— General order No. 12, to amend article 13, relating to future amendments.

Thirteenth.— General order No. 55, to amend article 14 of the Constitution.

Fourteenth.— General order No. 62, to amend article 3 by the addition of two new sections.

Fifteenth.— General order No. 69, to amend the Constitution relative to the liability of employers for injuries to employes.

Sixteenth.— General order No. 57, to amend article 8, section 7, relative to liability of stockholders of banking corporations.

Seventeenth.— General order No. 36, relating to civil service.

Eighteenth.— General order No. 48, to amend article 1, section 10, in relation to the suppression of gambling.

Nineteenth.— General order No. 44, to authorize the Legislature to provide for construction of dams and reservoirs.

Twentieth.— General order No. 42, relative to the drainage of agricultural lands.

Twenty-first.— General order No. 7, to amend section 4, article 2, relating to the enforcing of the duty of voting.

Twenty-first and one-half.— General order No. 33, in reference to the qualification of voters.

Twenty-second.— General order No. 35, as to restrictions on private and local bills.

Twenty-third.— General order No. 27, as to trusts or combinations.

Twenty-fourth.— General order No. 36, relative to corporations.

Twenty-fifth.— General order No. 38, relative to religious liberty.

Twenty-sixth.— General order No. 39, persons answering for capital and other infamous crime.

Twenty-seventh.— General order No. 40, to amend article 2, section 7, of the Constitution.

Twenty-eighth.— General order No. 46, to amend article 3, to establish boards of arbitration.

Twenty-ninth.— General order No. 47, to amend article 3, relative to private and local bills.

Thirtieth.— General order No. 51, to amend article 10, section 1, relative to Governor removing public officers.

Thirty-first.— General order No. 60, to amend article 8, section 11, relative to debt limitation of cities.

Thirty-second.— General order No. 66, to amend article 12, section 1, relative to oaths of office.

Thirty-third.— General order No. 70, to amend article 1, section 6, relative to conspiracies.

Thirty-fourth.— General order No. 75, to amend article 3, section 8, relative to the eligibility of persons to a seat in the Legislature.

Thirty-fifth.— General order No. 71, to prevent discrimination in rates or charges either by railroad, telegraph or telephone com-

panies, corporations or common carriers doing business in this State.

Thirty-sixth.— General order No. 68, to amend article 8, relative to franchises in city streets and places.

Thirty-seventh.— General order No. 59, to amend article 7 of the Constitution.

Thirty-eighth.— General order No. 5, relative to the transfer of land titles.

Thirty-ninth.— General order No. 19, to amend section 18 of article 3, relating to special or local laws.

Fortieth.— General order No. 23, to amend section 13 of article 3, as to passage of bills by the Legislature.

Forty-first.— General order No. 24, relating to grants.

Forty-second.— General order No. 30, as to the powers and duties of the Legislature in forming and dividing counties.

Forty-third.— General order No. 37, relative to criminal prosecutions.

Forty-fourth.— General order No. 43, relative to soldiers and sailors homes.

Forty-fifth.— General order No. 49, to amend article 1, section 7, relating to taking private property for public use.

Forty-sixth.— General order No. 56, to amend article 8, section 6, in respect to banks.

Forty-seventh.— General order No. 73, to amend article 11, relative to the militia.

Forty-eighth.— General order No. 76, to amend article 3, section 6, as to pay of members of the Legislature.

The President — The question is on the adoption of the resolution.

Mr. Bowers — Mr. President, I make a point of order. Thursday in each week is set apart for the consideration of general orders only. The introduction of this resolution to-night prevents our receiving the benefit of the rule on a matter which is to be adopted, to postpone for a day, which is intended to be twenty-four hours. It seems to me there can be no fair construction of the rule, no reasonable construction as we originally understood, that would allow a resolution of this character to be introduced to-night. What we have been doing has been done by unanimous consent, and I submit as a point of order that this resolution cannot come up to-night, that we ought to go into Committee of the Whole,

and unless by unanimous consent, that we are not entitled to do any business except the business of the Committee of the Whole.

The President — The Chair had already ruled upon that point of order when raised by Mr. Veeder.

Mr. Bowers — I make the point of order, Mr. President, that this resolution is debatable and cannot be considered to-night.

The President — The Chair rules that that point is well taken. The matter will be considered to-morrow.

Mr. Cochran — Mr. President, may I ask that the resolution be read again? There was a resolution in reference to the apportionment article.

The President — The Secretary will read the first part of the resolution.

The Secretary read the first part of the resolution, heretofore read.

The President — It goes over until to-morrow morning.

Mr. Barhite — Mr. President, I desire to offer a resolution.

Mr. Roche — Mr. President, I came in a little late and I ask for information if a point of order had been raised and there has been any ruling upon it to the effect that these resolutions should be referred as a matter of course to the Committee on Rules?

The President — The point of order was made that it should go over until to-morrow because it gave rise to debate, and it was held to be well taken.

Mr. Roche — Well, I ask, Mr. President, if, under rule 50, which starts out, "All proposed action touching the rules and order of business shall be referred as of course to the Committee on Rules," does not of necessity send these resolutions to the Committee on Rules.

The President — It was held over until to-morrow, under the rule. You may make that point then.

Mr. Roche — I make the additional point of order that these resolutions relating to the order of business before the House should be referred as matter of course to the Committee on Rules.

The President — Would you have it referred to the Committee on rules now? Do you claim that it should now be committed to the Committee on Rules? It is so referred, and the Committee on Rules will report upon it to-morrow.

Mr. Barhite's resolution was read by the Secretary, as follows:

R. 190.— Resolved, That the Committee on Rules be directed forthwith to report an amendment to rule 24, striking out the

words "two-thirds," and inserting in place thereof the word "majority."

Mr. Bowers — I make the point of order that it goes to the Committee on Rules.

The President — The Chair is of the opinion that this being a resolution instructing the Committee on Rules does not go to the Committee on Rules; otherwise, it would be entirely futile.

Mr. Bowers — Then we make the point of order that it is to be debated and cannot be taken up to-night.

The President — It goes over until to-morrow.

Mr. Andrew Frank — I move that the privileges of the floor be extended to the city clerk of Brooklyn, Mr. Joseph Benjamin, during his stay in this city.

The President put the question on granting the privileges of the floor, and it was determined in the affirmative.

Mr. Cochran — Mr. President, I rise to a question of privilege.

The President — Mr. Cochran rises to a question of privilege which he will please state.

Mr. Cochran — Owing to the fact that, during the very interesting and exciting debate this morning, there were a number of very general charges made against the members of the minority in this body, and which by their general terms, sir, included myself as much as any other member of the minority, I desire to avail myself of the question of privilege, to say a few words. The charge was made on this floor by a number of the gentlemen of the majority, that in this Convention there was a faction in the minority of this Convention, who were obstructing the business of the Convention and were doing that by continuously calling for the ayes and noes on questions that were of no importance, and that it was apparent, therefore, to the gentlemen of the majority that the ayes and noes were called only for the purpose of delay. I would say, sir, that I, myself, have been guilty once before to-day of calling for the ayes and noes upon a question, and, therefore, that these general remarks relative to the members of the minority party were as much applicable to myself as to any other member of my party. I have taken pains during the recess of this Convention to examine the records and proceedings of the Convention and of the Committee of the Whole, to see what the fact was, and whether I was guilty of the charge of which I might have been accused by the gentleman who spoke this morning. I find that since this Convention opened, and down to and including the close of the proceedings last night,

there were just thirty-three roll-calls on a call for the ayes and noes, and I find that of those thirty-three, twenty-three of them were on the calls for the ayes and noes by members of the majority party in this Convention, and that ten of those calls were on the call of members of the minority of this Convention, and of the ten, which the members of the minority in this Convention moved, two were on roll-calls relative to the adjournment of the proceedings of this Convention on motions of members of the majority party, and when the members of the minority party wanted to stay here and do work which we felt that we should do. As to the other eight, I believe, sir, that when I tell the members of this Convention what they were, the falseness of the charge which was made against the members of the minority party this morning will appear. One of those roll-calls was on the question of the contest in the election districts in the city of Buffalo. Another was on the question of the change of the jury system. Another was whether we should abolish capital punishment. Another was whether we should take away the limit of five thousand dollars, which is now fixed as the amount of damages to be recovered for injuries resulting in death.

Mr. Davies — Mr. President, I rise to a point of order. The gentleman is not speaking to a question of personal privilege.

The President — The point of order is not well taken.

Mr. Cochran — Another was, sir, a question which involved suffrage of the inmates of the Sailors Snug Harbor on Staten Island. Another was in reference to public officers, a bill introduced by Mr. Mereness. Another one was on a question of high license, a bill introduced by Mr. Titus. Those constitute the only general roll-calls which the members of the minority party in this Convention asked to have. If any gentleman in the majority can see anything in that which is an obstruction, I say I plead guilty.

The President — There is no doubt the Convention is delighted that Mr. Cochran has been able to vindicate himself so thoroughly.

Mr. Root — Mr. President, I move that Mr. Cochran's plea of guilty be accepted.

The President — The motion is out of order.

Mr. Barhite — Mr. President, I offer the following resolution:

The Secretary read Mr. Barhite's resolution as follows:

R. 191.— Resolved, That rule 27 be amended by striking out the words "two-thirds," and inserting therefor the word "majority."

The President — It is referred to the Committee on Rules. Mr. Johnson will please take the chair.

Mr. Kerwin — I ask the President to retain the chair for a few moments.

The Convention resolved itself into Committee of the Whole, Mr. I. S. Johnson took the chair.

Mr. J. Johnson — Mr. Chairman, I desire to inquire how much time remains on behalf of the advocates of the measure.

The Chairman — Twenty-five minutes on each side.

Mr. Nicoll — I have only a few words to say, Mr. Chairman, by way of the conclusion of the discussion upon the present amendments relating to cities. We have reached a very solemn moment in the course of our deliberations upon this amendment. We are approaching a time when this Convention will have to decide whether or not the great problem of home rule, which the people expect us to solve, shall be turned aside for another generation. We are confronted now with the proposition whether or not we shall repeat the experience of the Convention of 1867, which denied the hopes, the wishes, the desires, and aspirations of the people upon this subject, or whether rising for once above partisanship, forgetting that we are either Democrats or Republicans, we can drag out of this discussion that well digested and satisfactory measure of local self-government which three and one-half millions of people of this State now living within the corporate limits of cities have a right to expect from this Constitutional Convention. Disturbed as we have been to-day and several days before by merely party considerations, and great as the danger is that this Constitutional Convention may wind up in political debate only, let us, if we can, upon a high plane, with a sense of obligation to our oaths, endeavor to-night to cast aside partisan advantage and prepare for submission to the people something which has a fair opportunity of adoption. I am here, Mr. Chairman, to advocate the measure which is proposed by the minority of the Committee on Cities, because unlike the mongrel measure of home rule which proceeds from the majority of that committee, it represents a well conceived, well digested measure of local self-government; because it contains within its well-defined limits all the views of those who have devoted years to the study of municipal government, and the bringing about, if possible, a better order of things for the people of our cities. I was surprised, Mr. Chairman, yesterday afternoon when I moved an amendment to one of the sections of the present article, proposing to substitute first seven-eighths, and then four-fifths, for the present three-fifths provision to hear the distinguished President of this Convention state that the home rule which I was advocating was the

home rule desired only by Tammany Hall. If, gentlemen, that had been its real purpose, if I was indeed speaking the wishes and desires of Tammany Hall on the subject of home rule, I should have been entitled to the respectful attention of this Convention, because it is not to be denied that, for several years past, within the limits of Tammany Hall, has been enrolled the great majority of Democratic voters in the city of New York; a majority not less imbued with the desire for good government, not less instinct with patriotism than those who are found within the compass of the Republican machine in that city. But, sir, this is not a question of Tammany Hall or anti-Tammany, or of the committe of thirty, or of the Milholland faction, or of any other faction or party in the city of New York, or of any other city in the State. I do not propose to descend to that plane of discussion. I have no desire to divert this discussion into the paths of political and personal inuendo. We of the minority, as the President of this Convention has well said, are not here as politicians. We do not pose as politicians. We are not officeholders. We are not men who pass our time trying to get street sweepers appointed or looking for the plums of patronage. We have indeed, perhaps, but little political influence in our respective localities, but I may perhaps remind the Convention in passing, that we at least of the minority had enough political influence to be nominated by Conventions who expected us to appear on the floor of this Convention, and that we are not here by virtue of a political accident. But it is said that this measure must be defeated because it is a measure advocated by Tammany Hall. It is not an unusual thing, Mr. Chairman, for those who wish to escape the penetrating gaze of the people, and to avoid their just criticism, to endeavor to divert an issue by political suggestions. But that attempt cannot succeed here. The responsibility for the defeat of home rule and local self-government in this Convention shall be put where it belongs. I will tear aside the veil of hypocrisy, throw off the mask, and have the people of this State know, if the cause of local self-government is to be defeated in this Convention, just where the responsibility belongs.

Bear with me for a moment while I recite the history of the cities proposition in this Convention. The Convention assembled. The distinguished President of the Convention appointed a committee for the purpose of considering the various propositions relating to the good government of cities. That committee assembled and sat for weeks and weeks listening to everyone in the State of New York who had anything to propose upon the subject. They listened with patience and consideration to the views of all classes and conditions

of men. Before that committee appeared whom? First came the committee of twenty-one representing all the reform associations of this State, and then came the distinguished president of Columbia College with his well-considered views upon the subject. And what did they advocate? Did they advocate a retention by the Legislature of this State of its powers over cities with regard to local affairs? Did they advocate any two-thirds or three-fifths vote in the Legislature upon such question? Not at all. They advocated, what all men know is essential to good government of cities, separate elections, and an absolute prohibition of the Legislature to pass special laws in regard to cities either without consent of the local authorities. That was their proposition. Was Mr. Seth Low, when he appeared before the Committee on Cities, an advocate of Tammany Hall? Were the committee of twenty-one, when they stood before the Cities Committee demanding as one of the essentials to a proper local self-government an absolute prohibition on the part of the Legislature to interfere with the government of cities, the spokesmen of Tammany Hall? Why, not at all. They spoke their own views. They simply said, what every one in this Convention knows, that it is impossible for cities to work out any scheme of better local government without separate elections and without an absolute prohibition on the part of the Legislature to interfere at all with their local affairs. And then what happened? The majority of the Committee on Cities took up the proposition, which had been submitted to them by the committee of twenty-one and by the other reform associations of this State, and they reported it to this Convention, and the distinguished chairman of the Committee on Cities over and over again, upon the floor of this Convention, insisted, demanded, from this Convention, a provision absolutely prohibiting interference by the Legislature in the local affairs of cities. I read from his report. He says:

"This is a very large grant of power to cities, and it is intended and believed to be effective and permanent. In and by itself it is a larger degree of home rule than has ever before been presented by any legislative official body. It is certainly a step in that direction, and a very long one. If nothing more comes of it, the officials of the city cannot escape responsibility for legislation on the subjects enumerated; and the Legislature itself, being without power, will be without the solicitation to interfere in such matters."

I had the honor, upon the floor of this Convention, to congratulate him, because he had been able to work out the proposition as well as he had, and because he had been able to see, among all the conflicting opinions, the two propositions of local self-government.

And, then, gentlemen, what happened? Why, in the first place there went up from the organs of the Republican party in this State a cry that that kind of home rule must not be given to the cities of the State. In a leading editorial on the subject the party organ said, "the chairman of the Committee on Cities is a very honest, earnest, but a very indiscreet man." And then what next went up? From the machine of the Republican party in this State went up a woeful cry. What? Take away from the Legislature of the State the power to govern the cities of the State? Deprive us of our time-honored custom of interfering with the government of cities? Where, then, would be our patronage? How can we subsist? Without the national and State governments our only perquisite is interference with the government of cities. Where would be our appointments on the aqueduct? Where our policemen and firemen? Where our slices of fat contracts? Where all the privileges to which we have been entitled for so many generations? What, no more plums from the municipal pudding, no more fingers in the municipal pie! Do you not know that three-fourths of every volume of the Session Laws of this State is filled with special acts relating to cities? Take that power of legislation away from us and our occupation will be gone. Something must be done; at all hazards, the chairman of the Committee on Cities must be compelled to retreat. And then what happened? The distinguished President was appealed to. He, as has been said, is not sophistocated in political matters. He is unfamiliar with the ways that are dark and the tricks that are vain. He was asked to come to the rescue. He arose upon the floor of this Convention,

> "A fairer person lost not heaven. His tongue
> Dropped manna and could make the worse appear
> The better reason, to perplex and dash
> Maturest counsels."

And then he suggested that as a compromise between the reformers who demanded absolute prohibition on the part of the Legislature, and the machine, which insisted that there should be no prohibition at all, that there should be a three-fifths vote upon the subject. Dust in the eyes of the reformers; the loaves and fishes to the machine. No wonder that the gallant commander of the Chautauqua navy was heard to exclaim: "How our President grows in statesmanship every day."

And, then, gentlemen, our only hope — the only hope that the people of this State had — was in the redoubtable chairman of the

Committee on Cities, who, during the first months of this Convention, made the corridors of this Capitol tremble with his asseverations that he, at least, would never desert his post. Imagine our surprise when he, too, surrendered and came back with the cities article incorporating the three-fifths provision, and permitting business to be done at the old stand as in former years. No wonder he could not defend his position on the floor of this Convention. No wonder that he could not speak in defense of that portion of his amended article. "He was led like a lamb to the slaughter, and as a sheep dumb before its shearers he opened not his mouth." His place was taken by the bald-headed sage of Cherry Valley, who tired of playing Boswell to our Johnson (laughter), endeavored to usurp his place and to reconcile the last production of the Committee on Cities with the first. Such, gentlemen, is the lame, impotent conclusion which we have reached. Now, what is the proposition of the majority? Separate elections. That is good. Three-fifths vote. That is nothing. But in addition to that you have loaded it down with the proposition which you knew would make it unacceptable to the minority of this Convention. You knew that no Democratic votes could be obtained for a proposition which, pretending to give home rule, incorporated within its limits a provision that the Governor of the State should have the power to remove and appoint police commissioners. We, who live in cities, knew that that would be the end of peace and order in our midst. We knew that to take away from the mayor the power to control the police would work demoralization. You knew that it was impossible for us to accept any such proposition. Had you been instinct with the desire to give real home rule to cities, why did you leave that portion of it out, and submit it if you chose as a separate amendment to the people, to see how they treated it? Why anchor down a proposition for better self-government in cities by such a dead weight? And that is about all there is of the present proposition. We have substituted in its stead, a measure which expresses the views of all of those who have given years to the study of this subject. We provide for separate elections, for non-interference on the part of the Legislature on those subjects which are of city control only. And that is the proposition which we urge upon this Convention to-night. I beg to remind you, gentlemen, that we are not here passing a Constitution in the first instance; everything which we do here must afterward go before the great jury of the public.

The Chairman — The twenty minutes are up unless the additional five minutes that is conceded to the minority be given to Mr. Nicoll.

Mr. Mulqueen — Mr. Chairman, I ask that the five minutes be given to Mr. Nicoll.

The Chairman — If there is no objection.

Mr. McIntyre — I object.

Mr. J. Johnson — I trust the time will be given to him.

The Chairman — I would suggest to the gentleman that the minority are entitled to the five minutes, and if they are willing Mr. Nicoll should occupy the time, I should say there is no real objection to that.

Mr. McIntyre — I am perfectly willing Mr. Nicoll should have all the time they have.

The Chairman — That is all that was asked for. Mr. Nicoll will proceed.

Mr. Nicoll — Mr. Chairman, I have only one more word to say. This Convention cannot afford to adjourn without preparing a satisfactory article for home rule to cities in this State. For twenty years the people of this State have been looking forward to this Convention for the purpose of having all their hopes, their wishes and their desires upon this subject gratified. What shall we say to them? What can you say to them, who claim to be responsible for the amendment in this Convention, if nothing proceeds from this body in the way of home rule? Strike out, I beg you, to-night, that offensive article in regard to the police. View the situation as it is. Let the mayors of the cities remove police commissioners, as formerly, and let those mayors in turn be amenable to the chief executive of this State. Strike it out. It is rankly partisan. It will never be of any good. Certainly it will do no good to the people who live in the cities of this State. And then restore to this amendment that which was first recommended by the Committee on Cities. Make the prohibition on the part of the Legislature as to interference with our local concerns absolute. Leave the provision for separate elections as it is, and having done that, you will at least have done something to have gratified the hopes and wishes of 3,000,000 of people now living in the cities of this State, and have contributed something to the blessings of civilization for millions yet unborn. Let us make one last attempt, notwithstanding the passions of the moment, to rise above partisanship, and conscious of our duties toward the people of this State, and mindful of our oaths to them, let us submit something to them which, in the course of years, will bring them the blessings for which they will be grateful to this Convention. Let us not go down to history as weak, impotent, partisan creatures, who could not rise above the passions

of the moment, for the purpose of giving some beneficent government to the people of the cities of the State. (Applause.)

Mr. E. R. Brown — Mr. Chairman, after the weariness following the long debate upon this subject, I feel that any contribution that I make to it will add but little to the ability of any member to arrive at an intelligent conclusion. I shall be very brief in my remarks. This is the first time that a Convention has ever met that could take into its consideration and deliberation the problem of city government and municipal reform as it exists to-day. No Convention whose work has ever been adopted ever had this problem staring it in the face. In 1846, the population of New York city was less than 375,000. In 1846, the population of Kings county was less than 80,000. So we are confronted now with a new problem yet unsolved, and to the newness of the subject, and the difficulty of solving the problem, I attribute the long delay, the arduous labor, and the partially unsatisfactory result which we have reached. But, Mr. Chairman, in the consideration of this question we should look at it from the broad view of the State. As I listen to the arguments of my friends from the great cities, I come to think that the rest of the State must be principally devoted to raising vegetables for the cities which constitute the real center of attraction. But it seems to me, Mr. President, that that is not the high or the elevated view which this Convention should take of this problem. I yield to all those gentlemen save in relation to their pride in regard to the city of New York and the city of Brooklyn. But the city of New York, while it has been the source of pride, has brought the blush of shame many a time to the patriotic citizens of the State of New York. The same with the county of Kings, which has given us this last year one of the most infamous scandals that has ever degraded our annals. Mr. Chairman, we must look upon them with due consideration and due pride for the good that is in them, but we must not forget that we also have to look charitably at them, if we would preserve the sacred honor of the State. Now, in the consideration of this question, my friends of the minority insist that we shall constitute these cities into self-acting and self-controlled bodies. Shall we do so? Will it be in analogy with past constitutional enactment? When we first met to frame the government of the State of New York we had the examples of the old colonial establishments. Town government followed from them. County government followed from them. Was there any such authority ever conferred upon towns or conferred upon counties as these gentlemen ask shall be conferred upon cities? Must we then constitute these municipal corporations into independent

bodies which the State bars itself from reaching? Has the time come, Mr. Chairman, when we shall remit municipal corporations to the condition of domestic and private corporations? Shall we allow them to be controlled by courts of equity? Shall the Attorney-General bring suit to dissolve and wind them up when they fail to behave? That is the analogy which my friends of the minority seek to have us follow in putting their provisions into the Constitution upon this subject. No, Mr. Chairman, in attempting to formulate a constitutional provision upon this subject, we have to remember that it is a new one so far as constitutional action is concerned. If we shall take one step in constitutional development; if we shall go forward even so much as we have gone forward in the bill which has been brought in by the Committee on Cities, we shall have risked enough in derogation of the sovereignty and the power of the State, until we have discovered whether those who have heretofore been negligent, recreant to their duty, will, under the additional responsibility, rise equal to the occasion and discharge their duties as citizens and as representatives in a creditable manner. What is there in their past history to warrant us in granting this additional power? We grant it reluctantly, looking to the honor of the State, but we grant it gladly so far as we regard it as the only and the last resort for the resurrection of a virtue in these cities. Mr. Chairman, New York State has always been a hard State to manage in the organization of great constitutional movements. The first members of the federal constitution deserted and came home because they could not have their own way. In the next great crisis, the war of the rebellion, the honor of New York State was in the balance, and no man knew whether she would stand for the right or the wrong for many a long day and for many a long month. New York State has now to confront another problem, comparable in difficulty with the organization of the federal Constitution, comparable in difficulty with the difficulty which Alexander Hamilton met when he sought to bring New York State into line under that Constitution, comparable in difficulty to the terrible difficulty that the patriotic citizens of New York State experienced from 1861 to 1865. But I pray of you, gentlemen of this Convention, let no desire to have the absolute and unbridled control of the patronage of any city intervene to make you take the position requiring everything or nothing. I appeal to you, Republican members of this Convention, because you cannot satisfy those who make unreasonable demands upon this subject, because there may be some matter of detail in this proposed measure which does not meet your original approval, do not abandon this subject. Let not

this long debate, let not the acrimony or the wearisomeness of it, deter you from keeping on until you shall have solved this problem. The past we have made secure, and I believe that if this Convention devotes itself honestly, in as an unpartisan a manner as men may be expected to act, we shall succeed in making the future as glorious as we have the past. (Applause.)

Mr. J. Johnson — I would like to ask of the Chairman how much time remains.

The Chairman — Fifteen minutes.

Mr. Johnson — I think it would be fair to have possibly five minutes additional time on account of the first speech being not altogether on the topic we present.

Mr. Mulqueen — I ask that unanimous consent be given to extend the gentleman's remarks half an hour.

The Chairman — He only asks for five minutes. If there is no objection five minutes will be granted, and the time will be extended to twenty minutes from the present time.

Mr. Johnson — Mr. Chairman, I do not anticipate that I will use all of the time courteously allowed, but it is sometimes very difficult to speak, feeling the limitation of pressing time. At last, Mr. Chairman, we have arrived at the statement and concession that the great problem in the minds of the people who sent us here, the greatest problem of this Convention, is the question of what to do with the rule of the more than 4,000,000 of people who live in our great cities. At last we have arrived at the concession that the proposition submitted by the Committee on Cities did present, apart from objections which I will discuss in a moment, a full, fair, well-founded and well-secured system of home rule for the more than 4,000,000 of people who live in our great cities. At last we reach the concession that this article, the first essay ever made in this State for twenty years, was full and fair and complete in that which it granted to cities. That fact, sir, will live and would live without the concession. It is written and graven in the truth and the documents which have been presented. This proposition for the government of cities was based upon nothing but the ballot. Whatever may be said, write of us, my conferees on the committee and myself, as those who trusted their fellow men. We believe, sir, that there are intelligence, worth and probity enough in the great cities to make them the jewels, the ornaments and the glories of our State. We asked, sir, for this proposition, but one proposition, a fair election and an honest count; and for that we asked four safeguards only. What are they? We asked that there be majority

and minority counters at the polls. In the report which was submitted by the minority they said that was right, and it has since been conceded and adopted without dissent. We asked for separate elections. That has been conceded on this floor; it has been voted by the minority of the Cities Committee that that demand was right. We asked minority representation in the city councils, in the great hives of the people that crowd our immense cities; that the minority of the Committee on Cities said was right and indorsed it in the resolutions which they offered in the committee, having submitted their report along with the majority report of the Committee on Cities, and having in it said that they would soon present an article. In the report which was made by the minority of that committee, not one word or syllable was said that opposed the demand that a restraint should be put on the police so that they might not become the accomplices of the defrauders of the ballot, as in Gravesend and Troy. They in effect said that was right, for they made no objection to it. Having thus conceded in writing three of the safeguards, we asked, conceding the other by not objecting, this article came into this Convention with full and fair prospects of fair discussion. But, sir, when it reached here, what was said of it? That was said of it, which is said in the minority report of the Committee on Cities, that it did not do what it is now conceded it did do; that its promises were delusions; that its efforts fell short; that it was a failure toward securing municipal independence in cities. That was the contention of three days of debate. For three days it was assailed in detail and in particular, and there was found nothing right and nothing proper about it. Then the article went back to the Committee on Cities. It was brought back, but slightly changed. Then came the minority crying that that which they had assailed as wrong and fraudulent and ineffective, was right, was sufficient, was satisfactory, and an honor to the committee that presented it. And then they threw themselves upon the proposition for safeguards of the ballot, that we had demanded for our home rule article, propositions which in the original they had agreed were fair and proper and reasonable, and should be granted. Such is the position of the minority on home rule, that, either way you turn, they assert that it is wrong. Whether we go to the right or the left, they simply say to us, whichever way you go, you should have taken the other road. Then, sir, come the events of this week. The article had been slightly modified by making a three-fifths vote necessary; practically prohibitory, amply sufficient, and, in the mind of all just men, seeking to secure full municipal independence. Then came the amendment as to the

police. That was an amendment that, while I do not entirely agree that it was the very best means, was an amendment which was just and proper, and which secures to minority and majority alike their just rights. Thus stood the bill with all its original integrity unimpaired, with nothing in it that they had originally dared to say was to be complained of, and that being the situation, they send in a minority report, two months after this report, practically as it is now, was in print; as the debate begins they send in a minority report, and reserve their attack for that which the chairman of the minority of the Cities Committee (Mr. Hotchkiss), in the proposition he has submitted, had said was right; and which had been conceded by the entire minority of the Cities Committee in their original proposition. There has opened the attack to-day. I discuss not its propriety or impropriety. I say it is a leap from ambush, and with intent to kill. It is an attack on a position which they had in the early debate agreed was just. And there, sir, this minority, striking out minority representation in city councils, wounded, for the first time, the fair efficacy of this measure. That, sir, is their act, and their confession is that the provision we had made was right. They are convicted out of their own mouths.

What is the other incident of this discussion? Their proposed amendment is an overshadowing incident. The first sentence in their proposition is that cities shall be classified and have uniform charters. I refer you to page 748 of the debate. I refer you to what was said where one of the orators of this evening, one of their leaders, one who leads the debate to-night, who has been four years corporation counsel, backing himself with the high authority of the Court of Appeals and its written opinion, said that uniform charters were impossible. So their first proposition is that in order to have home rule you must do the impossible. Their next presentation is that the Legislature shall be bereft of all powers as to cities except with the approval of the city. Sir, if their amendment stood, there was but one thing to add to it. They should have said: the city of New York, the city of Philadelphia and the city of Chicago are put into one class, and the Legislature shall pass no law as to either which does not take effect as to all. The only tie that they would allow to exist between the sovereignty of the State of New York and its great city would be its common council, discredited, disowned and anathematized by their own orators. Is that an honest substitute for the article which they applauded? To adopt that proposition would be to dismember the State of New York and nothing else. New York city, save for its miserable common council, would be as far from the power of this State as is Washington,

and the power never could be resumed, save with the consent of the common council. And so that band, which is trusted only to license peanut stands, would take control of the diadem city of the State of New York. It is unnecessary to follow this argument further. I said in earlier debate that they wanted home rule, when all means resisted, and the facts that I have shown establish that they could not get it, and when it was thrust upon them, they by proposition. And so, sir, with that statement it is established that there is but a single proposition before you that can in any wise fulfil the great demand and expectations of the people, voiced and presented in eloquent language by their orators, that there is nothing else in all that has come from these deliberations, nothing else that you can take, to satisfy this demand, to fulfil the greatest duty that remains in the State of New York in this century, there is nothing before you to vote on, nothing that you can adopt save the article presented by the Committee on Cities, complete, effectual and honestly and properly prepared. (Applause.) I beg that the article may be adopted. (Applause.)

The Chairman — The question is on agreeing to the substitute offered by Mr. Davenport.

Mr. Choate — On that I call for a rising vote.

The Chairman put the question on the substitute, and, by a rising vote, it was determined in the negative — ayes, 45; noes, 75.

Mr. Jenks — Mr. Chairman, is a further substitute in order?

Mr. J. Johnson — I submit it is not, Mr. Chairman.

The Chairman— The Chair rules it is not in order. The rule provided the course that should be pursued.

Mr. Jenks — I submit to the Chair.

Mr. Peck — Mr. Chairman, I wish to state as a matter of personal privilege, that I did not vote and I cannot vote on these questions to-night, because Mr. Hawley, a member of the majority, has been taken ill in such a way that it would be dangerous for him to be here, and I have paired with him on that account.

Mr. Jenks — Mr. Chairman, just one word more. I ask the ruling of the most efficient Chairman, the expert on all matters of parliamentary law, whether unanimous consent of the Committee of the Whole would permit me to offer a substitute?

Mr. Johnson — I object, sir.

Mr. Jenks — Do you object without hearing it?

Mr. Bowers — You might allow us to read it, Mr. Chairman, to see whether unanimous consent may be given.

The Chairman — It can only be done by unanimous consent.

Mr. Vedder — Let us hear it read.

Mr. Jenks — I will read it. "The Legislature, at its session next after the adoption of this article, shall classify the cities of the State into not less than three, nor more than four classes, proportionately to their respective populations, and such classification shall thereafter be determined by the then latest State enumeration. The Legislature shall enact general laws for the government of cities, so that all cities of the same class shall possess like powers and be subject to the like restrictions." If unanimous consent be granted, I will offer this as a substitute.

Mr. Johnson — I object, Mr. Chairman. It is hardly different from what has been repeatedly been before us heretofore.

The Chairman — Objection is raised.

Mr. Johnson — Mr. Chairman, I move you that the Committee of the Whole now rise, report this article favorably to the Convention, and recommend its passage.

Mr. Bowers — I call for a division.

The Chairman put the question on Mr. Johnson's motion.

Mr. Cochran — Before the vote is announced I would like to say that I would have voted with the minority, but I am paired with Mr. Springweiler, of Erie, who would have voted with the majority.

The question of Mr. J. Johnson's motion, by a rising vote, was determined in the affirmative — ayes, 87; noes, 47.

Whereupon the Committee of the Whole rose, and President Choate resumed the chair.

Mr. I. S. Johnson — Mr. President, the Committee of the Whole have had under consideration proposed constitutional amendment (printed No. 451), entitled to provide home rule for cities, have gone through with the same, have made some amendments thereto, and instructed the chairman to report the same to the Convention, and recommend its passage.

Mr. J. Johnson — Mr. President, I offer the following resolution:

The Secretary read Mr. Johnson's resolution as follows:

Resolved, That the report of the Committee of the Whole be disagreed to, and the proposed constitutional amendment be recommitted to the Committee on Cities, keeping its place on general orders, with instructions to strike out all but the first section, and report the same so amended immediately.

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

The previous question was ordered.

The President — The question is on the adoption of the resolution offered by Mr. Johnson.

Mr. Tekulsky — I call for the ayes and noes.

The call for the ayes and noes was sustained, and the Secretary proceeded to call the roll.

Mr. Bowers — Mr. President, the previous question being moved prevented any opportunity to amend. I am in favor of reporting separate elections, but inasmuch as this compels us to put in clauses which it is evidently not the intention of this Convention ultimately to hold as to the terms of officers, and inasmuch as we have not yet received any report as to the term of the Governor and State officers, it seems a manifest absurdity at this time to report those separately. For such reasons only, I vote no.

Mr. Cochran — Mr. President, for the reasons stated by Mr. Bowers, I will vote in the negative; and I will also vote in the negative for the further reason that the motion to strike out all after the first clause kills this home rule bill just as I said this Convention would do. I have said from the very beginning that these gentlemen do not want home rule, and the only element of home rule in this bill they now move to strike out. They do not move to separate these propositions, and bring them in here, but all they want to leave here is separate elections. That I am in favor of, but I am also in favor of home rule for cities, and for that reason I am not in favor of striking out this proposition, although I do not agree to it in its present shape. I vote no.

Mr. Holcomb — Mr. President, reserving my right to pass upon this proposition when it shall come anew from the committee, and not considering myself included, and not precisely understanding the wording of the resolution, I vote no.

Mr. Kerwin — Mr. President, I ask to be excused from voting and will briefly state my reasons. If, after listening to the father of the home rule scheme which has been in this Convention now and under consideration for six days in the Committee of the Whole, and listening to the harangue set up against the minority to-day about taking up time in dilatory motions *et cetera*, I think that the father of this home rule scheme is incapable of bringing any home rule measure in this Convention which the majority will confirm, I withdraw my request to be excused from voting and vote no.

Mr. M. E. Lewis — Mr. President, I desire to be excused from voting and will briefly state my reasons. I believe that Republicans

high in the counsels of the party in this Convention do not desire and have not desired that this Convention should incorporate into the Constitution of this State any article which would give the cities of this State any measure whatever of home rule for those cities. If that is the case, Mr. President, would it not be a more manly proceeding to put this article to a vote at once, and kill it outright, rather than by this underhand method. (Applause.) I oppose this amendment, Mr. President, from the bottom of my heart. I say that it is an outrageous proceeding for this Convention to waste its time as it has wasted it for the two weeks that we have had this proposition under discussion, and then to kill it in this backhanded, midnight manner. Mr. President, I desire to call attention to one other proposition, and that is this, that the separation of this first section from the rest of the article means simply that the Democratic cities of the State of New York are to have one method and one system of elections, and the Republican cities of the State are to have another. I protest against that. I withdraw my request to be excused from voting and vote no. (Applause.)

Mr. Maybee — Mr. President, I desire to explain my vote. I am in favor of separate elections for cities, and if a scheme for separate elections for cities could be so arranged as not to conflict with the terms of the State officers, and the convenience of elections in the country districts, I should strongly favor it, at all times. It is somewhat remarkable that the Republican majority of this House, after having obtained a motion to report this bill favorably to the Convention, within one vote of enough votes to secure its passage on third reading, should now turn around and stab this proposition, which contains at least some measure of home rule for cities. The cause of home rule has been killed in the House of its friends. I withdraw my request to be excused from voting, and vote no.

Mr. Mulqueen — Mr. President, I have been in favor of a proposition for separate elections, but only when it was accompanied with greater power to municipalities. In my opinion, separate elections will be a farce and a failure, unless in the common councils of the cities you give power to the men whom you expect to elect. Eloquent eulogies have been delivered here upon the kind of men you can select in cities government when you have separate elections, but the men that the President and the leader of this Convention have in mind will never accept such offices without such power. Striking out, as you have, all the home rule that was contained in your article, having been informed that your caucus this afternoon decided to praise Mr. Johnson by passing his measure in Committee of the Whole and then kill it on this floor, and believing that sepa-

rate elections, as you now propose them, would be a farce, and are merely a sop to the reformers and the good government people of the city of New York, I withdraw my request to be excused from voting, and vote no.

Mr. Platzek — Mr. President, I desire to explain my vote. I am in favor of separating municipal from State and national elections. I regret that I am unable to vote for the whole article, knowing the energy, the ability and the conscientious endeavor bestowed upon that article by my friend, the distinguished chairman of that committee. I regret that he did not eliminate the minority and proportional clause of it, and that part of the entire article which permitted the Governor to remove the heads of police, but vested the mayor, who was responsible for the peace and good order of the city, to make an appointment in case of a removal. Had that been done I could conscientiously, in justice to the people, to my party and to myself, have voted for the whole article. But inasmuch as I cannot have all that I desire, I will vote for that which is at least beneficial, in my judgment, and I withdraw my request, and vote aye.

Mr. Tekulsky — Mr. President, I wish to state for the benefit of my colleagues here, that I am delighted to see the position that the majority has taken on this measure. For three long weeks they have delayed the proceedings of this Convention on a measure which was of no earthly use to anybody, no earthly use to either county or city. They have come here day after day, and session after session, and have talked majority and minority, and Republicanism and Democracy, and what does it all avail? It was merely to gain time and try to get up a claim that the minority was the cause of the delay. This measure was introduced and kept here day after day for the purpose of making a showing that they wanted to hurry up, and then pass all kinds of resolutions and have the Committee on Rules walk in here with amendments to the rules, to hurry up time and limit the debate. For what purpose? For no purpose at all, except to gain some imaginary political advantages. I say now that they have come down to the real things which the people have desired and do desire — separate elections. I withdraw my excuse, and vote aye. (Applause.)

Mr. Blake — Mr. President, the leaders of the majority on the floor of this House denounced the minority in the severest terms and language, and charged the minority with obstructing the business of this body, and yet, after the lapse of all this time, to which so many gentlemen have referred, now the life of this bill is suddenly to be snuffed out as with a stroke of a pen. I am reminded of the

fate of the little infant that hardly came into the world and whose life was snuffed out, and of whom it was said:

"If so early am I done for,
What on earth was I begun for?"

Sir, the duplicity of the gentlemen, if I may be permitted ——

The President — Mr. Blake does not refer to any particular gentleman?

Mr. Blake — No, sir; I am tempted, in view of the extraordinary course of the majority this evening, to recall the words of a distinguished English statesman, who, overwhelmed by a sense of the duplicity of those about him, exclaimed, "Oh, that a tax might be placed upon hypocrisy, then indeed might we pay the national debt of Great Britain." I vote no.

Mr. Durnin — Mr. President, with these few remarks, I withdraw my excuse and vote aye. (Applause and laughter.)

Mr. Goeller — Mr. President, I desire to be excused from voting, and will briefly state my reasons. I am amazed and I am certainly impressed that it is unworthy the occasion and the measure before us, that the majority here has wasted so many days' time and now by this proof show that their motives to deliver a real public benefit in a way of home rule are insincere. For these reasons, I ask to be reinstated in my right to vote, and vote no.

Mr. J. Johnson — Mr. President, I desire to explain my vote. I shall vote aye, first, because section 1 is a very great, an enormous advantage to the Constitution of this State, standing by itself; second, because by the vote to-day that which had originally been apparently conceded by the minority being withdrawn and a harmful wound inflicted on the remainder of the article, and because by its retaining its place on general orders it can be brought up at any time, I think this motion should prevail.

Mr. Johnson's motion was agreed to by the following vote:

Ayes — Messrs. Ackerly, Allaben, Arnold, Barhite, Barnum, Barrow, Becker, Bigelow, Brown, E. A., Brown, E. R., Burr, Cady, Carter, Cassidy, Church, Clark, G. W., Cookinham, Crosby, Davies, Davis, Dean, Dickey, Doty, Durnin, Floyd, Foote, Frank, Andrew, Frank, Augustus, Fraser, Fuller, C. A., Fuller, O. A., Galinger, Giegerich, Gilbert, Gilleran, Goodelle, Hamlin, Hedges, Hill, Hirschberg, Holcomb, Holls, Jacobs, Johnson, I. Sam, Johnson, J., Johnston, Kellogg, Kinkel, Kurth, Lauterbach, Lester, Lewis, C. H., Lyon, Manley, Marshall, McCurdy, McDonough, McIntyre, McKinstry, McLaughlin, C. B., McMillan, Moore, Morton, Nichols,

Nostrand, O'Brien, Parker, Parkhurst, Pashley, Phipps, Platzek, Pool, Powell, Pratt, Putnam, Redman, Root, Speer, Spencer, Steele, A. B., Steele, W. H., Sullivan, T. A., Tekulsky, Tibbetts, Towns, Vedder, Vogt, Wellington, Whitmyer, Wiggins, Woodward, President — 91.

Noes — Messrs. Banks, Blake, Bowers, Bush, Campbell, Chipp, Jr., Cochran, Danforth, Davenport, Deady, Deyo, Emmet, Farrell, Fitzgerald, Forbes, Gibney, Goeller, Green, A. H., Green, J. I., Hottenroth, Jenks, Kerwin, Kimmey, Lewis, M. E., Marks, Maybee, McLaughlin, J. W., Meyenborg, Mulqueen, Ohmeis, Parmenter, Peabody, Roche, Sandford, Smith, Sullivan, W., Truax, C. H., Tucker, Veeder, Williams — 40.

Mr. J. Johnson — Mr. President, the Committee on Cities submit the following report:

The Secretary read the following report:

In compliance with the instructions of the Convention, Mr. Johnson, chairman, reports the proposed constitutional amendments as amended ——

Mr. Bush — Mr. President, I rise to a point of order. A committee cannot report without having a meeting.

Mr. Johnson — It was under instructions.

The President — The Chair holds that it is wholly unnecessary to go through the form of making a report, that the order of the Convention executed itself, amended the article by striking out all but the first section; and Mr. Bush's point of order is not well taken. Mr. Johnson moved that the proposed constitutional amendment be ordered to a third reading, and sent to the Committee on Engrossment and Revision, and upon that motion moved the previous question.

Mr. Cochran — I ask to have the article read.

The article was read by the Secretary.

The President — Mr. Johnson moves the previous question. Shall the main question now be put?

Mr. Veeder — Mr. President, I desire to raise the point of order that this proposition having been reported by the Committee on Cities, as directed by the Convention, and under instructions to retain its place on general orders, that the proposition, therefore, is on general orders, and unless the Committee of the Whole is discharged, it must first be considered in the Committee of the Whole, before a motion can be made.

The President — The Chair holds that the point of order is not well taken. The question is on Mr. Johnson's motion for the previous question. Shall the main question now be put?

The President put the question, and it was determined in the affirmative.

Mr. Maybee — I rise to a point of order. I desire to call the attention of the Chair to rule 34. No proposed constitutional amendment shall be ordered to a third reading until it shall have been considered in Committee of the Whole. This is for all purposes a new constitutional amendment reported by the committee.

The President — It has been in Committee of the Whole until the Committee of the Whole got tired of it. (Laughter.)

The President put the question on Mr. Johnson's motion, that the amendment be ordered to a third reading, and sent to the Committee on Revision, and it was determined in the affirmative.

The President — The next business in order is the report of the Committee on Education.

Mr. Bowers — Mr. President, I offer the following resolution: "That the Committee on Cities be instructed to strike out the fifth and sixth sections of the report, which has just been sent in from the Committee of the Whole, and report a constitutional amendment in the words of such fifth and sixth sections, forthwith." The purpose of that is to give to the cities of the State the measure of home rule which this was intended to offer.

The President — The Chair thinks that your motion is not in order, because those, with all the other sections, except the first, have already been stricken out.

Mr. Bowers — But they were ordered into the Committee of Cities, where they now lie.

The President — No, the Committee on cities made a report.

Mr. Bowers — I do not wish to take up time if you are going to rule that this is out of order.

The President — Will you state the exact motion again, or send it to the Chair?

The Secretary read Mr. Bowers's resolution as follows:

"Resolved, That the Committee on Cities be instructed to strike out the fifth and sixth sections, and report a proposed amendment in the words of such fifth and sixth sections, forthwith."

The President — The Chair is of the impression that that is

impossible, because it has all been stricken out except the first section.

Mr. Cochran — May I ask for information? I do not desire to discuss this motion. Do I not understand correctly that the Convention has stricken out all after the first section, and do I understand the Chair to rule that it has killed all the other sections?

The President — I have not so ruled yet. They were stricken out by order of the Convention.

Mr. J. Johnson — Mr. President, as the mover of that resolution, I would like to say a word in reference to the point of order raised. That resolution was only with the understanding that as it retains its place on general orders, the amendment, except the part that is now reported, is in the hands of the Committee on Cities.

Mr. Bowers — That is precisely the proposition.

The President — Do I understand that it is in the hands of the Committee on Cities?

Mr. Johnson — That is the understanding, sir. That is the understanding on which I made the motion, that it was not killed.

Mr. Cochran — I made the point of order that it was killed, and either he or I am in error. I contend it is killed.

Mr. McMillan — I move to lay Mr. Bowers's resolution on the table, and on that I move the previous question.

Mr. Bowers — I had the floor, and have not yielded it except to give way to points of order.

The President — The Chair is of the opinion that Mr. Bowers's motion is well made, that it is in order. Now, Mr. McMillan moves to lay it on the table.

Mr. Bowers — Mr. President, I simply make the point of order that he cannot move to lay it on the table while I have the floor.

The President — I thought you had got through making your motion.

Mr. Bowers — I wanted to speak on the motion.

The President — Go on and speak.

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

The President — Please state your point of order.

Mr. Dean — That the motion of Mr. Bowers is an equivalent motion.

The President — Equivalent to what?

Mr. Dean — Equivalent to the question that we have already voted down.

The President — The point of order is not well taken, and the Convention stands adjourned until to-morrow morning at ten o'clock.

Friday Morning, August 31, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, at the Capitol, Albany, N. Y., Friday, August 31, at 10 A. M.

President Choate called the Convention to order.

Prayer was offered by the Rev. R. H. Shirley.

On motion of Mr. Cochran, the reading of the Journal of yesterday was dispensed with.

Mr. M. E. Lewis — I rise, Mr. President, to a question of personal privilege. In conversation with the distinguished gentleman from New York (Mr. Lauterbach), shortly after the adjournment of yesterday afternoon's session, and while still within this chamber, and laboring under great excitement, I used language which, ill-considered and hasty as it was, under the peculiar circumstances surrounding the incident, has, I believe, received a construction different from anything intended by me. I regret the use of those words, Mr. President, and I now desire to withdraw them, and to tender to Mr. Lauterbach my sincere apology. I need not say to this Convention that I have been deeply interested in securing the adoption of the report of the Cities Committee. We had reached a point when but one hour and a half remained for debate, each side being permitted to occupy one-half of that time. I was told by the chairman of the committee that Mr. Lauterbach would speak upon the report. His failing to do so, and the fact that he used a portion of the committee's time to attack the report, furnished the provocation for what I said. I am now informed that the use of that time in that matter may have been due to a misunderstanding. I recognize that such an explanation is possible, and am, therefore, sorry for what occurred. Once more, I say, Mr. President, that I regret the incident, and desire Mr. Lauterbach to accept my apology therefor.

Mr. Lauterbach — Mr. President, the graceful apology which has been made by Mr. Lewis for a remark, which rankled very deeply when uttered, is couched in such words and gives evidence of such a spirit as would render me lacking in fair appreciation of a change of sentiment did I fail to accept it in the same spirit in which it is

tendered. I can well understand that, when men for months have labored assiduously, earnestly and zealously, as the members composing the Cities Committee have labored upon the article which they have drafted, they should feel exceedingly tender upon the subject of any animadversion made upon the character of their work. Nothing was further from my intention than to do so. My views in respect of the attitude to be assumed toward the general scheme proposed have been pronounced, clear, emphatic, from the beginning of the sessions, and were known to the members of the Cities Committee. I have never changed my opinion as to the true attitude to be taken toward the scheme, and what I said yesterday was said in the line of all that had gone before. I took occasion before arising — and it will be remembered that during the whole discussion of the cities article I have not heretofore taken the time of the Convention for one single instant — but when yesterday it was suggested that time might be accorded me for which I had asked on several occasions, I took occasion to say that except as to one portion of the report, my personal views were against its adoption. I stated upon the floor precisely what I have indicated heretofore; but as I said, I can well understand that upon the determination of this long-drawn matter, when excitement had taken the place of judgment, that one who had been so loyally engaged in perfecting the work which he imagined was about to be destroyed, should have resented any sentiment that was uttered against his undertaking. In that view, and because of the manly manner in which the suggestion of apology had been made, I most cheerfully accept it, and I trust that the relations which have been so pleasant between Mr. Lewis and myself may continue to be so in the future. (Applause.)

The President — The Convention will doubtless accept this manly apology from Mr. Lewis for language which was quite as serious against the Convention as against him to whom it was addressed.

Mr. Hedges — Mr. President, I desire to be excused, on account of important business, from to-morrow's afternoon session.

The President put the question on excusing Mr. Hedges from attendance, as requested, and he was so excused.

Mr. Pool — Mr. President, I desire to be excused to-morrow and Monday, on account of illness at home, and I fear that it will require my absence for a longer time.

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

Mr. Griswold — Mr. President, I wish to be excused for to-morrow, on account of a special engagement.

The President put the question on excusing Mr. Griswold, as requested, and he was so excused.

Mr. Augustus Frank — Mr. President, I ask to be excused for to-morrow.

The President put the question on excusing Mr. Frank, as requested, and he was so excused.

The President — Before any more applications for excuses are passed upon, the Chair wishes to state that forty-two members have already been excused for to-morrow.

Mr. Danforth — Mr. President, it is with great reluctance, I assure you, that I ask to be excused for Saturday and Monday forenoon. I cannot in courtesy to this Convention, and with a feeling of justice to myself, "fold my tent like an Arab and silently steal away," but circumstances are such that my presence elsewhere is imperatively necessary. I very much regret it. I have been in attendance very closely upon the Convention, and no one regrets the necessity of my absence more than I, but I am compelled to ask this for Saturday and Monday morning.

The President — The Convention will understand that it is practically nullifying the rules that have been passed for sessions on Saturday and Monday if these excuses are continued.

The President put the question on excusing Mr. Danforth, as requested, and he was so excused.

Mr. Wellington — Mr. President, Mr. Abbott, of the Twenty-second district, is unable to leave his rooms by reason of illness. I ask that he be excused until such time as he shall be able to attend to the sessions of this Convention.

The President put the question on excusing Mr. Abbott, as requested, and he was so excused.

Mr. Tibbetts — Mr. President, in the fore part of the week I was excused for to-day and to-morrow. I desire to waive that excuse. (Applause.)

Mr. J. Johnson — Mr. President, it is with extreme regret that I ask to be excused for to-morrow. Illness in my family makes it necessary that I should be away on that day.

The President put the question on excusing Mr. Johnson, as requested, and he was so excused.

Mr. Hottenroth — Mr. President, there are few more faithful

attendants on the Convention than Mr. Sandford, of New York. He was suddenly stricken severely ill this morning and is desirous of being excused for to-day, to-morrow and Monday, until he is fully recovered.

The President put the question on excusing Mr. Sandford, as requested, and he was so excused.

Mr. I. S. Johnson — Mr. President, I desire to say now that it is very likely we shall be in the situation that we were in a week ago last Saturday, and that we shall not be able to proceed with business, because often many of the members that are not excused are away. I, therefore, give notice that at fifteen minutes past ten, and fifteen minutes past three, I shall move for a call of the House, which will require the attendance of all those that are not excuesd, so that we may be able to do business to-morrow.

The President — The Chair would state that Mr. Alvord, who has been very constant in his attendance up to Monday last, is still ill and would suggest that he be formally excused for this entire week, from Monday to Saturday.

The President put the question on excusing Mr. Alvord, as suggested, and he was so excused.

The President — Are there any memorials or petitions? If there are no memorials or petitions, notices, motions, resolutions are now in order.

Mr. Veeder — Mr. President, I offer the following resolution, and ask that it be referred to the Committee on Rules, and also ask that it be reported back on Monday.

The Secretary read the following resolution offered by Mr. Veeder, in the language following:

R. 192.—"Resolved, That when a vote is about to be taken on any question in the Convention or in the Committee of the Whole, tellers shall be appointed, if a count is demanded and required by one-fifth of a quorum."

The President — It is referred to the Committee on Rules.

Mr. Bush — Mr. President, I offer the following amendment to rule 56, and ask that it be referred to the Committee on Rules.

The Secretary read the amendment offered by Mr. Bush, in the language following:

R. 193.— Mr. Bush offers a resolution to amend rule 56, by adding at the end thereof the following: "Except as herein provided, no rule or order of the Convention shall be changed, suspended or

rescinded, except by a vote of two-thirds of all the members elected to the Convention. Nor shall the Committee on Rules be discharged from the consideration of a proposed change of rules except by a like vote."

The President — It is referred to the Committee on Rules.

Mr. Jenks — Mr. President, I offer the following motion:

R. 194.—" Resolved, That the President of the Convention shall appoint a special committee of six to prepare and submit to the Convention an article for the government of cities, which shall include the provision as to separate elections heretofore reported to the Convention from the Committee of the Whole. The special committee must report on or before September 8, 1894, and may report at any time previous to that date."

The President — This resolution, unless gentlemen desire to debate it ——

Mr. Moore — I desire to debate it.

Mr. Holls — I desire to debate it.

The President — If these gentlemen will withdraw their objections, and this is a matter of consequence, if it is to be acted upon at all, that it should be done speedily, it can now be considered.

Mr. J. Johnson — Mr. President ——

Mr. Holls — Mr. President ——

Mr. Johnson — I think this is an extraordinary proposition.

There was a call of " question."

Mr. Johnson — I move that the motion be laid on the table.

Mr. Jenks — And on that motion I ask for the ayes and noes.

The call for the ayes and noes was sustained.

Mr. Jenks — Will the Chair kindly direct the Secretary of the Convention again to read to the Convention the resolution. It is a very important matter, and no party lines on the matter ——

The President — The Chair thinks that if Mr. Jenks will withdraw his demand for the ayes and noes, there will be no difficulty in passing the resolution.

Mr. Jenks — I withdraw my request for the ayes and noes.

Mr. Root — Mr. President, I hope Mr. Jenks will not withdraw his request for the ayes and noes under the impression that I, for one, am going to vote for the resolution.

The President — The Chair had no authority to speak for any one but himself.

Mr. Jenks — Mr. President, I will accept the suggestion of the leader of the majority, if I may so call him, though I am sorry to see the House divided. I simply withdrew my request for the ayes and noes on account of the suggestion of the President. I have no desire whatever to delay this matter. It is a matter of great importance ——

The President — The Secretary will call the roll.

The Secretary again read the resolution offered by Mr. Jenks.

The President put the question on the motion of Mr. Johnson to lay the resolution on the table, and the Secretary proceeded to call the roll.

Mr. Barhite — Mr. President, I desire to explain my vote. We have had a competent committee who have had charge of the matter of preparing a cities amendment. That committee has not yet shown that it was incompetent. They have labored long and faithfully in the direction of preparing an amendment which would be satisfactory to this Convention. I deem, sir, that that resolution is an insult to every member of that committee, and I do not believe that this resolution should prevail. I, therefore, vote in favor of laying the proposition on the table. I vote aye.

Mr. Barrow — Mr. President, I desire to explain my vote. In all that has taken place, in regard to the report of the Committee on Cities upon this floor from the commencement until the present time, I have voted steadily to sustain that committee. I have discovered, I think, during the debates which have taken place in the last seven days, that there is not such a wide difference of opinion between the minority and the majority upon this floor, but that the difference can, if properly taken in hand, be eliminated, and a proposition brought in which shall receive the support of both sides of this Convention. For these reasons, Mr. President, I vote no.

Mr. Becker — As a member of that committee, Mr. President, I ask to be excused from voting.

The President put the question on excusing Mr. Becker from voting, as requested, and it was determined in the negative.

The President — Mr. Becker is required, by the rules of the House, to vote.

Mr. Becker — I vote aye, Mr. President.

Mr. Dickey — Mr. President, my regard for the chairman of the Cities Committee is so great that I will not vote to put upon him and his committee this humiliation. I vote aye.

Mr. Forbes — Mr. President, I agree with what Mr. Barrows

has said, and I would not speak if it were not for the remark which has just been made in regard to sustaining the committee. It seems to me that this body should not take into consideration personal regard for the members of the Cities Committee. While I have the greatest personal regard for the members of that committee, yet if I were on the committee I should not be offended because another committee was appointed which could get together, which could go as a team and formulate something which would be, in all probability, unanimous. The present Cities Committee is not unanimous; its members are divided among themselves. I, therefore, vote no.

Mr. C. A. Fuller — Mr. President, while I come from the country, and so might well be regarded as not having the vital interest in this question that city members have, I have nevertheless regarded it as a very important matter before this Convention. I have studied the bill; I have listened to the debates; I have personally been anxious that the bill as formulated by the committee should be adopted essentially in its entirety. I was much disappointed when the provision for proportional or minority representation was stricken out. I believe that now it is one of the great questions that should interest this Convention, and I am desirous that something more complete than section 1 of this bill should be presented to this Convention; and while I think this Cities Committee should not regard it as any imputation upon them that a new trial should be made, that a more complete measure should be presented to us than now is presented to us, I, therefore, hope that this new effort may be made, and that something may be presented to us that will be satisfactory to all. I, therefore, vote no.

Mr. Goodelle — Mr. President, I see no reason, nor has any reason been suggested, why if this matter should again be referred to any committee, it should not go back into the Committee on Cities. I believe I am justified in saying that the Chair cannot at present appoint any more competent committee to consider a question of this kind than this committee which has had the question under consideration for so many weeks; and after hearing the comments and the objections that have been made, I do not believe it is possible to select six men in the Convention that can take hold of this question and handle it with so much understanding as can the Cities Committee; and aside, therefore, from the slight and from the insult which is being placed upon the committee, I think it is extremely unwise that six new men should take up this subject anew, who have not considered it, and that it should be placed in their hands to report back to this Convention. As I said before, if this question is to be

again referred, let it be referred to that committee which have had this matter under consideration and which now fully understands the objections made to the report brought in; and let us do business in a decent and in a respectful way. I vote aye.

Mr. Hamlin — Mr. President, I would like to say just a word in explanation of my vote. I agree entirely with the gentleman from Onondaga, Mr. Barrow, in regard to this matter. I should be pleased to support the resolution of the gentleman from Kings, but, sir, as I understand the situation at the present time, this matter is still in the hands of the Committee on Cities, and I do not desire to cast my vote with the understanding that I am casting any imputation upon the ability of that committee to present to this Convention some provision, some resolution, some arrangement which may be satisfactory to the majority of this Convention. For that reason I vote aye.

Mr. Hill — Mr. President, I believe that the work which this Committee on Cities has done during the last three months ought not to be thrown away. I believe, furthermore, that it is the consensus of opinion among the delegates of this Convention that some measure should be adopted or recommended providing home rule for cities. We have before us the report of the Committee on Cities, and also the report from the minority of that committee. It seems to me possible, Mr. President, that out of these two reports this Convention might formulate such a provision as will be acceptable to the delegates of this Convention, and to the people of this State. I, therefore, Mr. President, think that we ought not to lay aside this work and appoint another committee, but that we should take the work as we now find it, improve it by amendment, if it be necessary, and adopt it. I, therefore, vote aye.

Mr. Holls — Mr. President, in my opinion, the adoption of this resolution would be a declaration of political bankruptcy of the majority of this Convention. I, therefore, vote aye.

Mr. Hottenroth — Mr. President, I do not desire to see the majority bankrupted, but at the same time I feel that they ought to do all they can to secure what they have expressed was their intention, home rule for cities. If they are sincere in that, they will endeavor to carry it out and give the minority every possible chance that may lead to that conclusion. I, therefore, vote no.

Mr. Jenks — Mr. President, I wish to explain my vote. This resolution commits to the hands of the President the appointment of a committee of six, without limiting him to the selection of any delegate whatever, and without confining him to any of the major-

ity or the minority members. I offered this resolution without a word of consultation with any member around this circle, with the exception of my friend, Mr. Maybee, whom I met here this morning, and one other member who came to my desk and who made a suggestion, and whose faith is different from mine in matters of politics. The members of the Committee on Cities are friends of mine, some of them long friends and warm friends. Whatever sneers may be upon the faces of the members of the committee at present, I have no intention, no wish and no desire to make any reflection upon them or upon their work; but it is now within two weeks of the fifteenth day of September. The Committee on Cities has had months to prepare a bill. The bill has been received in the Convention and sent back to the committee. They have had more time given to them than has been given to any other committee, except that of the Judiciary. The question is whether we are going to allow these delicate matters of personal etiquette to interfere with the work of this State, or whether the mere sounding of the same partisan and penny whistle of political feeling shall interfere with the fundamental work committed to our hands. It is not a question of our relations in this Convention with one another, whether we change cigars or cocktails or cigarettes, or whether we shake hands when we pass one another on the street; the question is whether or not we shall give to the cities of this State some doctrine or some governmental reform in the direction of home rule, and taking the gauge that has been thrown down, taking the mere accusation that I have some ulterior motive of insulting the members of the committee, which I deny and repudiate, I am willing to stand up here and offer this resolution. I have no intention at all, no desire at all to reflect on any man's work or any man's conduct. The chairman of the Committee on Cities is an older friend of mine than he is of almost any member of this Convention. My father before me was friend. Our ties are close and firm knit. I have no reflection to make upon him. I simply say the question now presented is one of policies, whether you are to have some principle for the government of cities or not; and that is the very reason that I have not consulted any members of the minority about this resolution. Not one man, except the two members that I mentioned this morning, dreamed that any such resolution would be submitted. I thought it was wiser to have the matter committed to a smaller committee of the President's appointment, and I do not now regard it as a proper matter to be sent to a great committee of sixteen or seventeen members around the table, trying to mend the tattered and dismembered fragments of this torn cities article, but rather

that the President, in the exercise of his high prerogative, should appoint six members, who, being smaller in number, can take the views of the various members of this Convention, as expressed in the debates on the article which have been had, bring to the House something which we might, irrespective of party, regardless of party clamor and party politics, present and leave to the people of this State in order that we may not have our names a by-word and a hissing through the land because we were unable to give the cities of the State some portion of home rule. I vote no.

Mr. I. S. Johnson — Mr. President, I desire to explain my vote. I am weak enough to suppose that there are some things which are due to the State outside of the cities, and that there are some articles before this Convention that deserve consideration. Already this Convention has occupied nine days in the discussion of this question; it has been considered by the Committee on Cities, and for nine days has been considered in the Committee of the Whole. During that time, this measure has been stabbed in what ought to have been the house of its friends. (Applause.) And now, after substantially killing the bill, they ask to have another committee appointed, and another report made, in which, perchance, nine days more may be taken in discussion upon this floor. Already it has taken more time than can possibly be given to all the other questions, and, hence, I think that the proper way, if any, is for gentlemen on the other side, if they are in favor of home rule, to come to gentlemen upon this side who are in favor of home rule, and in a conciliatory spirit agree upon some proposition, and then have some member get up in this body and propose that the amendment which is now before it be sent back to the committee, and the committee be required to report it with the amendment that has been agreed upon; and then we can accomplish our purpose without taking up the time of this Convention any longer. That is the idea that I have of getting out of this muddle which we are unfortunately in at this time. Mr. President, I vote aye.

Mr. J. Johnson — Mr. President, I desire to explain my vote (turning to Mr. Jenks). Brutus need not protest that he would not sacrifice the daughter of his friendship on his zeal for home rule for cities. This question turns on other reasons than those which are personal. Mr. President, I speak for the committee, which I believe has done its work as well as it could have been done under all the circumstances, the environments and the difficulties of the situation as presented; but well or ill, the propositions submitted by the minority that are voting for this resolution are, and are demonstrable to be, naught but dismemberment for the State of

New York. Until some one presents something that is debatable I think there is no need for any resolution of this kind. I vote aye.

Mr. Kellogg — Mr. President, I regard this resolution as not only an insult to the Committee on Cities, an insult to the Committee of the Whole, but, sir, it is an attempt to lock the stable door after the horse is gone. The gentlemen in the minority have had abundant chance in this Convention for home rule. We tried to force it upon them, but they would not have it. They have put up a thin mask before their faces, but the ears are protruding through just the same. They do not fool us, and they will not fool the people. Mr. President, I am opposed to this resolution because when I came to this Convention and took a solemn oath to support the Constitution of the State of New York, I realized, or thought I did, at least, that there were sixty counties in this State, and that there were some places in the State besides the city of New York, the city of Brooklyn and the city of Buffalo. For three weeks we have heard nothing but rainbow talk about home rule, and the air has been reeking with eloquence in regard to these cities. All we have accomplished is the adoption of one article. Now, Mr. President, in the name of the people of the great State of New York, who are watching the work of this Convention, let us proceed to something in which the body of the people are interested. We have canals, taxation, apportionment, forestry, education, charities and many subjects which interest them from one end of the State to the other. Let us see if we cannot purge the atmosphere of the eloquence which is going about the chamber, and, like true mariners, get our bearings, and come out of the smoke of battle into the desired haven. Then let us do some practical and beneficial work for the entire body of the people of the State. I vote aye.

Mr. Lauterbach — Mr. President, the home rule measure, as presented, embodied elements that were, as I understood it, from beginning to end, most favorable to the Democratic party. There were two features in the bill, however, which made it palatable to those who might otherwise have intended to oppose it. The one was the feature which prevented Sheehanism in the future, by permitting the regulation of the police departments of the great cities that would have control of the ballot-box; and that was stricken from the bill. It contained another provision, which was that minority representation should be preserved, and that those who paid the taxes in the great cities might, at least, be present in the local legislative bodies to hear debates upon the projects that called for the disbursement of the moneys which they poured into the treasury. Both those

features were denied as the result of the methods pursued by my Democratic friends, leaving the bill simply one of concession to themselves, except in respect to section 1. Section 1 has been properly formulated. The committee which applied so much energy and industry to this whole work presented that section to the Convention maturely considered, and scarcely an amendment was suggested to section 1 by either side, and it stands now in perfect form, except, perhaps — and I do not know whether that be a necessity — in respect of the election of Assemblymen, which can be provided for in the apportionment section, or which can be provided for very readily by simply recommitting section 1 back to the committee to make such amendments as may be necessary. In this attitude, with a section perfectly presented, against which there is no criticism, and if there were any it would be simply as to form, or as to a nominal amendment, the suggestion is made, after sugar-coating the committee with words of adulation and flattery, that the work that they have done be taken from them, and that the slight be put upon them, causelessly and unfairly, of regarding them as unfit themselves to present to this Convention the article providing for the separation of elections, which work they have so fully and completely performed. Under these circumstances I can only vote aye.

Mr. Mereness — Mr. President, I ask to be excused from voting.

The President put the question on excusing Mr. Mereness from voting, and it was determined in the negative.

Mr. Mereness — Mr. President, after the mountain had labored for nine days and brought forth a mouse last evening, I felt that it was hardly worth while even to save the mouse, and, therefore, did not vote upon the roll-call upon that proposition. It seems to me, sir, that there was an element of home rule in the cities article as it was passed and amended in the Committee of the Whole, and I was prepared to vote to sustain the action of the Cities Committee and report it favorably to the Convention, and to vote to submit it to the people on the third reading; but when the chairman of the Cities Committee, at the instigation, as I believe, of men in this body high in authority, who were displeased because some of their pet schemes were not saved in that bill, stabbed it in the open Convention, I was filled with disgust, and that feeling still remains; it is so great, sir, that I think the best thing that this Constitutional Convention can do is to lay the whole subject on the table, separate elections and all. I was in hopes to be excused from voting on this subject, but, as I must vote, I will vote to lay the whole thing on the table. I vote aye.

Mr. Meyenborg — Mr. President, I wish to be excused from voting, and to explain my reasons. I believe in home rule, or local self-government for cities, and think that personal considerations of etiquette should not stand in the way of this popular reform. The measures heretofore reported I could not and cannot conscientiously support, but I hope that a special committee appointed for its special fitness, rather than for political purposes, can and will do much better than a standing committee, and may possibly draft an amendment which may be satisfactory to this Convention and which the people will support. Desiring to give the special committee a chance, and not desiring to smother the child before it is born, I will withdraw my request to be excused, and vote no.

Mr. Moore — Mr. President, I desire to explain my vote. It seems to me that this resolution which it is proposed to lay on the table is not actuated by the spirit of fairness and honest good to the State. It seems to me that it is actuated more by such a spirit as penned these lines in the New York World relative to the President and the Republican leader on this floor, which I beg leave to read to you. "But President Choate and his lieutenant on the floor, Elihu Root, applied gag law, and more than once insulted members of the Democratic minority." It is not often that I pay any attention to newspaper criticism, and I am certain that the leaders in this House do not care for such a fling as that, particularly coming from the source it does; but it seems to me that it is the spirit of captious criticism which animates the minority in this House. We offered them home rule. They said, "no." They fought every proposition; they declined to receive anything which we offered them, and when we agreed to a proposition with some of them, then the rest of them turned about and fought that, too, showing conclusively that they were only fighting for delay, and, therefore, we say to them now: "Very well, you do not want home rule; you need not have it if you do not desire it." Now, Mr. President, it has been said here that the distinguished gentlemen from Plattsburg and Port Henry do not know anything about cities. I beg to say that whether they do or not, that it is the strong men who live upon the hills, and from them you get your Republican majorities, Mr. President, and not from these Democratic citizens. Therefore, I say that we have as great an interest in the cities of this State as any man who dwells in them and as much as we have in the country. We are all members of the same great body politic, and you cannot injure one member of a body without you injure all the rest. The men who earnestly and sincerely love their State must now stand

and vote together against a captious and obstructive minority. This much is plain to me ——

The President — Mr. Moore has exhausted his time ——

Mr. Moore — Have I? I am very sorry. I, therefore, vote aye. (Laughter.)

Mr. Morton — Mr. President, I ask to be excused from voting.

The President put the question on excusing Mr. Morton from voting, and it was determined in the negative.

Mr. Morton — Mr. President, I am guilty of having come to this Convention as a delegate from the Third Senatorial District, representing a large Democratic constituency who are in favor of home rule. Most of the Republicans in the city of Brooklyn are in favor of home rule. And I represent those constituents in this Convention. I am satisfied from what I know in Brooklyn, from what I have seen here, that the minority of this Convention do not want home rule. I have discovered since I have been in this Convention that there are gentlemen upon the majority side of this Convention who not only do not want, but who will not have home rule. Notwithstanding these two situations, sir, I shall stand for home rule in the cities, and I also stand, with as much firmness as any delegate in this Convention stands, for the sovereignty of the State of New York, and when that sovereignty was stabbed upon the home rule article, when the police power of the State was entrenched in that article so that the kind of home rule which the minority of this Convention desire to have could be made of no use to them, I began to fear, and I have since discovered that my fears were well grounded, that all this talk about home rule was idle. The home rule that the minority of this Convention desire is independence. They wish to set up free cities and to pull down the imperial standard of the State of New York. (Applause.) I am not willing that even the President of this Convention should be intrusted with the appointment of a committee that would incline in the slightest degree to such a misfortune, to such a disgrace. I do not care whether this thing is referred back to the Committee on Cities or not. I stand for home rule in the committee and out of it, that home rule will prevent a band of pirates being returned to the Legislature to stand within the walls of this capitol to plunder the city of New York and the city of Brooklyn and then return and condemn the Legislature for having invaded the principle of home rule. I believe that the people of the city of New York and the people of the city of Brooklyn are able to take care of their own affairs if they can have a fair opportunity that they shall be afforded the

security of the police power of the State and that the ballot-box shall be sacred and inviolate. Give them those two principles and the people of those two cities are able to take care of themselves. Even the lazy and indifferent who lounge in clubs, and the *dilettanti* politicians and men who talk and never act will be aroused under such a condition as that to do their duty as citizens.

The President — Mr. Morton has exhausted his time.

Mr. Morton — I hope that this matter may be brought to an issue, and that instead of laying this question upon the table, it will be brought here upon resolution. I, therefore, vote no. (Applause.)

Mr. Nicoll — Mr. President, I desire to explain my vote. It is manifestly idle, Mr. President, for the majority of this Convention to endeavor to charge up to the minority of this Convention the defeat of home rule. It has become a matter of the history of this Convention that even the model measure of local self-government which came from the majority of the Cities Committee was killed yesterday after the session by a Republican caucus, and it comes with poor grace from them now to charge that the fault of the failure of that measure rests upon the minority. I know why it is killed. It was killed at the dictation of the party machine in this State, and the best members of the majority were obliged to surrender to great political pressure. I am in favor of this resolution of Mr. Jenks, because it affords the very last chance which this Convention will have of resurrecting this home rule measure or any measure of home rule. Without that this Convention is in danger of adjourning without solving the most important problem that was submitted to it. As far as the minority is concerned, I may say that any broad measure of home rule, such as is found in the minority report, will be acceptable to them, provided it does not contain the obnoxious provision in regard to the police. While I am in favor of the resolution of Mr. Jenks, I would not be a party to any affront to the chairman of the Committee on Cities. I believe he is honestly in favor of home rule and only surrendered his judgment at the dictates of his party bosses. I hope when this resolution is passed that the Chairman of the Convention will appoint him the chairman of the special committee of six, and then, surrounded by better counsels, he may, perhaps, bring back from the smaller committee some measure of home rule which will be satisfactory to all the members of this Convention. I vote no.

Mr. O'Brien — Mr. President, to my mind this is not a question of political expediency or of personal etiquette. The question of

the government of cities is the overmastering, and I may say, menacing proposition of this State, and notwithstanding that there are over sixty counties in our State, the fact remains that no matter of more importance can come before the Convention than this problem of city government. But I disagree with Mr. Nicoll when he says that the appointment of the committee of six is the last chance. I still believe that out of the work of this Cities Committee, arduous and effective as it has been, we will yet get something for the people of the State. I for one shall be bitterly disappointed if we go back to the people without having taken some step forward in the solution of this great problem. But believing that the Cities Committee is still able to cope with it, I vote aye.

Mr. Parkhurst — Mr. President, I had hoped that the birthday festivities which have been going on upon this floor during the week would have been concluded by this morning. I vote aye.

Mr. Smith — Mr. President, I would like to explain my vote. I cannot agree with the statement that this resolution would cast any reflection upon the honorable chairman of the Cities Committee. I have known the honorable gentleman for more than twenty-five years. He is honest, able, consummate. He stands at the head of his profession, and it would be impossible for this Convention by any action to cast any slight or reproach upon his reputation or his fame. We all know that lawyers and doctors sometimes have associates in the profession called in to assist in cases. A new committee would be only adopting such a precedent. Now, as I am in favor of home rule, genuine, honest home rule, I am told by my friend, Mr. Dickey, that this is not an honest home rule measure that has been presented here, and as I am in favor of home rule, I am in favor of having a new committee appointed, with Mr. Johnson, of Kings, as chairman. I vote no.

Mr. Spencer — Mr. President, in explanation of my vote I desire to say that I am not surprised at this motion, and I do not know whether I ought to be pained at it or not. I am not surprised that motions of this character should come from the minority side of the House. I can well see that they would desire to disorganize and throw firebrands into the camp of the majority, which a motion of this character is likely to do. And the motion and the remarks of the mover of this resolution puts me in mind of the trial of a noted heretic, the proceedings of which have been spread abroad in the papers. All the members of the Presbytery at which he was tried protested

that they were all his friends, and their fathers were his friends, but nevertheless they voted to send him to Gehenna. Now, I think the President of this Convention spoke inadvertently when he apparently favored this motion. I do not think he would desire this Convention to cast a slur upon the work of this committee. We certainly have listened with attention, and we have labored faithfully to represent, if we possibly could, all the views of the different members of the minority, and we certainly have given respectful and careful attention to the suggestions of the honored President of this Convention, and so I believe that there cannot be any purpose here to take this matter from the hands of the Committee on Cities among the majority and turn it over to a committee which, if the proper inference shall be taken from the remarks of the mover of the resolution, would commit it to a committee which would be in accord with the views of the minority. I do not know whether the majority of this Convention is willing now to surrender all their rights and turn them over to the minority, and I think the remarks of the gentleman, that the President of this Convention would be the willing instrument of accomplishing such a purpose, cannot be justified. I will not believe it until I am forced to believe it. I vote aye.

Mr. Vedder — Mr. President, I ask to be excused from voting. The Committee on Cities attempted a Herculean task in framing the so-called cities article. They had to explore an unknown field and a difficult region. They have accomplished a grand work. All is not lost. The first section is saved. Mr. Nicoll, from New York, has just claimed that the balance of the sections of that proposition were dead. I desire to inform him, as one of the caucus that he speaks of, that the other sections are not dead. They are simply sleeping, and they will be aroused again, if at all, by the friends, and not by the enemies of those sections. (Applause.) If those sections are dead, by their friends, by the Republican party, as represented in this Convention, they will appear again when the Republican trumpet of resurrection shall sound, and not until then, and they will become living things when into their nostrils they breathe Republican life. This Committee on Cities, I say, has done grandly, better than could reasonably have been expected when they began this great work. They have kept the faith, every one of them, particularly the chairman of the committee, and if I may borrow Horatius a little while from Mr. Jenks, I will say that they kept it as faithfully as Horatius kept the bridge in the brave days of old. Let me show you almost a wonder. Behold the great work of Horatius Johnson. With dauntless spirit he began the almost

impossible task of making a bridge, grander than that which spanned the yellow Tiber. Every sunrise and sunset saw it grow in strength and beauty, yet all the while Democracy, under the intrepid leadership of Porscena Jenks, was arrayed in solid column, gloomy and terrible, on the hills of Janiculum, fiercely fighting night and day, but Horatius Johnson kept right on hammering away and building the bridge — a bridge which when built will span the political Tiber which now flows between the Republicans of the cities and the Republicans of the country, and over which the grand army of united Republicanism will walk in honor and in victory this fall and during all future time. Mr. President, I withdraw my request to be excused from voting, and vote aye.

Mr. Woodward — Mr. President, I wish to explain my vote. I am in favor of home rule for cities just as far as it is consistent with the integrity of the State and the government of the State by the people. I think that no set of men can get up a report that is perfectly faultless. No one man can invent all the machines that are used in this country. It takes a variety of men, a great many different men, different minds. I would not discharge the Committee on Cities. I would retain that committee and let them work at the matter and see if they can make any improvements in the report they have made, but I would allow a committee of six to be appointed, six or seven, a new committee, that they may get up something after the discussion that has been had here for eight or nine days. It seems to me that there has been light enough thrown upon the subject so that they can get up a better article, and for that reason and others which I cannot urge now, on account of lack of time, I shall vote no.

The President — I desire to explain the vote which I shall give upon this motion. I have had some opportunity for reflection during the roll-call and have somewhat modified the views with which this resolution had impressed me. In the first place, I do not regard it at all as a slight upon the Cities Committee, nor do I believe it is impossible for Mr. Jenks or any of the supporters of this resolution to have had any such purpose or idea in offering it. It is quite a possible theory that a subject for our consideration does not belong to a standing committee simply because it has once been committed to that committee, and it is not that view at all that actuates me in the vote I am about to give. It appears that this resolution emanates and is supported chiefly by those who voted solidly against the entire report of the Committee on Cities. It would now appear that they repent to some extent the attitude which they then took. If so, it seems to me that there are some suitable ways for them to

express their change of mind. The appointment of a new committee would in my judgment be a delay and a hindrance. The subject is not now before or in the hands of any committee, or in the control of any one but the Convention. One section has been adopted. The remaining sections, one and all, may be adopted and considered and handled by the Convention better than any committee. It would be impossible for the President to appoint a committee better informed, more accomplished than the Committee on Cities have been and will be to the end. It seems to me the proper way for the delegates who joined in voting against the proposition of the Committee on Cities as an entire, if they have anything to propose, they have merely to propose it to the Convention, as was done in a very manly way, I think, by Mr. Bowers last night, when he moved to take up for consideration the fifth and sixth articles and have them treated as the first has been, and as that motion is before the House, and is the next thing in order, and as I have no doubt that any overture made in good faith for the restoration of any considerable part of the report of the Cities Committee will be hailed with welcome, I vote to lay this resolution on the table.

Mr. Holcomb — Mr. President, not having been here at the time when the roll was called in the first instance, I would be pleased if I might say a word. I am in favor of home rule for cities, but I have not been in favor of the propositions contained in this proposed amendment which came out of the Committee on Cities. I concluded in my consideration of the proposed amendment that the majority here had so over-ladened the proposition that it did not intend to keep the word that it spoke in the title of the proposed amendment and carry it out in good faith so that the people of New York city or any of the cities of the State could enjoy that meed of home rule which belongs to them, and yesterday, when the Committee of the Whole was discharged as it was, and when the proceeding that followed was taken, and the death blow was struck to the proposition, I considered that the conclusion at which I had arrived had been well drawn. As I said when I began, I am in favor of home rule, but I want it to be a deliberate, a proper, a strong and well-intentioned home rule, not one which shall take the city of New York and by intention or lack of intention set it aside from the whole body politic of the State. I would not, under any circumstances, consent that the city of New York should be set apart from the State at large, but I believe that the city should have the right to manage her own affairs, the police department, the fire department, the park department, and not leave things in general down there in such loose ends as they were in section 5 of

the proposed amendment, which undertook to regulate matters that might be controlled by our local Legislature. I believe that the death blow to home rule has been struck and struck deliberately by the Republican majority in this Convention, giving expressed voice to the Republican party in this State. I withdraw my request to be excused, and vote no.

Mr. Crosby — Mr. President, as many gentlemen have construed the resolution as an imputation upon the committee, and particularly upon the chairman, and having no desire to be recorded in that view and believing from the sentiments expressed now that good work will be done as the committee now stands, I desire to vote in the affirmative.

The resolution of Mr. Jenks was laid upon the table by the following vote:

Ayes — Messrs. Ackerly, Allaben, Arnold, Baker, Barhite, Barnum, Becker, Brown, E. A., Brown, E. R., Cady, Carter, Church, Clark, G. W., Cookinham, Crosby, Davies, Davis, Dean, Deterling, Dickey, Doty, Durfee, Floyd, Foote, Frank, Andrew, Frank, Augustus, Fraser, Galinger, Gilbert, Goodelle, Hamlin, Hawley, Hedges, Hill, Hirschberg, Holls, Jacobs, Johnson, I. Sam, Johnson, J., Johnston, Kinkel, Kurth, Lauterbach, Lester, Lewis, C. H., Lewis, M. E., Lyon, Manley, Marshall, McArthur, McDonough, McIntyre, McKinstry, McLaughlin, C. B., McMillan, Mereness, Moore, Nichols, Nostrand, O'Brien, Parker, Parkhurst, Pashley, Phipps, Pool, Pratt, Putnam, Redman, Root, Spencer, Steele, A. B., Steele, W. H., Tibbetts, Vedder, Vogt, Wellington, Whitmyer, Wiggins, President — 80.

Noes — Messrs. Banks, Barrow, Blake, Bowers, Burr, Bush, Campbell, Cassidy, Chipp, Jr., Cochran, Countryman, Danforth, Davenport, Deady, Deyo, Durnin, Emmet, Farrell, Fitzgerald, Forbes, Fuller, C. A., Gibney, Giegerich, Gilleran, Green, A. H., Green, J. I., Griswold, Holcomb, Hottenroth, Jenks, Kerwin, Kimmey, Marks, Maybee, McLaughlin, J. W., Meyenborg, Morton, Mulqueen, Nicoll, Ohmeis, Parmenter, Peabody, Platzek, Roche, Rogers, Rowley, Smith, Sullivan, W., Tekulsky, Titus, Towns, Truax, C. H., Truax, C. S., Tucker, Veeder, Williams, Woodward — 57.

The President — Mr. Bowers has the floor on his motion to adopt the fifth and sixth sections of the cities article.

Mr. Bowers — Mr. President, I moved last night that this Convention pass separately the fifth and sixth provisions of the article reported by the Cities Committee. I did so because that course of

procedure had been taken in regard to section 1, and it seems to me that it was right, also, that this Convention should give the people of the State an opportunity of saying whether they would allow the cities even the small measure of home rule afforded by the fifth and sixth sections, without compelling them at the same time to take the provisions of the article that the Governor should be given the power to remove and appoint the heads of police of a city.

Mr. Goodelle — Mr. President, I would like to have the substitute read.

The President — It is not a substitute. Will Mr. Bowers accept a suggestion of the Chair? The Chair would suggest, as a mode of procedure, that he put his motion in the same form as was taken in regard to section 1, that the fifth and sixth sections be recommitted to the Committee on Cities.

Mr. Bowers — Mr. President, I do not see how the motion can be made in that form, because the motion that was made last night struck out all of the balance of the article, except the first section. I supposed that they being stricken out, I cannot make the motion.

The President — It is undoubtedly in the control of the Convention in some form.

Mr. Bowers — Mr. President, I see no other way but to compel this committee to report sections 5 and 6 as an independent measure. If they are compelled to so report, it will give a measure of home rule that should be taken, in my opinion, because it will not compel us to vote upon the proposition of minority and proportional representation and the power of the Governor to interfere with our police. I submit it to the judgment of the Convention.

Mr. McMillan — Mr. President, I move to lay the resolution of Mr. Bowers on the table.

Mr. Cochran — I rise to a point of order, sir, so that we may have a ruling upon it now, and know where we stand upon the matter. As I understand the resolution as offered by Mr. Johnson last evening, it was to this effect: that the proposed constitutional amendment which had been considered by the Committee of the Whole be recommitted to the Committee on Cities, with instructions to strike out all after the first section. The Cities Committee reported the first section of the amendment, and I submit now, sir, that the striking out all after the first section has killed every section except the first. There can be before this Convention but one amendment to general order No. 13.

The President — I do not think you can raise that point of order

now because the pending motion to lay Mr. Bowers's motion on the table is not debatable.

The President put the question on the motion of Mr. McMillan to lay Mr. Bowers's motion on the table, and it was determined in the affirmative.

Mr. Root — Mr. President, I move the adoption of the resolution (No. 177) reported favorably the other day by the Committee on Rules. It was offered by Mr. Cookinham on the eighteenth of August, and appears upon the Journal, at page 521.

The President — Mr. Root calls attention to the rsolution on page 521 of the Journal, offered by Mr. Cookinham, and recommended favorably by the Committee on Rules. Will Mr. Root please read the resolution.

Mr. Root read the resolution as follows:

Resolved, That the Committee on Rules be directed to report a rule allotting a time for debate upon each of the proposed constitutional amendments.

Mr. Bowers — That was referred to the Committee on Rules. Has there been a report made?

Mr. Root — A report was made several days ago.

Mr. Bowers — Was it stated that the minority dissented?

Mr. Root — I do not remember what the fact was. Mr. Bowers can state the fact.

Mr. Bowers — The minority members dissented from the report.

Mr. Veeder — Mr. President, I ask to have the report of the Committee on Rules read. That is the matter we are to discuss.

The President — One moment. The Committee on Rules made no written report. They reported in favor of the passage of this resolution.

Mr. Veeder — It would be possible that we are to readopt a resolution that has been referred to the Committee on Rules. They say they have made a report. Now, I ask to have the report read, and then the question is on the adoption of the report.

Mr. Root — Mr. President, may I state my motion. The Committee on Rules several days ago reported this resolution of Mr. Cookinham favorably. I have now called up that report and move its adoption, and upon that I move the previous question.

Mr. Bush — Mr. President, it is unfair to move the previous question and not allow a single man in the House to have a single word to say upon a proposition of this kind.

Mr. Veeder — I submit, Mr. Chairman, that that is not fair. If the threat of the gentleman from Cattaraugus is to be carried out, let us know it at once.

The President — The question is shall the main question be now put?

Mr. Bush — I demand the ayes and noes.

The call for the ayes and noes was sustained.

The President — The Secretary will call the roll.

The Secretary proceeded to call the roll.

Mr. Roche — Mr. President, probably not more than five minutes will be consumed in discussing the question and more time than that will be consumed in calling the roll. Now, why cannot the calling of the roll be dispensed with and let us have a fair discussion of this rule.

Mr. Blake — I regard this, Mr. President, as one of the worst exhibitions of gag law that I think has ever disgraced any deliberative body that I have ever read of or ever heard of. Do the gentlemen propose to close our mouths by this gag law at once? Is there any reasonable amount of sense or justice left in the members of the majority ——

The President — Mr. Blake will please make his remarks a little more parliamentary and in order.

Mr. Blake — Well, sir, we forget parliamentary law when we are gagged in this manner. It is un-American and it is unjust, and if it is the picture that we propose to place before the people of the State of New York, that you propose to pass all the important measures under the gag law, well, sir, go ahead! Go on gentlemen of the majority! Pass your gag law! Pass your measures, but the people, the Supreme Court of the State, will pass upon your action. We could ask nothing better at your hands if we desired your defeat than for you to refuse to give us an opportunity to intelligently discuss the propositions that come before this body. Go on! Go on! If you choose, in your way. "Whom the gods wish to destroy they first make mad." You are mad! You are becoming madder each day!

The President — Mr. Blake has exceeded his time.

Mr. Blake — Very well, sir. I have not exhausted all I have to say on that matter. I vote no.

Mr. Bush — Mr. President, the reason I wished to use five minutes before I demanded the ayes and noes upon this question

was simply to make a few remarks on this resolution of Mr. Cookinham. Now, this rule provides that the Committee on Rules be empowered to report a limit of time on all the matters on the calendar. They can come into the House at any time. Now, under rule 56 it provides that whenever ordered so to do by the Convention the Committee on Rules shall report a rule limiting the time for debate. Such report will stand as the time limited for debate on the subject-matter referred to in such rule. Now, this resolution is absolutely unnecessary unless it purports to change rule 56. Under rule 56 the Committee on Rules might come in at any time when a proposed amendment was up to limit debate.

The President — When ordered so to do by the Convention.

Mr. Bush — They made a report yesterday so to do without an order by the Convention. My point is that it is much safer for the Committee on Rules to come into the Convention on each separate proposition, rather than to come in here with a rule bunching the whole matter. For instance, how do we know how much time need be spent by the educational, forestry or apportionment articles? If that is the idea to divide up that time in proportion to the importance of the subject, I simply wanted to ask that question before the roll-call was ordered. For that reason it is apparent how inadvisable it is often to order the previous question. I simply desired to ask a question. I vote no.

Mr. Cochran — Mr. President, I have the authority of one of the delegates-at-large in this Convention to the effect that the majority party in this Convention yesterday afternoon, in caucus, decided to move the previous question whenever the minority desired to debate any question that was to be heard here. I think it is very evident that they did adopt such an intention. I vote no.

Mr. Cookinham — Mr. President, contrary to my ordinary rule of explaining my vote, I desire to say just one word upon the subject of the resolution. Now there never has been the slightest idea on the adoption of this resolution to shut off debate or any discussion or limit of time except this: the full import of this resolution is that the Committee on Rules should fix a limit on debate, report that to this body, and this body would then act upon it. There does not exist in the committee the power to originate such an idea, and it is necessary to adopt this resolution in order to give them the power to act. That is the full import of the resolution. They reported in favor of adopting the resolution. Then it goes back to them to fix the time.

Mr. Bush — Is it proposed to make several reports, a report on each amendment?

Mr. Cookinham — I understand a separate time will be fixed for each amendment.

Mr. Bush — All in one report?

Mr. Cookinham — My idea is that it will be divided.

Mr. Griswold — Mr. President, I had supposed, when rule 56 was adopted, that it was the intention when that very important power was conferred on the Committee on Rules to fix the time of debate, that it would be recognized that the different subjects and different amendments might require different time of debate. Some might require but a very brief time, while others, as would be reasonable and right, would require a longer time, and I suppose that the subject, recognizing it is a very important power to be conferred upon the Committee on Rules, would have a time allotted to it consistent to its importance. Now, whether that is to be done at the same time as the committee has proposed, or whether it is to be done as the different subjects come before the Convention, and shall be proposed by the Committee on Rules, I do not know. Now, the simple thing, which seems to be necessary is to refer it to the Committee on Rules, which seems to be the necessary thing, should be done, or you will never get through with this Convention. Now, if it is a simple proposition to refer to the Committee on Rules as to how long a time shall be allowed on each proposition, why that seems to me consonant to what is necessary.

The President — Perhaps Mr. Griswold does not understand what the pending question is. It is, shall the previous question now be put?

Mr. Griswould — I wish to inquire of the Chairman, if it is proposed now that the Committee on Rules limit the time of debate on every question.

Mr. Root — It is proposed merely that the Convention authorize the Committee on Rules to bring in a report or reports limiting the time upon these separately, and the intention is merely to lay out the work for a day or two or three days ahead as we go along, so that the Convention shall know what they are to do.

Mr. Griswold — Upon every question that comes up?

Mr. Root — Upon every question as it comes up.

Mr. Griswold — I am not yet informed why that is not appropriate.

Mr. Root — It is appropriate, Mr. Griswold.

Mr. Griswold — Very well.

Mr. Veeder — Mr. President, I rise to a point of order. I claim that it is wholly out of order for Mr. Root to discuss the merits of the proposition.

The President — Perhaps it is out of order, after Mr. Root has completed the discussion, to raise a point of order.

Mr. Veeder — That comes from the delay of the Chair in recognizing members.

Mr. Lyon — Mr. President, I shall vote for the adoption of the rule proposed, but I think that a request for five or ten minutes for the purpose of debating a new subject was reasonable. Hence I vote against ordering the previous question. I vote no.

Mr. Meyenborg — Mr. President, it seems to me that the majority have started out on the line of policy that the minority have no rights which the Republicans respect. The majority fight from a movable pivot. They change the rules to suit their necessities and all would be lost to the Democratic party if there was no appeal to the people who will have their inning in November, and like the words in Mikado "they will achieve in time to make the punishment fit the crime." I withdraw my request to be excused, and vote no.

Mr. Roche — Mr. President, as a protest against the making of motions for the previous question when they are entirely unnecessary, when they shut out questions presented by the members simply for information, and when the making of them leads to the consuming of more time than would be given up to debate on the main proposition itself, I vote no.

The President — I think that if a very few minutes time for explanation of this entirely harmless, proper and necessary resolution had been given, much time would have been saved and this vote would have been unnecessary. The proposition is merely to authorize the Committee on Rules from time to time as articles or amendments are becoming imminent on the day calendar, for the Convention to make a limit of time on them. It will be under the control of the Convention to make it or not. I vote no.

The previous question was ordered by the following vote:

Ayes — Messrs. Allaben, Arnold, Baker, Barhite, Barnum, Barrow, Becker, Brown, E. A., Brown, E. R., Cady, Carter, Church, Clark, G. W., Cookinham, Crosby, Davis, Dean, Deterling, Dickey, Doty, Durfee, Foote, Frank, Andrew, Frank, Augustus, Fraser, Fuller, C. A., Fuller, O. A., Galinger, Goodelle, Griswold,

Hamlin, Hawley, Hedges, Hill, Hirschberg, Holls, Johnson, J., Johnston, Kinkel, Kurth, Lester, C. H., Manley, McDonough, McIntyre, McKinstry, McLaughlin, C. B., McMillan, Moore, Morton, Nichols, Nostrand, O'Brien, Parker, Parkhurst, Pashley, Phipps, Pool, Pratt, Putnam, Redman, Root, Spencer, Steele, A. B., Steele, W. H., Veeder, Vogt, Wellington, Whitmyer, Wiggins, Woodward — 71.

Noes — Messrs. Banks, Blake, Bowers, Burr, Bush, Campbell, Cassidy, Chipp, Jr., Cochran, Danforth, Davenport, Deady, Deyo, Durnin, Emmet, Farrell, Fitzgerald, Floyd, Forbes, Gibney, Giegerich, Gilleran, Goeller, Green, A. H., Green, J. I., Holcomb, Hotchkiss, Hottenroth, Jenks, Kerwin, Kimmey, Lyon, Marks, Maybee, McCurdy, McLaughlin, J. W., Meyenborg, Mulqueen, Nicoll, Ohmeis, Parmenter, Peabody, Peck, Platzek, Roche, Rogers, Rowley, Smith, Speer, Sullivan, W., Titus, Truax, C. H., Tucker, Veeder, Williams, President — 55.

The President put the question on the adoption of the report of the Committee on Rules on Mr. Cookinham's resolution, and it was determined in the affirmative.

Mr. Root reported in favor of the adoption of the following resolution of Mr. Barhite:

R. 191.— Resolved, That rule 27 be amended by striking out the words "two-thirds" and inserting in place thereof the word "majority."

Mr. Bowers — That giving rise to debate, I suppose will lie over until to-morrow.

Mr. Root — I think that that comes under the rule that if twenty-four second the demand that it goes over until the following day.

The President — Is there not some mistake about your report. Rule 27 has nothing to do with that subject.

Mr. Cookinham — It is rule 24.

The President — The matter will have to go over until to-morrow if twenty-four members so demand.

Twenty-four members objecting to the consideration of the rule it went over until to-morrow.

Mr. Root — Mr. President, the Committee on Rules submits a further report.

The President — A further report from the Committee on Rules as to the order of taking up amendments. The gentlemen will give their attention. The Secretary will read the report.

The Secretary read the report as follows:

The committee reports favorably as amended the following:

R. 195.— Resolved, That the proposed constitutional amendments hereinafter mentioned be made special orders for August thirty-first, at ten o'clock, in the order stated below, and that they each be considered in Committee of the Whole until disposed of except the general order in regard to apportionment which will have precedence over all other business after the day now fixed for its consideration.

The President — Does the gentleman desire to have this report read? It has been read once.

Mr. Veeder — There have been some changes made.

The President — There have been some changes made. Will Mr. Root state the changes that have been made?

Mr. Root — At the request of Mr. Roche general order No. 27 was moved up from the twenty-sixth place to the thirteenth place.

Mr. Becker — What is that measure?

Mr. Roche — It is the anti-trust measure.

Mr. Root — And also one came through Mr. Deyo or Mr. Bowers, I do not know which, by which general order No. 23 was put on at the foot as we have it here.

Mr. Bowers — Mr. President, we have had scarcely enough time for the minority members to make an examination as to whether everything is on there that ought to be on, and it seems to me that it might be well enough to let this matter rest until to-morrow.

The President — Unless objection is made it will lie over until to-morrow, and will the Committee on Rules please withdraw to the President's room, and under the order just made propose a limit of time on the education matter that is to be taken up?

Mr. Bowers — I desire to move that the list and reference to the order in which matters are to be taken up to be printed.

Mr. Cookinham — Mr. President, I shall object unless it is required to be printed and laid upon the desks of the members to-morrow morning. Unless it is printed and on the desk of the members to-morrow morning it ought not to be printed.

Mr. Bowers — Mr. President, I move that it be printed and laid upon the desks of the members to-morrow morning.

Mr. Cookinham — That is all right; I will not oppose that.

The President — It will be printed as a matter of course as soon as it is adopted.

Mr. Bowers — Mr. President, I thought we ought to have some opportunity to let members look at it before it is adopted.

The President — It will be printed under the rules.

Mr. Bowers — The only point is this, Mr. President, I think the members ought to be allowed to see this report, to see what is proposed in the way of special orders and compare it with the general orders and find if it is satisfactory.

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

Mr. J. Johnson — Mr. President, I purpose to make a mere parliamentary motion, which I will say in advance that I shall move to lay upon the table. It was suggested this morning by Mr. Cochran that, by virtue of the resolution last named, in some way the Convention had lost control of the cities article. I do not apprehend that there is any possible question about that; but in order to save even a possibility of question within the time limited, that is to say, the next legislative day, I move that the vote by which that article, section one, was carried to a third reading, be reconsidered; and I move to lay that motion upon the table.

The President put the question on laying the motion to reconsider on the table, and it was determined in the affirmative.

Mr. Holls — Mr. President, I move that the Convention now take up the special order, the report of the Committee on Education.

The President — Will Mr. Holls defer that motion for one moment until the Committee on Rules makes a report as to limit of time. The committee is strongly of opinion that unless a limit of time is agreed upon before the debate begins, it will be almost impossible to fix a reasonable limit afterward. I believe the committee is ready to report.

Mr. Holls — If not, I would make a motion that we take a recess for five minutes.

The President — The Chair does not think that will be necessary.

Mr. Holcomb — Mr. President, I am called to New York on business to-morrow, and I would ask leave of absence for to-morrow and Monday.

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

The President — The Committee on Rules propose for consideration of the Convention that the report of the Committee on Education be allowed one day; that is, seven hours. Is that approved by

the Convention? It stands as the rule unless otherwise ordered by the Convention under rule 56.

Mr. Veeder — Mr. President, will you please state that again?

The President — The Committee on Rules proposes seven hours, one entire day, for the report of the Committee on Education, unless otherwise ordered by the Convention. The rules say that such report shall stand as the time limited for debate on the subject-matter referred to in such rules, and the previous question or other motion to close debate shall not be in order until the expiration of the time so allotted, or the debate has been closed.

Mr. Holls — Mr. President, I would like to ask for information, whether that time so proposed by the Committee on Rules includes not only the time in Committee of the Whole, but also the time necessarily required for the report of the committee to the Convention?

The President — It covers the discussion, in all, in Committee of the Whole.

Mr. Bush — Mr. President, I would like to ask for information. I understand the committee reports seven hours, or is it to-day? There are not seven hours left to-day.

The President — They report one entire day. That makes seven hours. Now, it is also a part of their report, which I omitted to state, that the principal representative of the report, and of his opponent, representing the opposition to it, shall not exceed one hour each, and that other speeches shall not exceed twenty minutes each.

Mr. Dickey — Mr. President, is it in order to move that the vote be taken at a later time, beyond the time limited for debate?

The President — I think not, because the rule says that the report shall stand as the time limited for debate; of course, unless the Convention otherwise order.

Mr. Dickey — Mr. President, if in order, I move that the vote of the pending order be taken on Monday next at twelve o'clock.

The President — The present question only is as to the time to be allowed for debate. Shall it be seven hours, or more or less?

Mr. Roche — Mr. President, cannot that be accompanied with such a motion as that which Mr. Dickey has proposed? There has been quite a number of excuses granted to members for to-morrow and Monday morning. These members will be back here by noon on Monday; in the meantime, if the debate should close under the proposed rule, some other business can be taken up and there will be no harm done by having the vote upon the educational question

taken at a time when probably all the members of the Convention will be in their places. Now, I, for one, have asked to be excused, and it is highly important to me that I should be absent from the Convention. I desire very much to vote upon this question, and that is the case with some other members. I think, Mr. President, that it will create a very good feeling among the members and do justice to this question, in which there is a great deal of interest, if we should go on with the debate from this time out, but agree that the vote upon the question shall be taken on either Monday or Tuesday without further delay.

The President — The Chair is of the opinion that if a motion is made to that effect it will be regular.

Mr. Holls — Do I understand, Mr. President, that it is not in order to make the motion?

The President — I think it is in order.

Mr. Holls — Then, Mr. President, I will make the motion that the vote be taken on Tuesday morning, after the reading of the Journal.

The President — That is, the vote in Committee of the Whole, the final vote?

Mr. Holls — Any final votes upon this article or any branch of it.

Mr. Platzek — Mr. President, I only desire to make one suggestion, which, I think, Mr. Holls will accept; that is, if the vote is to be taken on Tuesday, that it be taken at twelve o'clock, so as to enable a number of gentlemen from New York and Brooklyn, who arrive here on the eleven-fifteen train, the Empire State express, to be present and vote.

Mr. Root — Mr. President, I object to arranging the business of this Convention on the theory that members are going away and stay away during sessions of the Convention, during the last two weeks that we have remaining.

Mr. Holls — Mr. President, I think that not only the convenience of members, but the important interests involved in this report, will be best subserved by a postponement of the vote until Tuesday, and I have made the hour the beginning of the day because that will least interfere with the rest of the work.

Mr. Platzek — I withdraw my suggestion, Mr. President.

Mr. Holls — If the other work of the day is begun and broken into by this vote, it will nullify much of the work that will then be under consideration.

The President — Does the House understand that the motion is to vote on every amendment, however trifling?

Mr. Holls — Oh, no, Mr. President.

The President — Do you mean the final vote?

Mr. Holls — The final vote.

The President — Favorable or unfavorable?

Mr. Holls — Yes, sir.

Mr. Holcomb — Mr. President, may I ask whether it is the intention of Mr. Holls that that vote be taken in Convention or in Committee of the Whole?

The President — In Committee of the Whole, of course. Gentlemen will understand the motion of Mr. Holls, accepting the limit of time, seven hours, proposed by the Committee on Rules, not more than one hour of which time is to be taken by him and whoever represents the opposition to his views, and twenty minutes' limit to every other speaker. He proposes that the final vote on reporting favorably or unfavorably, not on any amendments that precede that, but the final vote, shall be taken immediately after going into Committee of the Whole on Tuesday morning.

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

The President — The Convention now goes into Committee of the Whole upon general order No. 61 (O., I. No. 388; P. No. 439), and Mr. C. H. Truax will be good enough to take the chair.

Mr. Truax took the chair.

The Chairman — The Convention is now in Committee of the Whole on general order No. 61, and the Secretary will read the proposition.

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

"Proposed constitutional amendment to amend article 9 of the Constitution, relating to free common schools."

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

ARTICLE IX.

SECTION 1. The Legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this State may be educated.

Mr. Holls — Mr. Chairman, for the purpose of regularity, I make the usual motion to strike out the section.

Mr. Chairman, in beginning the discussion of the article upon education, it is not my purpose to detain the committee or this Convention by any attempted display of oratory. No words of mine can add anything to the importance of the interests involved in education and the report which has been made by the committee, and which is Document No. 62, upon the files of all the members, contains such explanatory matter of the article itself as amply suffices for an introduction to the whole discussion of the subject. The time of this Convention is now too limited and too precious for more.

The first section which we have reported, and which is new, explains itself. Of all the United States of America, New York, New Jersey and Delaware are the only States which to-day have not a similar analogous provision in their fundamental laws. As has been stated by the committee in their report, imagination cannot possibly picture the State of New York refusing to provide education for all her children; and hence the objection might be made that the section was unnecessary. But this argument has not been held to apply to many other matters which are thought to be fundamental, and in view of the policy of the State of New York toward all education, and to which more reference will undoubtedly be made during this debate, we consider it of importance that at the head of the educational article there should be a section announcing in no uncertain terms the interest of the State of New York in the foundation of all its prosperity, the free common schools. I now withdraw my motion to strike out the section, and unless amendments are offered, I hope the Secretary will read section 2.

Mr. Campbell — Mr. Chairman, I offer an amendment to section 1: Insert in line 3 of page 1, after the word, "State," the words, "whose education is not provided for by their parents or guardians."

Mr. Campbell — Mr. Chairman and gentlemen, in offering this amendment I do it so that the people of this State may express in their organic law the propostion and principle that the parent of every child in this State is charged with the duty to educate that child, and has the right, proceeding from that duty, to provide the means by which his duty will be performed. The free schools of this State are the outgrowth of the performance of the duty and the exercise of the right of parents in the education of their children.

These schools were not established by the State acting as such or in a formal manner, but by the people themselves, each parent acting in his individual capacity, and all the people co-operating heartily in the performance of the parental duty to educate his children; a duty which Chancellor Kent has called a sacred trust given to parents by their Creator, and a right which they have by the law of nature. The free public schools of this State have, therefore, become sacred to the people and to every home and to every heart. They are the schools of the people in the most intimate sense; because they sprung spontaneously from the people before the foundations of the government. Hence, the public schools of America have grown to be the admiration of the world.

Every attempt to better their condition and make more general their beneficent action in improving and increasing secular knowledge naturally and at once excited the enthusiastic support of the people who created them. Hence, there has been introduced to this Convention a new article of the Constitution, expressing the principle of universal education, and directing the Legislature to use the power of the State to foster that principle, and, perhaps, to enforce adhesion to that principle.

It is proposed to enact an organic law, directing the Legislature to provide for the maintenance of a system of schools wherein all the children of the State may be educated. The reasons for making this change are given by the Committee on Education in its report to the Convention recommending the passage of the article proposed to us. This is what the report, among other things, contains: "Your committee, therefore, recommends the adoption of section 1 as an explicit direction to the Legislature to provide 'for a system of free schools wherein all the children of the State may be educated.' This requires not simply schools, but a system; not merely that they shall be common, but free, and not only that they shall be numerous, but that they shall be sufficient in number so that all the children of the State may, unless otherwise provided for, receive in them their education."

Thus the committee, by stating in their report that the schools are to be provided for those children who are not otherwise provided for, recognizes the right of parents to educate their children, for it is not possible to imagine that the children not educated in the public schools can be otherwise educated or have their education otherwise provided for than by their parents. The committee could not question that right with any hope of assent from us. It is a right superior in the parents to that of any other person, superior to any right that might be asserted by the State or any other aggre-

gation of persons. This Convention, therefore, instead of denying the right of the parents to educate their children, is about to provide all the means of secular education that any parent can ask, to enable him to fully perform his sacred, bounden duty to educate his child. It would seem, therefore, that since the right of the parent to direct the education of the child is undeniable, and is meant to be conceded here, that it is wiser to express it in the Constitution than to leave it unexpressed, and, therefore, capable in the near future of denial or controversy.

In order that this truth may be certainly and definitely expressed, I have proposed the amendment to section 1, which will provide that the children of those parents who do not provide for their education may be educated in the public schools. If parents choose to educate their children at any other than the public schools, then they cannot be compelled to send them to the public schools. It will leave parents entirely free to use private schools to accomplish their purpose and perform their duty of education. But it may be answered that the section as proposed without any amendment is permissive only, and simply gives to the inhabitants of the State a privilege of which they may or may not avail themselves at their option. No man can tell, however, what the courts may hold in construing this section of the Constitution if it be not amended in the manner I have proposed.

Should the Legislature, in obedience to the mandate of section 1, as it now stands, provide by law for one great system of free common schools, with all the teachers, books and appliances sufficient to provide means to educate all the children of the State, including the three or four hundred thousand who are not now attending the public schools, would it be unreasonable for the courts to hold that the grant of such a power implied a grant of the power to compel the people to accept and use the system to the exclusion of any other means of education. If any one should prefer any of the numerous kindergarten schools or academies now conducted by private endeavor and enterprise to those provided by the State, a conflict between the individual and the State would inevitably arise. A controversy might be precipitated, which, before it was ended, would injure the common schools beyond the possibility of repair, and it could end only in settling the law to be that the right of the parent could not be interfered with. We can avoid the possibility of such a dispute by adopting this amendment.

The amendment contemplates nothing more than to say in effect that where the education of the child is neglected for any cause by the parent or guardian, or is not provided for by them, then the

State, in the exercise of its subordinate right on the same subject, may step in and perform the neglected duty of the parent. The words supplied by the proposed amendment are words which the committee, judging from its report, inadvertently omitted to insert in the section, and which it is manifestly our duty to supply. A constitutional amendment should never leave our hands which will be uncertain or difficult of explanation or construction, or capable of more than one construction which will need any construction. It should be capable of comprehension by the simplest mind of ordinary man or woman. I believe the amendment I propose will accomplish that end with respect to section 1 of the proposed article and I urge its adoption.

Mr. Holls — Mr. Chairman, the amendment proposed by the gentleman from New York is, in my opinion, entirely unnecessary, and for that reason very objectionable, for it adds to the language of the section without adding at all to its sense. We might with equal propriety say: "All the children of this State who are not otherwise provided for"— and I believe that is the sense of the gentleman's argument — or we might say, "all the children who are healthy enough to go to school," or "who live near enough to school-houses to go to school." The section, as it stands here, in no way interferes, directly or by implication, with the sacred right of the parent and the family first to educate their children if they wish to do so. It simply says that the State of New York, as a fundamental part of its policy toward all of its inhabitants, shall provide for a system of schools wherein if required — for those words, in my opinion, are fairly implied — all children of the State may be educated; and that, of course, means if required by the parent. The addition of the words proposed by the gentleman from New York might with equal propriety be construed that children who have parents should not be sent to the public schools, but that the parents should be required first to educate them at home. It is absolutely unnecessary. There is nothing here, and there was nothing further from the mind of the committee than a denial of the rights of the family, or any imputation upon private schools of any character, and it is impossible for me to see by what language it might be read into that amendment. For these reasons I sincerely hope that the amendment will not prevail.

The Chairman put the question on the adoption of Mr. Campbell's amendment, and it was determined in the negative.

Mr. Gilleran — Mr. Chairman, I offer an amendment.

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

Amend section 1 as follows: "The Legislature shall provide for the maintenance and support of a system of free common schools, which shall be open to all the children of this State."

Mr. Gilleran — Mr. Chairman, I did not happen to be at the meeting of the Committee on Education when the first section was agreed upon, if it was agreed upon in committee, and on looking it over I find that it is open possibly to misconstruction grammatically. It provides that the Legislature shall provide for the maintenance and support of a system of free common schools (comma), wherein all the children of this State may be educated." The question is whether the children of the State are to be educated in the system, or in the common schools. By erasing the comma I think the language would properly be interpreted as meaning that the children were to be educated in the schools.

However, on looking over the Constitutions of other States, referred to by the chairman of the Committee on Education, I find the exact language which I now wish to insert in place of the last part of section 1. And I think that in order that section 1 may be properly understood, that language should be inserted. The term, "wherein all the children of this State may be educated," is fraught with meaning, pregnant with danger. The use of the word "may" there is in an auxiliary sense. It is well known that the common use of the word "may" indicates permission, but it may also indicate a possibility with a contingency. The question is, may these children be educated there, or may they not. They may be; they may not, too. It is according to how you take the meaning of the term "may;" and for use as an auxiliary, expressing contingency, it expresses contingency in connection with a purpose. Now, the purpose of the State no doubt is or will be, under the terms of this amendment, to provide a system of schools wherein all the children of the State shall be educated if they go there, and which shall be open to them if they go there. Therefore, in order that the sentiment expressed in section 1, in which I heartily concur and in which I am sure every member of this Convention concurs, may be changed so that it may read in the precise and exact language suggested in the amendment.

Mr. Hill — Mr. Chairman, I do not imagine that the construction which the gentleman from New York has placed upon this amendment could possibly be placed thereon by any court or by any board of education. The word "wherein," a relative pronoun, refers to the two words which precede it, namely, "common

schools." This qualifying or relative clause, commencing with the word "wherein," makes it imperative on the State to provide adequate free common schools for the education of all the children of the State, if the children or their parents or guardians desire to avail themselves of such schools. The amendment suggested by the gentleman from New York that the schools be kept open is clearly covered by the amendment as it stands reported by the Committee on Education without such suggestion. There has been some fear expressed that the word "may" might be construed as mandatory instead of permissive. Such construction ought not, and, in my opinion, would not be placed upon the word "may." The State of New York, Mr. Chairman, should place itself in a position where the parents and guardians and children, if they desire to avail themselves of our common schools can do so, and the reason of this first section is, that there are places in the State of New York where the common schools are not adequate and not numerous enough to provide education for all the children who desire to avail themselves of them. This provision, if it be adopted, will remove that objection, and it follows as matter of course that if the schools be provided they will be open during reasonable seasons. It is possible that the gentleman's amendment to the proposition as suggested by the committee might necessitate keeping the schools open all the months of the year. That would not be advisable. It would not be prudent, either, for the State or its subdivisions, or for the children to be educated thereby. This amendment, Mr. Chairman, is substantially the same as has been already incorporated into most of the State Constitutions of this country. In the committee I think it received no unfavorable criticism whatever. It seemed to be the unanimous opinion that provision should be made for the education of all the children of the State if they desired to avail themselves thereof, in such manner as has been done in this proposed amendment. It seems to me that the gentleman's construction of the sentence is technical. Certainly the language is not susceptible of any criticism grammatically, as it stands here, and it provides free common schools for all the children of the State that may desire to be educated therein. It is terse, succinct and clear, and susceptible of no misconstruction. Hitherto our organic law has contained no such provision, and our common school system rests simply on statutory law, easily abrogated by any capricious Legislature. I think, Mr. Chairman, that the amendment ought not to prevail, but that the original section should be reported favorably as it has been reported by the committee.

The Chairman put the question on the adoption of Mr. Gilleran's amendment, and it was determined in the negative.

The Chairman — There being no further amendments to section 1, the Secretary will read section 2.

The Secretary read section 2, as follows:

"The corporation created in seventeen hundred and eighty-four, under the name of the Regents of the University of the State of New York, is hereby continued under the name of the 'University of the State of New York.' It shall be governed and all its corporate powers exercised by not less than nine regents."

Mr. Hawley — Mr. Chairman, I desire to offer an amendment.

The Secretary read the amendment, as follows: "Strike out the word 'all,' in line 8, and insert, 'which may be increased, modified or diminished by the Legislature,' so that the sentence shall read: 'It shall be governed, and its corporate powers, which may be increased, modified or diminished by the Legislature, be exercised by not less than nine regents.'"

Mr. Hawley — Mr. Chairman, I desire to say only a word. This amendment is not offered in any hostility to the report as it stands, with which I am heartily in favor. But it is offered because of my own opinion that as matter of law the amendment as it now stands in the report of the committee puts into the Constitution the Board of Regents as it shall exist, and with the powers that they have on the day that the Constitution shall go into effect, and places it beyond the power of the Legislature to add to, increase or diminish the powers of the Board of Regents. That is to say, that if the amendment went into effect to-day, the Board of Regents would be a constitutional corporation, with exactly the powers conferred upon it by the University Law, and without power on the part of the Legislature to in any way alter, diminish or increase those powers. It is to meet just that question, and that alone, to say what I believed the committee designed to say, and what is the wish, I believe, of everybody to say, and to say it so plainly that there can be no misconstruction or misapprehension about it, that the Board of Regents, after being put into the Constitution in this way, shall be still subject to the Legislature in respect to addition, diminution or modification of the powers which they shall exercise.

Mr. Doty — Mr. Chairman, I desire to ask the gentleman a question, if I may, and that is whether the purpose that he desires to accomplish by his amendment would not be more effectively accomplished by moving to strike out the entire section?

Mr. Hawley — Oh, I think there is a very wide, a very large difference in the two propositions.

Mr. J. I. Green — Mr. Chairman, I am heartily in favor of the amendment proposed by Mr. Hawley. I do not think we ought to incorporate into the Constitution of this State or give power to any body which would be beyond the control of the people for twenty years, or until a new Constitution is established. For that reason, I think, we are in duty bound to put it in the power of the Legislature to modify, diminish or increase the powers of the Regents of the University of the State.

Mr. Holls — Mr. Chairman, in answer to the remarks of the gentleman from Seneca and the gentleman from New York, I wish to say that in the opinion of the committee, expressed at the time that this amendment was adopted, and after a very careful discussion, the words as we have reported them, would by no means give any powers to this corporation which is continued, which could not at any time be modified, diminished or increased by the Legislature, so that, so far as the purpose of the gentleman's amendment is concerned, his words do not express anything different from what I understand to be the unanimous sense of the committee.

Now, it seems to me, while I hesitate very much to even suggest an opposition on a legal question to a gentleman of so much more and wider experience in law and learning, that there can be very little doubt about the true interpretation of this section. We speak of the corporation which is continued. Surely the continuation in itself confers no power. Then we say "it"— the corporation —"shall be governed and all its corporate powers exercised by not less than nine regents." What are its corporate powers? Those words not being defined in the Constitution, it is necessary for us to seek outside interpretation. We find it in what is called the University Law of 1892, which law defines all the corporate powers of the University of the State of New York. That law, being simply a statute, is, in my opinion, clearly subject to revision, amendment, repeal or modification by the Legislature, subject only to the provisions of the Constitution.

All I have to say is that if, in the opinion of the many better lawyers in this Convention, the amendment of the gentleman from Seneca (Mr. Hawley) will add clearness to this provision, the committee have no objection to its insertion. But such was not our opinion when we reported the section.

Mr. McIntyre — Mr. Chairman, now, about the report of the Committee on Education. I was one that voted against the section

in the committee, and I have never changed my mind. I do not think the amendment offered here improves it or saves it, for the simple reason that all the law that we have had in this State in relation to the Board of Regents of the University of the State of New York is statutory from beginning to end. The whole law of the State in relation to that matter is brought out very fully and published in a small pamphlet issued by the Regents of the law of 1892; and everything that gave the Board of Regents of the University of the State of New York creation came by statute from the State of New York. All the powers and duties that they now have are given them by this same statute. If you seek to incorporate them in the Constitution of the State of New York there must be certain objects for it, and what will you do here if you bring it into the Constitution of the State of New York with anything like the present section, or the section as it will be amended. "The corporation created in 1784 under the name of the Regents of the State of New York is hereby continued under the name of the University of the State of New York. It shall be governed and all its corporate powers exercised by not less than nine Regents." The Legislature would be handicapped. It would be a stumbling block for any future legislation if that should be adopted as it is here, and the Legislature should be free and untrammeled. The Legislature might take away the fund from the Regents, they might reduce the number to nine, but those nine would still remain and the University of the State of New York would still remain, whatever system they might want, or however much they might desire to unify the educational system in this State. I do not wish to go into the discussion of that at the present time, but I only wish to say that the amendment would not save it, and I would say that, in my opinion, it would be a stumbling block, and my opinion is that the only way is to strike that out and leave the Constitution as it was in relation to that matter, because it is all statutory, whatever powers we have in relation to the educational interests of the State in both branches of it; that it should be still left to the Legislature if they in their wisdom see fit to unify the system, and there is nothing in the Constitution which should be a stumbling block in the way of that legislation. Hence, I am opposed to the amendment.

Mr. Hawley — Mr. Chairman, I do not recognize very much the force of an argument against this amendment which comes from a gentleman who desires to kill the section itself. I repeat what perhaps was not understood by the committee, that the sole purpose of the amendment which I have offered is to say in clear and distinct language what the committee means to say, but what I

think as a matter of law it fails to say; and the committee say that if I am right in that construction then they are with me and have no objection to the insertion of this amendment. I believe that I am right, and the amendment is not in hostility to the section, because I am heartily in favor of the section and I trust that the friends of the section will endeavor to protect it, and not take arguments for the amendment from sources hostile to the section itself.

Mr. Choate — Mr. Chairman, I trust that the amendment of Mr. Hawley will be adopted, and if the chairman of the committee will declare, as he has in substance declared, that it is intended only to carry out the purpose they had, I am sure that it will be. The section ought not to be left equivocal. I agree with Mr. Hawley that as it stands the probable construction would be to maintain in that corporation, free from subsequent control by the Legislature, all the powers that it had at the time of the adoption of the article.

Now, Mr. Chairman, I believe that Columbia College alone, of all the institutions of learning in this State, has any rights that are free from control by the Legislature. Every institution under the control or supervision of these Regents is an institution created by the State, subject to the absolute control of the State, and supported in a large measure by the money of the State; and as a general constitutional principle it cannot be denied or doubted that the State at all times ought to have absolute control of them all.

Mr. Hirschberg — Mr. Chairman, the amendment proposed by Mr. Hawley may be all right, but, if so, it seems to me that it is not couched in apt phraseology. The Educational Committee found nothing in the Constitution on the general subject of education. There was simply the provision in reference to the funds and their disposition. They found two systems of education grown up in the experience of the State; the common school system and that which is known as the system of secondary or higher education. They designed to recognize both, to recognize them by simple language, which should be perfectly free from the slightest suggestion or suspicion that it interfered in any way with the Legislature or the people modifying, developing or elaborating these systems. They accordingly in the first section provided that the free school system shall be continued, and in the second section, that the University of the State of New York shall be continued. Having done that much, the suggestion was made that a mere provision continuing the existence of the University might be destroyed hereafter by legislative action in reducing the number of Regents to a merely nominal number, reducing them to one; and this final sec-

tion was put in to prevent the reduction being carried below nine. Now, everything would be accomplished by a simple statement that the number of Regents should not be reduced below nine. The objection to the section as amended, as the amendment proposes it, is that it is an unnecessary continuance of the language referring to the corporate powers and privileges of the University, and that objection has not been removed by the language of the amendment. I would suggest, then, that the amendment be, and would offer it as an amendment to the amendment, that the number of regents should not be reduced below nine.

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

Mr. Hirschberg — Yes.

President Choate took the chair and announced that the hour of one o'clock had arrived, and that the Convention stood in recess until three o'clock in the afternoon.

AFTERNOON SESSION.

Friday Afternoon, August 31, 1894.

The Constitutional Convention met at the Capitol, at Albany, August 31, 1894, at 3 P. M.

The President called the Convention to order.

Mr. Parmenter — Mr. President, I am suffering with a very severe cold, and I would like to be excused for the evening session and for to-morrow.

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

Mr. Kellogg — I desire to be excused for to-morrow's session.

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

Mr. C. H. Truax took the chair in Committee of the Whole.

The Chairman — The Convention is in Committee of the Whole upon general order No. 61. Are there any further amendments to section 2?

Mr. Peck — Mr. Chairman, what will become of Mr. Hirschberg's proposed amendment? What disposition will be made of it? Will the action upon it be postponed?

The Chairman — The action upon it will be postponed.

Mr. Goodelle — Mr. Chairman, I would like to have the amend-

ment offered by Mr. Hirschberg to the amendment of Mr. Hawley read, to see what form it is in.

The Chairman — The Secretary will read the amendment.

The Secretary read the amendment, as follows:

Strike out all after the words "New York," as they occur the second time in section 2, and insert "the number of regents shall not be less than nine."

Mr. Hirschberg — Mr. Chairman, the suggestion I made was that the sentence should read "the regents shall not be less than nine in number." I do not want to be misunderstood by the committee. Personally I do not feel that there is any force in the suggestion that this line confirms the existing corporate powers of the University of the State of New York. The object of it is simply to name the number of Regents, and all it means is that no less than nine Regents shall ever exist to govern the University, or to exercise such corporate powers as it may have by law. I am at a loss to see how the construction suggested by Mr. Hawley could be seriously entertained. The design of the committee was in no way to fetter the Legislature, but to simply recognize the existence of two systems and put them in the Constitution; one as a corporation known as the University of New York, whose Regents should consist of nine persons at least, to govern the corporation, to exercise its corporate powers; and that, of course, means such corporate powers as are conferred by law; and the other as a recognition of the necessity of a common school educational system. I am in favor of the sentence as it appears in the report of the committee.

The Chairman — Mr. Hirschberg does not offer an amendment.

Mr. Hirschberg — I do not withdraw my amendment; my amendment is one changing the phraseology of the pending amendment for the consideration of the Committee of the Whole.

Mr. Peck — Mr. Chairman, I hope that the change suggested by the gentleman from Orange will not prevail, for this reason: It would leave the section saying that a corporation is hereby continued, that corporation being a corporation formerly known as the Regents of the University, the name of which has recently been changed to that of "The University of the State of New York." Now what does the word "continued" mean? Does it mean simply that the name is to be continued? Does it mean that a certain entity, something which has been known to the history of this State almost from its beginning, is to be continued? And if it is

an entity, if it is a corporation to be continued, what is a corporation without corporate powers? I think that no good draftsman in any institution of any kind would allow such a question of construction to remain if it were possible to eliminate it. It is said that this corporation is continued, subject to the same powers as the present corporation is now subject to. I contend that that is not it; that what is continued is not the powers of the Legislature to visit that corporation and to modify its corporate laws, but it is the corporation itself that is continued with its corporate powers. I do not wish to impose my construction of that sentence upon this committee, but I say to this committee that it is a very dangerous thing to leave a construction of that kind in the Constitution, because you cannot tell what construction might be given, and it would be very likely to be influenced by the equities and character of the first case that was presented to a court as to how the court would turn upon it. At all events, I think that it is too dangerous a way to leave it, and that it should be modified and actually express what we intend, which is simply to give a constitutional recognition to this body without conferring upon it any powers in such a way that they cannot be modified, governed and controlled by the Legislature hereafter as they have been heretofore. And I am further confirmed in that position, the position which I take, the construction which I give to it, because we say here that the corporation is to be continued except in one respect, that respect being the number of Regents. Well, when we make an exception, when we continue a corporation except in one particular, do we not in every other particular continue it in existence as it exists to-day? I think there can be no doubt about the fact that it is a very dangerous expression and ought not to be left in the Constitution in that way. As to the criticisms that were made in presenting the resolutions by the gentleman from Orange (Mr. Hirschberg), I think he is mistaken, because when we say that its separate powers are to be exercised by a continued corporation it seems to me there can be no question but that that corporation and its powers are continued. And if they are, if they become a part of this Constitution, then they are constitutionalized so that the Legislature is forbidden either to diminish or to increase those powers. There is no power left anywhere until another Constitutional Convention meets, or a constitutional amendment is proposed to and passed by the people to change those powers. And, therefore, I say that, there being no difference, so far as I know, in this committee, as to what is desired to be done, that it should be done in such a way that there can be no mistake about it. I hope that Mr. Hawley's amendment

will prevail, and that the amendment proposed by the gentleman from Orange will not prevail.

The Chairman put the question on the adoption of Mr. Hirschberg's amendment, and it was determined in the affirmative, by a rising vote, 36 to 23.

Mr. Peck — Mr. Chairman, I call the attention of the Chair to the fact that no quorum voted.

Mr. Holls — Mr. Chairman, I think a quorum is present.

A count of the House being taken, it was announced that a quorum was present.

Mr. Choate — Mr. Chairman, is it too late to ask for a rising vote upon the question, now that there is a quorum present?

The Chairman — We have had a rising vote; the Chair has announced the result.

Mr. Holls — Mr. Chairman, does not the question now arise upon the amendment as amended?

The Chairman — There are no other amendments except Mr. Hawley's amendment.

Mr. Holls — Mr. Chairman, that was amended by inserting Mr. Hirschberg's in it, and the question, as I understand it, is on Mr. Hawley's amendment, as amended.

Mr. McIntyre — Mr. Chairman, I move to strike out section 2.

The Chairman — Mr. Hawley has the floor.

Mr. Hawley — Mr. Chairman, I am advised that a number of gentlemen in the distant parts of the hall voted on the amendment of the gentleman from Orange under a misapprehension as to what was the question before the committee. I do not know whether that has put the matter beyond the control of the Convention or not, but it does not seem to me that the amendment of the gentleman from Orange, which now apparently has been passed by the committee, meets the difficulty at all. It does not put within the control of the Legislature any of the corporate powers of the Regents of the University as constitutionalized by this amendment; and we are met at once by some of the numerous absurdities that result from this action by looking into the University Law. We have now, if we pass this section, constitutionalized the Regents of the University, with the corporate powers that they have to-day, and we have said that these corporate powers shall not be exercised by less than nine Regents, and among the corporate powers which we have thus put into the Constitution are the corporate powers given to that

body by the University Law, and the University Law provides that it shall require ten Regents to constitute a quorum. The University Law also provides that no employe can be removed or his salary changed, of this corporation which we have now constitutionalized, without a vote of ten Regents. And yet we have tied the hands of the Legislature, and said that a board of nine Regents shall exercise, by some impossible power thus to be conferred upon them, the duties which the statute says, which becomes a part of these corporate rights, shall be exercised by not less than ten. Now, it is to avoid just such questions as these and to place the whole question within the control of the Legislature ——

Mr. McIntyre — Mr. Chairman, I rise to a point of order. There is no motion before the House.

The Chairman — Mr. Hawley is speaking to his amendment as amended by Mr. Hirschberg.

Mr. Hawley — It is to avoid just that state of affairs, and not from any unfriendliness to this section, but with an earnest and honest desire to see in the section just precisely what the chairman of the committee says they meant, and to see it so plainly that there can be no misconstruction or difficulty about it. And I hope that somebody who knows more about the machinery of a parliamentary body will point the way out of the difficulty in which we have found ourselves by the passage of the amendment of the gentleman from Orange.

The Chairman — The Chair will state the situation as he understands it. The gentleman from Seneca (Mr. Hawley) made an amendment in line 8, of page 1. The gentleman from Orange (Mr. Hirschberg) amended that amendment so that it reads as follows, in the latter part of line 7 and all of line 8: "There shall be not less than nine Regents." The question now before the House is upon Mr. Hawley's amendment as amended by Mr. Hirschberg.

Mr. Forbes — Mr. Chairman, I move to reconsider the vote by which the amendment of Mr. Hirschberg was adopted.

The Chairman — The question is on the motion of Mr. Forbes to reconsider the vote by which Mr. Hirschberg's amendment to the amendment was carried.

Mr. Holls — Mr. Chairman, in view of the slight number of gentlemen voting, I hope it will be carried, because it is very important that this question be settled clearly. As I have already stated this morning, it is a question which does not enter into the intention of the committee at all, and it is eminently proper that we should have a full discussion.

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

The Chairman — The question is on Mr. Hirschberg's amendment to Mr. Hawley's amendment.

Mr. Hirschberg — Mr. Chairman, let me suggest that the Secretary read Mr. Hawley's amendment to see if the language of that cannot be changed so as to meet the whole suggestion.

The Secretary read amendment of Mr. Hawley.

Mr. Hirschberg — If you insert the word "shall" before "be" it will read smoothly; before the second "be."

Mr. Hawley — I have no objection to that.

The Secretary read as follows:

"Shall be governed and its powers, which may be increased, modified or diminished by the Legislature, shall be exercised by not less than nine Regents."

Mr. Hawley — I accept the amendment, Mr. Chairman.

Mr. Holls — Mr. Chairman, now that Mr. Hirschberg withdraws his amendment, and there seems to be a general consensus of opinion that the amendment of Mr. Hawley will make the section more clear, I sincerely hope that it will be adopted in its present form, according to the last suggestion of the gentleman from Orange.

The Chairman— Does the gentleman from Orange withdraw his amendment?

Mr. Hirschberg — Yes, sir; with that modification.

The Chairman — The question is upon the amendment of the gentleman from Seneca, Mr. Hawley.

Mr. Deyo — Mr. Chairman, I would like to see inserted after the word "diminished" these words, "whose terms of office may be regulated." It seems to me that as this now stands it may be possible that the term of the Regents, which is a life term, will be so continued. I wish to guard against that. If the Legislature sees fit they may alter the term.

Mr. Holls — Mr. Chairman, I do not see how there can be any question ——

The Chairman — The gentleman has not offered any amendment. He said he would like to see it inserted.

Mr. Holls — Mr. Chairman, it seems to me there can be no ques-

tion whatever about the power of the Legislature to change the term of the Regents. That is clearly implied in the words "corporate power." The entire regulation of the work of the Regents is, under this section, as heretofore, continued in the supreme power of the State of New York as represented in its Legislature, and I sincerely hope, therefore, that the amendment of the gentleman from New York, if pressed, will not prevail.

The Chairman — Does the gentleman from New York press his amendment?

Mr. Holls — No, it is withdrawn.

The Chairman — The question is on the amendment of the gentleman from Seneca (Mr. Hawley).

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

Mr. Cookinham — Mr. Chairman, I offer the following amendment:

The Secretary read the amendment as follows:

Add at the end of section 2 the following: "The Regents of the University shall also have power to appoint and to remove the Superintendent of Public Instruction."

Mr. Cookinham — Mr. Chairman, it is not my intention to argue at length this question. It is one of vast importance. I have offered the amendment to sense the Convention upon this most vital question, as I believe it to be, in regard to this whole body. I am well aware that there have been good and bad Superintendents of Public Instruction. I am aware that it is a blow at the political method of appointing them. I am aware that it strikes at the wishes of many gentlemen who desire to assist their friends in attaining this, I may say, exalted position. Nevertheless, I believe it would be for the interests of the schools of the State of New York, I believe it would be in the interests of all education and culture in the State of New York, that this position should be taken away from a political body and vested in this body, which, although it is created by the elections from the respective great parties, is one in which politics has never entered. There are unquestionably many gentlemen present who have given this subject great attention, and who are able to inform us, who are not upon the committee, and to give us information as to the results in the past and the probable result in the future, provided a change is made. I hope, Mr. Chairman and gentlemen, that for once the great Republican party, which has been, is now, and always will be, the friend of education, will be

joined by the great Democratic party, the vast majority of which here, and everywhere else, are in favor of education, morality and culture, and that we will establish, once for all, the head of the entire school system of this State, by taking it once and forever out of politics.

Mr. Kellogg — Mr. Chairman, I am very sorry indeed to be compelled to disagree with the proposition of my learned colleague, Mr. Cookinham, that the Superintendent of Public Instruction should be elected by the Board of Regents. In the first place, Mr. Chairman, there is no call for this proposed amendment by the people. In fact, I undertake the assertion that an overwhelming majority of our people are bitterly opposed to the proposition. The school system of our State, the common school system as now constituted, I undertake to say is not surpassed by any civil division in the world. It stands without a rival, and without a peer anywhere. It is the result of more than a century's growth. Suppose, Mr. Chairman, that the Superintendent of Public Instruction is elected by the Board of Regents. You have a body of men who have life tenures. Suppose, and the supposition is possible, that a conspiracy is formed in the election of the Board of Regents from year to year, by some peculiar sect or those who have peculiar beliefs, and they get control of the school system of the State, it would be possible for them to draw the knife of assassination and with one fell blow destroy the common school system of our State, which has been maintained and advanced during the marvelous progress of our great State. I concede that the Board of Regents have been crying for this pap for a number of years. They hanker after it as a cat hankers after new milk, but there is no demand by the people of the State for it. It means, Mr. Chairman, simply this: that instead of the common school system of the State being carried on and developed by those who understand the elementary principles of education, by those who understand the teaching of A B C, writing, reading and arithmetic, it means that the poor little infants, when they enter the common schools, instead of being placed upon A B C, are to first learn theology, astronomy, geology, mental science, political economy and so forth, and be taught how far it is to the moon. That is what it means, nothing else, more or less. Instead of a demand on the part of the people of the State for this, they are not only opposed to it, but the school commissioners of the State are opposed to this radical proposition. I have in my possession letters from the school commissioners from my county, in which they say, do not let such a measure as this pass the Constitutional Convention unless you wish to turn over the school

system of the State into the hands of those who not only do not want to understand the best methods of teaching the elementary principles of education, but who are high-toned namby-pambies, ridiculed by school children everywhere. Let not the State take this uncertain step. Let the common school system remain in close touch with the people in the future as it has in the past. Let it remain where it has made such glorious progress and where it will win yet greater victories in the future.

Mr. Dickey — Mr. Chairman, if the Legislature of this State is good enough to elect the Regents, as they do, they are good enough, sir, to elect the Superintendent of Public Instruction. (Applause.)

Mr. Holls — Mr. Chairman, this motion puts a number of the members of the committee into an embarrassing position. I think, sir, that a very strong argument can be made — an argument which, as I have no hesitation at all to say, is absolutely conclusive to my mind, in favor of this motion. I know that every objection urged against it by my friend from Otsego, and the objection which seems very plausible as argued by my friend from Orange, can be answered, if the question was now to be debated. But I, at least, do not think, first of all, that this Committee of the Whole, now sitting upon this report of the Education Committee, is a debating society, in which a proposition which is not reasonably sure to be adopted, as I fully believe of this amendment, should be uselessly debated. I will, therefore, confine my remarks upon this motion, to saying that the section as it stands, giving recognition to the university and putting it beyond the reach of hasty, ill-advised and possibly partisan legislation, has been adopted by a committee in which very different views upon the subject were prevalent, and that, as finally adopted and submitted to this Convention, the section represents the combined views of by far the larger portion of the committee; every one of them having to yield something. Under these circumstances, Mr. Chairman, much as I deplore that this opportunity which I hoped would be grasped by this Convention to unify the educational system of the State, to take it out of the reach of party politics, and to take a step forward in the line of educational reform which, in my opinion, would be very great and very grand; much as I regret that this opportunity should not be utilized, I still feel it to be my duty to ask this Committee of the Whole and this Convention to support the report of the committee unchanged, except as now improved by the amendment adopted on motion of Mr. Hawley. It is useless, I repeat, to go into all the circumstances on both sides of this question as to whether the

superintendent should be appointed and under the control of the Regents. The arguments for unification have been presented to every member in this Convention, in print. They are simply unanswerable. The most eminent educators of the State have unanimously asked for this change. Andrew D. White, who has been properly called the Educational President of the United States; his worthy successor, President Schurman, of Cornell; Prof. Nicholas Murray Butler, the foremost of all the younger leaders of Educational Reform; President Low, and others too numerous to mention. From outside of the State the venerable Henry Barnard, the Nestor of American education, and Dr. William T. Harris, the famous head of the Bureau of Education in Washington, urge the same reform. Personally, I am proud to agree with them, and only deep conviction of a higher duty prevents me from supporting the amendment of the gentleman from Oneida. The objections to it are hardly worthy of consideration, and, in my opinion, have been refuted conclusively before our committee. But I appeal to the members of this Convention upon this ground, that it is manifestly impossible that a question presenting so many technical points, and so many matters of detail, can be as elaborately discussed and decided in the Convention or in the Committee of the Whole as it can in a standing committee; and it seems to me that the wisest and safest course, the one which also will save most of the valuable time of this committee and this Convention — and this very article will require a great deal more of debate — would be to support the sections as reported by the committee. It does not represent my views, as I wanted them expressed. It does not represent the views of any other one member of the committee; it does, however, represent an honorable compromise. It represents what I think the entire committee, with very few exceptions, consider attainable, and it represents the one request, moreover, which was made officially of this Convention, by the Board of Regents of the University itself. The Board of Regents asked to be recognized in the Constitution. Their request is eminently proper. It redounds to the highest honor of this State that its Constitution should hereafter recognize that noble institution. That was the Regents's request. They stood ready to assume greater responsibilities, if this Convention in its wisdom should put them upon them. They stand ready to do so now. But they did not ask for more, and after we had examined the question very carefully, the majority of the committee decided that this section was in itself a great step forward, and that hereafter the Legislature might be, after all, counted upon to go forward further on the same lines. I do not

sympathize with gentlemen whose one great consideration in making constitutional amendments is distrust of the Legislature. I do not believe now, that the Legislature, which has the power directly to elect this important officer, would fail to surrender this power if the arguments are brought forward properly. If it is, as I believe it can be, made to appear that it is in the public interest, I do not think that the Legislature would hesitate to deprive itself of this power for the public good, and vest it in the Board of Regents. There is nothing in the Constitution, of course, to prevent it, and, therefore, while I subscribe to this section as it stands, with some regret, I do it, with the hope, which I think is shared by every member of the committee, that the section as it stands is a step forward and that more will be accomplished by the Legislature hereafter. (Applause.)

Mr. Durfee — Mr. Chairman, I move to strike out from the amendment of Mr. Cookinham, the words "and to remove," the effect of this motion being to confine the power proposed to be given to the Regents of the University to the election of the Superintendent of Public Instruction.

The Chairman — The Secretary will read the amendment as amended by the gentleman from Wayne.

The Secretary read the amendment as follows:

Mr. Cookinham moves to add, at the end of section 2, the following: "The Regents of the University shall also have power to appoint and to remove the Superintendent of Public Instruction." Mr. Durfee moves to strike out the words "and to remove," so that Mr. Cookinham's amendment would read: "The Regents of the University shall also have the power to appoint the Superintendent of Public Instruction."

Mr. Cookinham — I will accept that suggestion.

Mr. Durfee — Mr. Chairman, it is a source of sincere regret that in the performance of what seems to me to be a great public duty, I am compelled to differ with the chairman of the Committee on Education, who has just taken his seat. He stands for the report of the committee, because, as he truly says, that report was the best that was obtainable from the committee; although it does not, as he declares, represent his own personal judgment. I shall not, Mr. Chairman, permit consideration for the report of this committee to control my action in a matter which I regard as of the importance of the one before us; but I shall appeal to the intelligence and to the patriotism of this committee to put into our report, if it is

not already in it, such provision as shall conduce, in the judgment of the committee, to the welfare of the State.

What, then, Mr. Chairman is the condition in which we are placed? We have in this State, in this matter of paramount importance, the education of the people, a dual system; the Regents of the University having control of higher education, and the Superintendent of Public Instruction having control of elementary education. Necessarily, friction arises between these two departments. Necessarily, there arise controversies, and controversies do exist and have existed, and will exist as long as this system prevails. The teachers of the common schools are drawn, for the most part, from the academies, which are under the control of the Regents, and yet the certificate of the Regents of the proficiency of those teachers is not recognized by the officers who have in charge the appointment or licensing of these teachers. This is one instance. There are numerous others. It is not so much the fault of the individuals in charge as it is the fault of the system itself. This, then, is the first evil that arises from the system which prevails, and which has prevailed for many years. And it is an evil, Mr. Chairman. Gentlemen may laud our common schools, they may declare that there is nothing superior, nothing equal to them, in any State in the Union, or in any foreign land. But gentlemen who know the common schools know well that however good work they may have done in the past, they come far short of filling the place which they ought to fill. Not long ago a gentleman as well acquainted with the working of the common schools throughout this State, perhaps, as any man, who has for years been engaged in visiting them and in attendance upon teachers' institutes, deplored, in my presence, the low standard of our common schools, and insisted that there had been no perceptible advancement in the influence which our common schools exert for the last thirty years. Such a condition of affairs as this, Mr. Chairman, is intolerable in this great State.

Another evil that results from this State of affairs is, that the election of the Superintendent of Public Instruction by the Legislature is controlled by partisan considerations. Here is an officer, elected once in three years, holding a high position at a high salary, and partisan considerations control his election. They always have, and, as long as human nature remains unchanged, they always will. The result of that is, that no man who is, in the outset at least, well qualified and fitted to fill the place — the best qualified and fitted to fill the place — will take it, because the tenure of his office is necessarily uncertain. No matter how excellent an officer he may be, no matter how efficient and capable, when his term expires, if the

Legislature happens to be composed of members of a party different from that to which he belongs, he goes out and a new man comes in. We have had numerous illustrations of this in recent years, when some of the most efficient and capable men that have ever occupied that office have been deprived of their official station upon the expiration of their terms by a Legislature of the opposite political faith.

A further evil results. For the best operation and conduct of the schools, a well-considered and harmonious system is essential. This cannot be developed in a day nor a year, nor in the term of one superintendent. It is a growth. It must be continued from term to term, and can only be brought to perfection as the product of continuous thought and continuous effort in the same direction, controlled by a single guiding mind. Such a result is impossible, when a man who originates and carries forward a method of that character, or a system of that character, is displaced at the close of his term, and a new man foreign to the method, foreign to the thought, takes his place.

Mr. Chairman, what is the remedy? In the first place in can only be gained by bringing both systems, both branches of education, the elementary and the higher branches, under one supervising head. In no other way can unity, can harmony even, be secured between the lower and the higher education. Clearly this must be so. And how shall that be accomplished? I presume we are all agreed that it would be a desirable thing to have the school system of the State brought into harmonious relations. I presume we are all agreed that there should be one harmonious system, well developed from the lower steadily upward without a break to the higher and the highest education. But how shall it be accomplished? We were agreed in committee so far. When we came to consider the methods by which this result should be obtained, we differed. For my own part, Mr. Chairman, I believe that the simple direct method, and one which would surely produce the result that we seek, is that proposed in the resolution offered by the gentleman from Oneida. Let the superintendent be elected by the Regents of the University and out of confusion will come order, out of conflict will come harmony, and there will be developed and carried forward, a system of which we may indeed be proud. The Regents of the University are a body of men of wide and varied experience. They are men familiar with affairs. They are men as well qualified as any body of men in the State of New York to make the selection of a capable and efficient officer. They are a non-partisan body. Though a majority belong to one political faith, nevertheless, in all their

action, they have been entirely non-partisan. A majority composed of Republicans elected George William Curtis, after his defection from the Republican party, Chancellor of the University. A majority composed of Republicans elected Chancellor Upson, and Vice-Chancellor Doane himself a Democrat; and in all their conduct in relation to the trust which they have in charge, their action has been entirely non-partisan. We have, then, in this body, the means of securing unity for the system of schools in our State, and the greatest capacity and efficiency in the individual who shall have charge of the department of elementary education.

It seems to me, Mr. Chairman, that this subject is worthy of the most careful and deliberate consideration of every delegate here present. For my own part, profoundly impressed with the importance of the action we are about to take, and believing that if this Convention were to submit for the suffrages of the people no other measures of reform than this, it would still deserve well of the people, and that if this measure should be indorsed by the people at the polls, as it would be, it would inure to the welfare of the State and to the security and permanence and elevation of the institutions which we love, I hope the amendment proposed by the gentleman from Oneida will prevail.

Mr. Moore — Mr. Chairman, I rise to speak upon this question of the gentleman from Oneida, in obedience to a request from my constituents, both personal and by letter. They have implored me to use what little influence I may have, by my voice and by my vote, against this amendment. They are against it. They do not wish to take away from the people, through the Legislature, the election of the Superintendent of Schools. Much as I deplore a double-headed educational bureau, I would not make it single-headed, Mr. Chairman, by putting the Superintendent of Education under the control of the Board of Regents. I would rather create a great officer to be elected by the people of this State, who should be the head of the Board of Regents and at the head of the educational system of the State, an officer of the people. But, in saying this, I do not decry the labors of this board, this hundred and some years old board. There is stability in age, but, Mr. Chairman, when you get such a board as that, who send out questions month after month which there is not a man in this House could answer without years of study, and expect small children of eight or ten or twelve or fifteen years of age to answer, and pass at least seventy-five per cent through the Regents's examination, so that the Regents's examination has become a horror in every household in this State, I say it is about time that the people resumed the supervision of the

Board of Regents's institution, leaving to them the supervision of the schools of the State. Mr. Chairman, in behalf of my people, in behalf of those who have requested me to speak here, I hope this resolution, as well as the amendment of my friend, Mr. Durfee, who has just spoken, will be voted down by this Convention.

Mr. Platzek — Mr. Chairman, in our committee I believe that this question received greater consideration than any other that was presented to it. The unification of the educational system of this State very properly addressed itself to every reasoning mind on that committee. For myself, I started out with almost a firm conviction that there was an absolute necessity to unite in one central body the entire system of education, primary, and secondary or higher education. We had before us some of the leading educators of the State, and even others who came from without our State, to enlighten us upon this question. We had before us and heard two of the Regents, the secretary of its board and the superintendent of instruction; likewise the principals of academies, principals of high schools and teachers. After we had listened to these splendid gentlemen and expert educators, we discovered that we would have to begin to think for ourselves, and find proper solution of the confusion into which the committee were thrown by the diverse views of the educators and officials that appeared before them.

In my judgment, there is danger to the school system and to the adoption of the entire Constitution, which we are seeking to frame for the suffrage of the people, if we intrust or confer upon the Board of Regents the power to select the Superintendent of Education. Under the system as it now exists, there is an absolute separation between the Superintendent of Education, who looks after the district and the common school, the place where the people are instructed, where the poor man's child receives his education, and the University of the State, controlled by the Board of Regents, doing a most excellent work, magnificent men of whom the State should be proud, for year in and year out they have rendered service to the State and have exalted the higher educational systems of our State to that degree that it is unexampled, not alone in any State in the Union, but in any other country or nation on the face of the earth. I want them to maintain that high place, and I want to keep them separate and apart from the public or common and district school. The university, or the Regents acting as and for the university, have built up a reputation for higher education, for conducting a magnificent State library and a circulating library, and for examinations and improvements in collegiate institutions, where professions are taught of which this State is very

properly proud and appreciative, and for which the acknowledgment of every citizen of the State is due to each and every one of them. But the very moment we seek to unite the lower, that is, the primary or common schools, with higher education, from out the length and breadth of this State, as my friend, Judge Moore, says, there will come a rumbling and a noise of disapproval. There will be a fear on the part of the poor people that the funds raised for education in this State will be devoted more largely to higher education, to the neglect of the common and school districts. I, for one, favor a higher education. I, for one, would be willing to vote to appropriate money for secondary education, but I would not cast that vote or give it my approval until every child within the State was assured that there was ample room and accommodation and proper instruction in the district and common school. The common and district school instruction is an absolute necessity. The secondary school and the higher school are not absolute necessities, except in so far as the teachers are educated in these higher schools to go out and instruct in the common and district schools; and I am afraid, sir, that the people would look at it in that light, and, instead of approving our work, would most heartily disapprove of it.

And another thing. The Board of Regents, as constituted, are elected for life. I am not going to attempt to be witty, and say they never resign and seldom die, but here we have a magnificent body of men associated among themselves, wedded to their own notions, fond of their own ideas, working in one groove, satisfied with what they accomplish; and there is danger that there will be a lack of breadth, of spreading out, of diffusion, that may endanger the educational system of the State also.

There are other reasons which it is unnecessary for me to assign, because I do not care to occupy too much of the time of the Convention. I think I have suggested sufficient to show that we had better leave the amendment as the committee has presented it, after deliberation and mature consideration. I hope that it will so stand, and that the amendment of Mr. Cookinham will not prevail.

Mr. Woodward — Mr. Chairman, I do not wish to take much time, but I would like to say a word upon this question. I spent twenty-five years of my life in school, either as a teacher or a scholar. I taught quite a number of years, and was town superintendent of schools in two different towns. I have had some experience, therefore, in education. When the question was first broached to me of the appointment of the State Superintendent of Schools by the Regents, it struck me favorably; but when I came to reflect upon it, and think of the questions that they send out to our common

schools, the questions that no mortal man alive could answer, it struck me that for a century, at least, they had not been inside or seen or known what there was in common schools; and for that reason I don't think they are the sort of men to appoint the State Superintendent of Schools. Some of their questions were as indefinite and incomprehensible as this: "Can a chimera ruminating in a vacuum devour second intentions?" And I would suggest this as one of the questions they would send out for primary classes. (Laughter.)

Now, the Regents of the University are old men, selected because they have achieved something in the world of science or in the world of languages; they have achieved something, and, therefore, they are selected as Regents of the University, and they become superintendents of higher education. I am in favor of higher education. During my teaching I fitted many boys for college, some of whom are doctors of divinity at the present time. (Applause and laughter.) For that reason, among others, I claim the right to speak, for I have always fought on the side of education. I think the higher branches of education taught in our schools make better scholars in the lower branches than if only the lower branches were taught. One of the best English grammarians that I ever had in my school, and I had some that had taught three or four winters, was a boy not over twelve years old, but who had studied Latin and had commenced Greek, and there wasn't an observation or a remark in Brown's grammar but that he would cite at any time when it became necessary in parsing or disposing of words. I speak of that as showing the influence of the higher branches. In a school that I taught one winter there had been a teacher there for five years, that had taught the languages. The people became dissatisfied, they said the languages took too much time and that they would not have the languages. They employed a Normal school graduate who could not teach languages. It was some time ago, when they did not teach the languages at the Normal schools. He taught for a year, and they became dissatisfied with him, and they had a board of trustees that were in favor of trying the languages again. I happened to be the individual that was employed by them for the coming winter. I made a rigid classification of the different classes, giving every class its proper time, and training my scholars in arithmetic and algebra and so forth, upon rapid work. I sometimes spent a week with scholars that had been through arithmetic, training them on rapid work, so that when they came to an example they could work like lightning. The teachers frequently came in at the examination and said: "We can't follow your classes, they work

so rapidly." By so doing, and a proper arrangement with the school of 120 scholars, I was enabled to fit boys for college in Greek and Latin, and nobody complained. There was no difficulty whatever. It did not interrupt. The fact was, it offered an inducement to those in the lower classes to hurry up and get through their arithmetic and their algebra and the higher branches so as to study the languages, and it had a good effect.

Now, I would have a man for State Superintendent of Schools that was a live man. I would not have a fossilized individual (laughter) that fifty years ago studied the languages and pursued the studies that they had in our colleges at that time, and never had been into a common school, and never had been into a teachers' institute. As town superintendent, I conducted more or less teachers' institutes. I do not speak of this as boasting. I speak of it to show that I have some little knowledge with reference to these things. A great many things have been introduced into the common schools latterly that were not in forty or fifty years ago, when these men were in common schools, if they ever were, and a great many of them never were in common schools; they were educated, perhaps, in academies or select schools, or something of that kind, and they gained some reputation and were put in as Regents. They are good in their place. I value them highly. I am in favor of the Regents of the University. There are many of them worthy men and well qualified for the positions they occupy, but they are not in a position to know who the best man is for the common schools. They are too far behind the age for that. (Laughter.) If I were to arrange the election of the State Superintendent of Schools I would have it done by the people. The people should nominate and elect him, and then there would be some care in the selection of the individual. The only trouble with the Legislature is, they don't always look to see whether the State Superintendent of Schools is a fit man or not. I have found him very frequently ignorant, entirely ignorant of school law. In one case I wrote to him at the request of the trustees of our school at Batavia, to know whether a certain Catholic institution was entitled to a portion of the money raised by taxes there. He said they were not. He did not know of any law that permitted it. I made a brief and called his attention to the statute, and also to some decisions in the Court of Appeals, or the Supreme Court, I don't recollect which now, in a case that arose in the city of New York, and also a case that arose at Rochester, and I sent him down that brief. He then said they were entitled to a share in the money. They were claiming fifteen hundred dollars of the money raised by tax there. I told the trustees

that they were not entitled to it. As this did not go up to him on appeal, we had a right to litigate it. The Catholics commenced a mandamus to compel us to pay it, and I was employed to defend that. I did so at Special Term. The Special Term decided they were not entitled to it. It then went up to the General Term. I argued it at the General Term, and the General Term also decided that they were not entitled to it. Then they did not see fit to go any further. (Laughter.) I speak of that as showing the lamentable ignorance, sometimes of the State Superintendent. I could mention other instances. In one case he said that this department has always decided that where taxes that are not assessed on the assessment-roll are fixed upon a party, that there must be a personal notice. I wrote a review of that, in which I called his attention to the fact that there were six or seven books published by the department in which they said it was not necessary. A copy of that was sent to him, and I guess he perused it and discovered it, for I pointed out the page where he would find that law. I would, therefore, like to see a little more care on the part of the Legislature in electing State superintendents, and if they are not qualified in point of law, they should employ some lawyer that is, that understands it. (Laughter.) I do not wish to take the time of the Convention any further.

Mr. Root — Mr. Chairman, I have the highest regard and esteem for the members of the Board of Regents. For many of them I have a life-long affection. For their work I have only admiration and commendation. I think they are an honor to the State of New York, and that every citizen of the State is under great obligations to the eminent men who, without compensation, with zeal, fidelity and laborious effort, superintend the unsurpassed system of higher instruction in this State. My personal wish would be to agree to the amendment which Mr. Cookinham has offered. I should be glad to see the Board of Regents elect the Superintendent of Public Instruction; but, sir, I believe that our Committee on Education, after months of listening to the advocates of two extreme ideas, after thorough and impartial consideration, have reached a safe, wise and conservative means between the two extremes. And abandoning my personal views, I am for sustaining the report of the committee upon this subject. (Applause.)

Mr. Cookinham — Mr. Chairman and gentlemen, when I offered this amendment I was aware that the committee had been divided upon the question, standing, as I believe, 9 to 8. Since offering the amendment ——

Mr. E. R. Brown — Mr. Chairman, for the information of the gentleman ——

Mr. Cookinham — Mr. Chairman, I hope the gentleman will not interrupt me. I only want a moment's time, and then I will answer him. Since offering the amendment, I have consulted with the gentlemen on the committee who voted in favor of vesting the power of appointment in the Board of Regents; also, the chairman of the committee and the friends who would like to have the power vested in the Board of Regents, and we have agreed that the wiser plan will be to withdraw the amendment and to sustain the committee.

The Chairman — The amendment is withdrawn.

Mr. E. R. Brown — Mr. Chairman, I did not rise to any point, except to state that the report of the committee was nearly unanimous upon this question, being 10 to 4 at that time.

Mr. Moore — Mr. Chairman, may I ask Mr. Holls, the mover of this amendment, a question?

The Chairman — Not just now.

Mr. Moore — I simply want to ask one question for information, that is all.

Mr. Holls — The motion is withdrawn.

The Chairman — There is no motion before the House now. Are there any other amendments to the section?

Mr. McIntyre — Mr. Chairman, if there are no other amendments to be offered, I move to strike out section 2. My reasons are these, and I will be very brief: in the first place I do not think anything should be put into the Constitution of the State unless there is a reason and a necessity for it. Putting this into the Constitution does not change the law in any way from the shape in which it now exists, except in this respect. If it does anything, it simply creates the University of the State of New York so that it could not be changed, and fixes the Regents so that there cannot be less than nine in number. Now, I shall not say anything against the University of the State of New York, which is an institution that is without existence and is a mere fiction in fact; because our understanding of a university is one where instruction is given; undoubtedly the founders of this institution, at the time they founded it, had in view that here or in some other place in the State there should be a large university to which the people might come for instruction, the same as other universities not only in this State but in other countries. The Regents had the charge and management of that, and

out of that has grown a good thing, and the work that the Regents do I have not one word of fault to find with. I have no criticism to make upon the higher education of the State of New York. I only wish it was more. But the Legislature of this great State has from time to time passed laws favoring the Regents, and they have them now as they were passed and codified in 1892. So it seems to be perfect and complete, and I am going to take the time to call the attention of this Convention to the law that now governs the University of the State of New York, for the reason that I presume some have not given it as much thought as we who were on the committee gave to it. I am not going to read the whole law, but I will read some of the headings in relation to the law. The first page is confined to definitions; it defines academies and colleges, and universities; it says that "Regents means Board of Regents of the University of the State of New York. State Superintendent means State Superintendent of Public Instruction. Higher education means education in advance of common elementary branches, and includes the work of academies, colleges, universities, professional and technical schools and educational work connected with libraries, museums, university extension courses and similar agencies."

Now, those are the subjects which the University of the State of New York, through its Regents, now have control of. It gives the corporate name and objects: "The corporation created in 1784, under the name of Regents of the University of the State of New York, shall continue and be known as University of the State of New York. Its objects shall be to encourage and promote higher education, to visit and inspect its several institutions and departments, to distribute to, or expend or administer for them such property and funds as the State may appropriate therefor, or as the University may own or hold in trust or otherwise, and to perform such other duties as may be intrusted to it.

"The University shall be governed and all its corporate powers exercised by nineteen elective Regents, and by the Governor, Lieutenant-Governor, Secretary of State and Superintendent of Public Buildings, who shall be *ex-officio* Regents."

Now, there we have, in compact and complete form, the whole of the law in relation to the Regents, which puts it beyond any question of doubt; gives them the absolute power, as much as it would if it were mentioned in the Constitution of the State. The next question that comes to my mind is, why do you wish to put them into the Constitution? It is for the sole and simple reason that they think by putting it in the Constitution of the State of

New York, no power under heaven, no Legislaure of the State would ever have power to uproot them or root them out if it should ever become necessary; and I, for one, Mr. Chairman, am not in favor of putting into the Constitution anything that is beyond our control, unless we know beyond question that it is what we want in relation to the educational system of this State.

Now, we have still a further educational system of this State, and what is it? I will not read you the law of 1894. The Legislature passed laws in relation to the common schools, the State Superintendent of Public Instruction, and said what his powers and duties should be. He has charge of the elementary education of the State. The Board of Regents issue their pamphlets and tell you what they do, and what do they do? Why, the State has a magnificent library here. It belongs to the State; the secretary is librarian, and draws his pay for taking charge of it. They have museums of the State, and the State appropriates money, and they take charge of those. It has academies, scattered throughout the State, private as well as public, and what do they do? They simply look after those that are able to pass the Regents' examinations and appropriate certain moneys to them. But the great mass, the bone and sinew of our educational element, the common schools of the State, are the elementary schools. The first great duty of a State is to educate the common people. It is the primeval and first principle to commence at the bottom and educate the common people and bring them up to the point where they can work for themselves and get ready to receive a higher education. The State of New York, you would think, wanted to work down hill; commence at the top with your higher education, and then what? Let the district schools take care of themselves.

Now, gentlemen, I wish to say this, that I have not been on this Educational Committee for four months without learning some facts, and what are they? The very first week in which we were assembled, the Board of Regents made a grand charge upon this Convention, and for what purpose? They had an object in view. One member of that board came before the committee, and I, myself, asked him these questions. He said he wanted to have the Regents recognized in the Constitution. I asked him what for, and he said so that the Legislature can never do away with the Board of Regents. Then they said they wanted to have certain funds of the United States school money passed over to them. Why? Has the Legislature ever failed to appropriate for your support whenever you have asked for it? No; but we think that some-

time the Legislature may fail to appropriate the money, and we want to have a fund so that we shall not have to be dependent on the Legislature. What else do you want, gentlemen? We want to elect the Superintendent of Public Instruction. I asked why. Do you know anything about elementary education in this State? No; we don't. We attend to our higher education, but we want it so that he will stop fighting against us, and we will have the control of him. That was the milk, as the boy said, in the cocoanut; and that was all, and these three things were what they wanted. They did not succeed in getting it all, but at one time they passed a resolution that they be recognized in the Constitution.

Now, gentlemen, as I said, I have nothing to say against the Board of Regents; but you put into the Constitution anything that recognizes the Board of Regents of the educational system of the State, the head of the common schools and your Constitution is beaten as sure as fate. There is not a common school man throughout this State in the rural districts that would vote for this Constitution, if you put the Board of Regents in any way ahead of the elementary education of the State. I feel deeply in this matter. I don't think the clause, the way they have it fixed, is so but that the Legislature might control the Regents, but there is a doubt about it, and what is the necessity of having a doubt? There is no necessity for it whatever. I hope the people from the rural districts will stand firm and vote solidly against this, because there is no need of it. Now, why is there any other reason? I will be very brief and tell you another reason. I came here cherishing the fond hope that perhaps we might get a unification of educational interests in the State. I, for one, believe there should be. I believe there should be a board of education; you may call them Regents if you like; live, active men. I would like to know where the institution is that we put babes or decrepit old age in to do an active business. We want some active, energetic, middle-aged men to have charge of the elementary education of the State, and I did hope we might get a unification, but we could not do it. I hoped we might have from every judicial district one man that would be on this board of education, and they would elect the Superintendent of Public Instruction and have absolute charge, from the kindergarten up through the university and the higher educational elements of the State; have a unification that means something.

Now, gentlemen, leave the Constitution as it is. Leave the statutes as they are, and you have got something that you can unify this educational system when the people rouse up to it, and they are getting roused every day. Leave it as it is, and the

Legislature can unify this system of education, and we shall soon have one. We shall soon have something that will have charge of the elementary school from the lowest up through to the highest schools of our State. Why, to hear people talk about the elementary education of the State you would think it was perfection. I would like to get some of you gentlemen out of your cities, and your city schools, and your village schools, and go through the rural districts and look at the elementary education if you think it is perfection. Do you think a school-house eighteen by twenty-four, built with bare walls, unpainted, with a few hardwood seats in it, a deal table and a blackboard, without maps or globes, or any of the appurtenances that belong to a school-room, is going to elevate and educate the children of this State as it should be done? Why, the great State of New York spends money enough, if it was properly directed and if we had a Board of Education that was alive and active in the matter; and I, for one, believe that every single child within the school age, from the time he is old enough until he is sixteen years of age, should be taken in charge by the State in one way, as far as education is concerned, and should be educated. Do that and you would banish ignorance and you would add more to the perpetuity of the institutions of the State than in any other way. But the very first stumbling-stone would be to put this into the Constitution. Leave the statutes as they are, I say; let the matter rest as it is and we are all right. We can get unification hereafter, and if, in good time, the people of the State see fit to reduce the number of the Regents from nineteen down to nine; if they see fit to abolish the life tenure and give them a reasonable and respectable period of office; if they wish, then, to make the Regents the Board of Education, while keeping the University of the State of New York as a name, I have no objection to it whatever, but what I say is, leave it so that the Legislature can do something when necessary, and as long as we are not going to do it here, let us let the matter rest and strike out this section two, and you harm no one. There is no reason why you should stand by the committee, because, forsooth, they have seen fit to bring this matter here of introducing the Regents into the Constitution, unless your good common sense says so. I appeal to you, gentlemen, not to perpetuate this very erroneous thing.

Mr. Towns — Mr. Chairman, the reason why the Committee on Education thought it well to recognize the Board of Regents in the Constitution was because they wished to take it out of the unseemly contests that occur from year to year in this Assembly Chamber, and in the Senate Chamber across the way. They

thought that if there was anybody that might be looked upon with veneration, if there were any associations which clung around the political history of the State that were pleasing to all of her citizens and well-wishers, it was those that surround the Board of Regents of the State of New York, and the accomplishments of that board from the time it was originated. They have deserved well at our hands. Their distinguished services in the walks of education have been recognized in every civilized country upon the globe. They have taken medals awarded to them in praise of their action, and where others who have made the system of education a study for some time have seen fit to reward our Board of Regents and to commend them for their acts, it was as little as the Committee on Education could do to recognize those merits and to recognize the Board of Regents in the Constitution, in the fundamental law of the State. What is the Constitution? It is a compilation of laws and regulations fixing certain fundamental rules of action beyond which the Legislature may not go and which they may not invade or trespass upon. We had seen for many years the Board of Regents assaulted here in Albany; we had seen them made the football of political power and intrigue, and we said once for all, if we can do so, we will put a stop to such unseemly actions; and it was for that reason that we thought best to recognize the Board of Regents. If it had been in our power we would have gone further; we would have established a system of unification of the educational system of this State which would have been a rule commendable in itself and efficient in its action. But we did not think that the time was ripe for that. We went as far as we thought public opinion would permit us to go at this time; we went so far as to recognize the Board of Regents and to fix their number, below which the Legislature might not reduce them. That once established, we thought that the good sense of this commonwealth would assert itself in time to come, and would build upon that constitutional body a unified system of education in this State, which would do credit to its wealth and to its vast interests.

Now, this gentleman, who is as familiar with these acts as any of us, seeks to nullify our action here by striking out section 2, reducing the Board of Regents to that abject and dependent position which they have heretofore occupied. Why does he say that he thinks this is necessary? Because the higher education is likely to absorb lower education, or elementary education. Is there any truth in that? Has our educational system become less efficient on account of the activity of the Board of Regents? Has not the

Board of Regents raised the standard of education in this State from year to year? Have they not raised the standard of merit by which persons may be admitted to the bar, by which persons may be allowed to practice medicine in the State? Have they not increased those rules in stringency from year to year, so that we feel safe that the commonwealth of the State of New York is in the advance, marching with the advanced rank in civilization?

Now, the Board of Regents are a historical board. There are memories and reminiscences clinging around them which should fill the heart of every citizen of the State with pride. They are a dignified body; they are selected from our most eminent, our best and noblest citizens. They are selected without regard to politics, without regard to anything except their efficiency and except their record of honor and patriotism. If there is any body or any board which should be recognized in the fundamental law of the State, it is that body which sheds the light of higher education upon the elementary schools of the State. It is from above that the impetus to education and advancement must come, and not from below. The higher education sheds its light from above, and not from below; and for that reason we wish to throw around the Board of Regents of the State of New York every safeguard that the fundamental law of the land can vouchsafe to it. It would be a calamity, gentlemen, if this Constitutional Convention did not recognize the eminent necessity of passing this amendment.

Now, I hope it is not necessary to enter into any long disquisition of this matter. We do not wish, nor do we apprehend that the report of the Committee on Education will share the sad fate of the report of the Committee on Cities. We do not want this measure talked to death. We think that it has merits. We have tried to compromise with those who are opposed to the advanced principles which some of us thought should be enunciated in the fundamental law, and we have brought forth a measure here which in the main was acquiesced in by nearly every member of the committee. We want to see you accept it, and we want you to recognize that it is not perfect, but it is the best that we could do under the circumstances. You might as well eliminate the entire effort and the entire report of the Committee on Education from the Constitution if you strike out section 2 and fail to recognize the Regents in the Constitution and take them out of the element of politics.

Mr. Forbes — Mr. Chairman, I agree with all that the last gentleman has said in regard to the eminence of the service which the Regents have rendered to the State of New York, but it seems to me that that is not an argument that should justify putting them in

the Constitution. If they are so old a body and have served so faithfully and well, that is certainly a reason why they will not be destroyed by any Legislature in the future. The only thing that is done by this amendment is to provide that they shall not consist of less than nine in number at any particular time.

Mr. Chairman, I would not have spoken upon this question had I not wished to call the attention of the committee to what is going on in the Convention in the matter of appointive officers. We are, on the one hand, directing our attention to elective officers. We are going back to the people in the matter of cities — or trying to go back to the people, in the cities which are now governed by commissions; but in the State as a whole we are taking the other course and establishing or attempting to establish commissions for almost everything. Now, are we to be in the future a State governed by commissions appointed, or are we to be governed by the elective officers that can be changed by the people from time to time? That is the question before us, and not whether this body of regents is a good body, or whether it has done well in the past or not. The question is whether we shall have a body which shall be under the control of the Legislature and which the Legislature can put an end to. It ought to be so in regard to all of these commissions. We should have no officer in this State who is not directly responsible to the people. We want no commissions which cannot be created by the people or destroyed by the people through their proper representatives in the Legislature.

Mr. Cassidy — Mr. Chairman, since sitting in this Convention, I have had before me the Constitution of the State. I have often times asked myself this question: "What Constitutional Convention was it that framed the Constitution before me?" And I have come to the conclusion that the Constitution of this State as it now exists was not the growth of a night-time, was not the work of a single Convention, but the growth of a hundred and fifty years of civilization, the work of seven Conventions, and many of its principles are traceable even to the Magna Charta itself. And I have looked through that Constitution in vain to find any place where the present Board of Regents have been embalmed. I asked myself, how long has the Board of Regents of this State been in existence? And I find that it has existed for more than one hundred years, subserving a useful purpose in unifying the educational system of the State, but it has never occupied such a position that the great sages who made this document which we have before us have thought it worth while to embalm their names in this Constitution purely for ornament. A Constitution embodies principles for use, and it is not

intended to embalm the name of any individual man or set of men. If these gentlemen have occupied a useful place in the history of our educational system, if they are only seeking honor, let their names be crystallized into deathless song by the poet from Long Island. Let the troubadours of this State sing their praises throughout the land, but let us not put their names into the Constitution of the State simply as an honor to them, without its being there for any useful purpose. The Board of Regents has existed for more than a hundred years because they were entitled to exist, because they existed by reason of the work which they were doing. They merited their existence. We now propose to put them into the Constitution so that they may exist, not because they are entitled to, not because they are a meritorious body, but because they must exist, perforce because the Constitution says they must exist. When we have done that we have robbed the Board of Regents of all its usefulness and of all the stimulus which now impels it to its usefulness. I do not believe that this second section should be placed in the Constitution. It serves no purpose, and I am heartily in favor of Mr. McIntyre's amendment.

Mr. Deyo — Mr. Chairman, as a member of the Committee on Education, I desire to explain my position. The Regents are extremely solicitous to intrench themselves behind the barriers of the Constitution. This solicitude would have no grounds for its existence were it not that they fear an attack and that they are not willing to enter upon the encounter solely upon the merits. No one disputes but that the work of higher education they have been doing must continue to be prosecuted, and their contention is, therefore, solely that such work shall be carried on in the manner now followed, and that the Legislature shall be prevented from adopting any other.

I am not prepared to say either that the Regents should be abolished, or the higher education intrusted to other instrumentalities. Such an investigation cannot be made by us, and it would be improper for us to fetter those whose right it is to do so if they desire it. While not expressing a final judgment I can conceive of reasons why an investigation should be made which might result in the abolition of the Regents. The life term seems to many to be not in accord with the spirit of our institutions, and the irregular intervals at which vacancies occur prevents the initiation or prosecution of any policy except that which the board itself deems fit to follow. A recognition of the Regents in the Constitution would be a stumbling block in the way of any investigation by the Legislature, therefore, I am in favor of Mr. McIntyre's motion to strike out section 2.

Mr. E. R. Brown — Mr. Chairman, I did not intend to make any remarks upon this subject, but at the earnest request of some of the members of the Committee on Education, of which I have the honor to be a member, I think it may be proper that I should say a few words.

It is well that the Convention should not act upon this subject without knowing precisely the matters at issue. Before the Committee on Education there were many appearances, and part of those appearances of the best men of the State. We learned, first, that there was an unsatisfactory condition in the common schools; second, that there was an unsatisfactory condition in the higher schools, and that that unsatisfactory state of affairs arose largely from the fact that there was no unity in the educational system of the State. Another fact that was developed before the committee, and so thoroughly developed as to win the almost unanimous support of the committee, was that it would not be proper, in the present state of public sentiment upon the subject, and would not be proper, in view of the conditions surrounding the Regents and surrounding the common schools, to devolve the election of Superintendent of Education upon the Board of Regents. Upon that subject the committee was more nearly unanimous than upon any other subject discussed before it. The consideration that led the committee to this it would not now be wise for me to detail before the Convention, because there is no scheme before the Convention seeking the unity of the educational system of the State. But I do think it is my duty to call the attention of the Convention to the circumstances that this proposed section was adopted by the committee by a majority of one at a full session of the committee; that it had been sought for by the members of the Board of Regents, avowedly on the ground that they feared their extinction or reorganization by the Legislature, and they sought to have this as a fortification against such interference.

I am not here to insist that the Convention shall take one position or another upon this subject; but I do think the Convention should be aware of the fact that the Committee on Education all wished that we may soon have something like a unified system of education in this State, and that the Committee on Education nearly all believed that it cannot be through the Board of Regents as now organized. I believe, myself, that the University of the State of New York is a venerable, an honorable and a desirable institution. What reorganization, if any, should take place, is not for me to say. But I trust that when the Convention acts upon this subject, it will not, in view of the great work, which either the

Convention or the Legislature ought to do, do something which is a mere empty form. The Board of Regents has had an existence of more than a hundred years. It was in existence when the Convention sat in 1801, in 1821, and in 1846, but never yet has there been a constitutional enactment upon the subject. If you desire to put it in the Constitution, I only wish that you might put it there intelligently, having in view the purposes which those best interested in education should have, and that you shall not act upon the subject in an indifferent or an unsatisfactory manner.

Mr. Gilleran — Mr. Chairman, I would not feel that I had done my full duty as a member of the Committee on Education, did I not state on the floor of this Convention my opposition to recognition of the Board of Regents in the Constitution. I heard the arguments submitted before our committee. None of those arguments appealed to me particularly as a good reason why such recognition should be given. The Board of Regents has existed as a Board of Regents and as the University of the State of New York for 110 years. During that time it has done efficient and good work and the people of the State of New York recognize that fact. During that time they have had venal and dishonest Legislatures, unfortunately for the history of our State, and not one of those Legislatures has taken upon itself the privilege, the duty or the dignity of interfering in any way with this venerable and grand institution. What is the cogent reason why it should now receive recognition? Have the people any less faith in it, or do they recognize to any less degree, the grand work they are doing ——

The Convention here took a recess until 8 P. M.

EVENING SESSION.

Friday Evening, August 31, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, at the Capitol, Albany, N. Y., August 31, 1894, at 8 P. M.

Second Vice-President Steele called the Convention to order.

Mr. Doty — I ask to be excused from attendance to-morrow and Monday, on account of illness in my family.

The President *pro tempore* put the question on excusing Mr. Doty, as requested, and he was so excused.

Mr. J. I. Green — Mr. President, I ask to be excused for

to-morrow and Monday, on account of an important business engagement.

The President *pro tempore* put the question on excusing Mr. Green, as requested, and he was so excused.

Mr. Deyo — Mr. President, I ask to be excused for to-morrow afternoon's session.

The President *pro tempore* put the question on excusing Mr. Deyo, as requested, and he was so excused.

Mr. Foote — Mr. President, I am obliged to be absent on Monday, and ask to be excused for that day.

Mr. Choate — Mr. President, before any action is taken on Mr. Foote's request, may I be informed by the Secretary how many have already been excused for Monday?

The President *pro tempore* — Thirty-seven.

The President *pro tempore* put the question on excusing Mr. Foote, as requested, and he was so excused.

Mr. McIntyre — Mr. President, I ask to be excused on Monday.

The President *pro tempore* put the question on excusing Mr. McIntyre, as requested, and he was so excused.

Mr. Titus — Mr. President, I ask to be excused on Monday.

The President *pro tempore* put the question on excusing Mr. Titus, as requested, and he was so excused.

The President *pro tempore* — The regular order of business is the consideration of general order No. 61, in Committee of the Whole, Mr. C. H. Truax in the chair.

The House resolved itself into Committee of the Whole, Mr. C. H. Truax in the chair.

The Chairman — The House is now in Committee of the Whole, and Mr. Gilleran has the floor.

Mr. Gilleran — Mr. Chairman, when I started to oppose recognition of the Board of Regents, or of the University of the State of New York, in the Constitution, this afternoon, I meant to be very brief, and I shall detain the committee but a very few minutes. When the gavel fell, announcing the hour of recess, I was trying to think of any good reason why such an article as this should be inserted in the Constitution. There has been no popular demand for the insertion of this clause; there has been no demand from any person, or from any class of persons, except the Board of Regents themselves. I think it would be unwise from any standpoint to recognize any corporation, or any association, of life-serving officials

in perpetuity. Besides, I think that the work of the Board of Regents and of the University of the State of New York will be more efficient, will be better conducted, will conduce more to the benefit of the State, if its members feel that they are subject to legislative action. I think that they would be proud if they felt themselves above the Legislature, and I think it would be grossly harmful to them. Plans of unification were suggested in our Committee on Education, but none of those plans, though they suggested themselves very forcibly to the members of the committee, were accepted unless that they hedged around the nucleus of the University of the State of New York. In fact, none was seriously discussed, except such as placed the University of the State of New York as the basis of unification. Near the end of the deliberations of the committee, however, a new plan was suggested, and I hope it will be laid before this committee for action. It involves the retention of the University of the State of New York, that institution which we all revere, and of which such words of praise have been said; but I do not think it would be wise or prudent or right to recognize any institution in this State which is properly subject to legislative action, in the Constitution. Let us maintain our public school system; let us establish it on a good, sound basis; let us improve the elementary education of our people; let us establish an intelligent and educated constituency; let us cherish all institutions which are dear to us, and let us place our educational organization on such a basis that,

> " None, however destitute, be left
> To droop by timely culture unsustained."

Mr. Moore — Mr. Chairman, if it is in order at this time, I desire to move to strike out lines 13 and 14 in section 4.

The Chairman — The motion is not in order.

Mr. Moore — If it is not in order now, I wish to give notice that I will so move at the proper time.

The Chairman — The question is upon the motion of Mr. McIntyre to strike out all of section 2.

Mr. Hirschberg — Mr. Chairman, before the motion is put to strike out section 2, I would like to say a word in explanation of the action of the committee, and to be permitted to indulge the hope that the Convention will not strike out that section. When the Convention was organized and the committees were arranged, those who had the matter in charge provided for the appointment of a committee on the general subject of education. It was thought desirable to have seventeen members of that committee. When

the committee met they were, of course, chiefly strangers to one another, men selected from all parts of the State, many of whom had never seen or heard of the others. They made an investigation, first of the extent to which educational matters had been regarded in the Constitution of the State of New York; second, generally as to the educational system or systems of the State; third, as to the opinion of those best qualified to judge of the proprieties and needs of the occasion. So far as regards the Constitution as it exists, it is, perhaps, sufficient to say that the only recognition at all in the Constitution of the State, of the fact that education forms one of the main features of the public care of the people of the State, is to be found in article 9, which comprises less than a dozen lines, and which is devoted exclusively to regulations concerning the common school, the literature and the United States deposit funds. As it seemed to be thought proper that there should be some educational articles presented; as it seemed that the State had grown large enough, prosperous enough, to make it desirable that something general and organic in its nature should be embraced in the Constitution of the State recognizing the fact that the State guaranteed education to its citizens, and that education was the chief foundation stone upon which the superstructure of the wealth and of the prosperity of the State was built, the committee, after considerable discussion, decided not to disturb the existing order of things at all, but simply to report to the Convention, so that it might be adopted and embraced in the Constitution of the State, a simple provision recognizing the existing order of things and continuing them for the next twenty years. It was for that reason that section 1 was recommended, which, in the fewest possible words, provides that the Legislature shall continue the existing provisions for the maintenance and support of a system of free common schools, wherein all the children of the State may be equally educated; recognizing also the fact that this State, in recognition of its own necessities and requirements, had developed a grand and broad and comprehensive system of higher education under the charge of a corporation as old as the State itself, incorporated in the year succeeding the treaty of peace between the colonies and the mother country; recognizing the existence of that corporation, the admiration which it receives from educators all over the civilized world and its beneficent work in this State, they regarded it as proper to report a second section, which, without cumbering or fettering the Legislature or the people in any way, should merely recognize and continue that which was the basis and the safeguard of higher education in the State, and continue it in existence during the life

of the Constitution. The section 2, which is now assailed, does nothing more than this. It has been said by the gentleman who last addressed the committee, that this corporation should be subject to legislative action. It is subject to legislative action, and this section makes it continue equally subject to legislative action. Its powers, the scope and manner of its work, those limitations are all under legislative control, and it is designed to leave them so. But it is said, "Why recognize them at all?" For this reason, a complaint was justly made on behalf of the gentlemen chiefly concerned that the power existing in the Legislature at any time to terminate their good offices, either by an abolition of the corporation entirely, or by so reducing the number of its Regents as practically to deprive it of its existence, had a tendency to thwart their efforts; they required a better, stronger and more enduring tenure than that under which they had existed for more than a century. If we are to make an educational article at all, and of that, perhaps, the Convention may best judge, then it is proper that we should recognize the existence of this important higher branch of our educational system. If the University of the State of New York is not to be recognized, then there is no excuse or occasion for an educational article at all. It was impossible to prepare an article which should be broad and comprehensive and just, which should recognize good work by good and faithful men, recognize the grand experience of the State in educational matters, and leave out of it the University of the State of New York and its work; and that is the reason that the committee decided to report this section. Now, beyond that they do not go, excepting in one other section, which limits the use of the State money to schools that are entirely under State control. This is the whole purview, purport and scope of the article which has been presented. Now, I say, could it have been less? If it is to be lessened at all, why should it not be all destroyed? The Constitution has never recognized education, has never attempted to formulate the principles under which it should be adopted, exercised and developed; but if the time has come, as it seemed both to the Convention and the committee that it had come, when this might well and properly be done, I insist that nothing less than has been reported here could be reported or adopted without great danger of a charge being made that in leaving out the University of the State of New York something invidious was intended and that the committee had acted unjustly, improperly, in disregarding and ignoring what is, after all, the chief and important feature of our educational system.

Now, that is all I care to say. Having been called upon to do

something, we could do no less. I may add that the committee was divided. There were some members of the committee, and I was among them, conservative, willing to leave things just as they are, who preferred to say nothing at all about the article and to report that no amendments were necessary. There were others at the other extreme. They wished to provide means for a unification of the system; they wished it decided which of the two branches should have charge; they wished to furnish all the machinery and to furnish the details and incorporate them in the Constitution. And, as a compromise, we finally agreed upon this plan, and as such it was reported, and as such I hope it will be adopted.

Mr. Goodelle — Mr. Chairman, I desire to say but a single word in the line of the remarks of the gentleman who has just taken his seat, as to the question why we should recognize in the Constitution the Board of Regents and make provision for them. I desire simply to say this. It has been deemed sufficiently important to protect the material interests of the State at least, to provide in our Constitution that the canals of the State should not be disturbed. It has been heretofore recognized in the Constitution that the salt springs of the State should not be sold. By this Convention it has been determined that we shall have bi-partisan election inspectors. We have a proposition which will come before this Convention very soon in reference to the preservation of our forests. All I desire to say is this, if these material things, the canals of the State, the salt springs of the State, the forests of our State, the elections of our State are of such importance as that they shall be protected by constitutional amendment, I ask this Convention by what consistency, when we come to the head of our educational system, it is proposed that that shall not be protected as well as these material interests? When we undertake to leave the Constitution where the Legislature can strike down the very head of our educational system, we simply put it in a position where we disregard the element in our government upon which rests its stability and perpetuity. I am, therefore, opposed to this section being stricken out.

Mr. Peck — Mr. Chairman, as a member of the Committee upon Education, it has been suggested to me that silence might mean that I was indifferent on this question. I have no wish to make any extended remarks on the subject, but I do desire the committee to understand that, so far as my judgment goes, this section, as it now stands in that article, is a fair, honorable, average sentiment of the Committee on Education, and unless the Convention sees some better reason for changing it than has yet been advanced in this

committee — in which case it would surely be accepted by the committee — I trust that it will be adopted in the form in which it was reported, with the change which has been made already in the committee.

Mr. McIntyre — Mr. Chairman, I think the forty minutes have not yet been occupied, and I have just a few words in answer to the arguments attempted to be made why this should be recognized in the Constitution. And I have only this to say, that all you do in this proposed Constitution is to say that the University of the State of New York shall be recognized, and that there shall be nine Regents, but you do not say one word about how they shall be supported. You leave it all to the Legislature. They have to appropriate the funds; they have to provide ways and means, without which the board would be absolutely powerless. Therefore, as far as the plea of putting a provision in the Constitution concerning the board is concerned, there is no arrangement for it, because you do not provide how it can be perpetuated. Suppose the Legislature should withdraw the funds, should withhold the means by which they are supported, why, they would be absolutely powerless. They are dependent wholly upon the Legislature, and I maintain that they should not be recognized in the Constitution any more than is the Superintendent of Public Instruction, and not so much, because the common school fund is for the elementary schools of the State; and I have not heard an argument yet from the other side that has said a word about the elementary schools of the State. That is what the common school fund is for, and that is what we want to preserve. That is what we are here for. We are not here for higher education; we are not here to recognize the institutions that support higher education; but if we are to put anything in the Constitution, we should put in something in support of the common schools, the common school funds and the common school moneys, and the moneys that are raised for the purpose of elementary education. Why, $3,500,000 of the funds raised goes where? It goes to the common schools. And only $107,000 goes for higher education. And it is urged here that we should preserve and perpetuate what? The educational system of the State of New York? You do not touch one side of it; you do not take in any part of it. If anything were put into the Constitution that it was desired to perpetuate in the way of education, we should have a unified system provided for, to protect the common schools, as we shall have in time. We do not want this. This institution is not the head of education in the State; it is not the foundation of it. The foundation is the common school system of the State, and you have got hold of the wrong end

of the rope. We want a unified system, and we want it for the common schools; and when we get that, that will be the head of the system to provide for in the Constitution. I hope that gentlemen here will not be led astray by any false idea that the Regents, who have existed for a hundred years or longer, are being done away with. Not at all. But they are not the head of the school system of this State. The great public interest is the common school, and we do not want to lose sight of that. The Board of Regents is perfectly powerless without legislative action. Suppose the Legislature should say, "We won't appropriate any money." What power is there to compel them to do it? Mr. Chairman, we have a first section that establishes the common schools, and now our duty is to leave that as the system, because that is what the taxation is primarily for, to raise money for the common schools.

Mr. Root — Mr. Chairman, there is no question before us here as to whether the superintendent of the common schools shall be provided for in the Constitution. No committee has reported it, and no amendment has proposed it. The question now is, whether this institution, founded by the greatest of New Yorkers, Alexander Hamilton, which has been made the model for the National University of France, which among all educators the world over, is the highest title that the State of New York possesses to advanced position among educators in the world; whether this institution, which is, or should be, the pride of every member of the State, shall be recognized in the organic law of the State, as we recognize the Superintendent of Public Works and the Superintendent of State Prisons. Mr. Chairman, I believe that a system of organic law which leaves out this great branch of the public service, which leaves it without a word, which leaves it at the whim, at the mercy of the ideas of every one of the successive Legislatures which may come and go for all time to come, is radically defective. I believe that this time-honored, effective and satisfactory institution should be put beyond the reach of any temporary changes of opinion; left where the Legislature can control it; left where the Legislature may define, may increase or diminish its powers, but put beyond all attempts to destroy it. I believe this committee is right in elevating this great and honorable institution, at least, to the level of the Superintendent of State Prisons and the Superintendent of Public Works.

Mr. Holls — Mr. Chairman, I do not intend to take much time of the Convention on this question with what I shall have to say.

The Chairman — If Mr. Holls will excuse the Chair, he will state

that half of the time allotted to the consideration of this article has been consumed.

Mr. Holls — I am deeply sensible of that, and will be mindful of it in the few words that I say now. I wish merely to say in answer to one seeming argument that has been made on behalf of this motion, namely, with reference to the common schools, in my opinion and in the opinion of the majority of the committee, there is nothing this Convention can do for the purpose of elevating the common school system of the State of New York more important and of greater permanent value than to give this constitutional recognition to higher education in the State. As the gentleman from Kings has eloquently and ably said, and as has been said by every competent historian of education from time immemorial, education works downward, and while it is true that the common school is the foundation of it all and nothing can be said of our system of common schools in their praise and in emphasizing their importance to the State, which I will not heartily subscribe to, its efficiency depends largely upon the ideals set before its pupils and its teachers, and those ideals all come from the higher education. Education has been aptly compared to a pyramid, of which the common school is the broad and solid foundation; but the exact size and the proportions of the pyramid and the question whether it shall be a thing of beauty or an awkward truncated figure is all governed by what? By the cap at the top, the headstone or summit of it all. The angles there, and the lines running thence which reach down to the bottom, determine the shape of the entire structure. And so, Mr. Chairman, there is nothing which we can do to elevate all education from the primary school and the kindergarten up to the college and university that will be half so valuable as this constitutional recognition and this declaration in the fundamental law of the State that the time-honored policy of the State of New York, which has made it a leader in the history of education and a source of pride to its children, shall be continued and shall henceforth be continued under constitutional safeguard. I sincerely hope the committee will be sustained in its position, and I ask for the question.

The Chairman put the question upon the motion of Mr. McIntyre to strike out all of section 2, and it was determined in the negative.

Mr. Veeder — I desire to state, Mr. Chairman, that I am paired with Mr. Augustus Frank.

The Chairman — Are there any further amendments?

Mr. Deyo — Mr. Chairman, I have an amendment to offer.

The Chairman — Is this an amendment to this section?

Mr. Deyo — Yes, sir.

The Chairman — The Chair suggests to the gentleman that he is out of order; that amendments were called for and no amendment was offered; then substitutes were called for and substitutes were offered and passed upon. Then a motion was made to strike out. That motion was denied, and we now have passed to other business. The Chair is of the opinion that the gentleman must wait until the completion of the sections. The Secretary will read section 3.

The Secretary read section 3 as follows:

"Sec. 3. The common school fund, the capital of the literature fund and the capital of the United States deposit fund shall be respectively reserved inviolate. The revenue of the said common school fund shall be applied to the support of common schools; the revenue of the said literature fund shall be applied to the support of academies, and the sum of twenty-five thousand dollars of the revenues of the United States deposit fund shall, each year, be appropriated to, and made part of, the capital of the said common school fund."

Mr. Holls — Mr. Chairman, I move to strike out that section for the purpose of debate, and for the purpose of saying merely that that section is the section of the whole of article 9 of the present Constitution. The committee investigated the question of funds quite carefully. The result of their investigation is in the printed report, and the result, so far as amendments are concerned, was that it was not thought worth while to amend that section in any particular. It is not a matter of great importance in the educational history or policy of the State, and under all the circumstances, we thought the Convention would best allow matters to go on as they are.

The Chairman — Will the gentleman allow the Chair to ask him a question? Should it not read, "The capital of the common school fund," in order to read the same as the section in the present Constitution?

Mr. Holls — Yes, sir; that is a misprint. I noticed it just this moment. It should be, "The capital of the common school fund." I move to amend in that particular, Mr. Chairman, to insert the words, in line 9, "capital of the."

The Chairman put the question on agreeing with the amendment offered by Mr. Holls, and it was determined in the affirmative.

The Chairman — Are there any other amendments to this sec-

tion? There being no other amendments to this section, the Secretary will read section 4.

The Secretary read section 4 in the language following:

"Sec. 4. Neither the State nor any subdivision thereof shall use its property or credit, or any public money, or authorize or permit either to be used, directly or indirectly, in aid or maintenance, other than for examination or inspection of any school or institution of learning, wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine is taught.

"This section shall not apply to schools in institutions subject to the visitation and inspection of the State Board of Charities."

Mr. Choate — Mr. Chairman, I offer an amendment to this section.

The Secretary read: Mr. Choate moves to amend section 4 by striking out the last two lines, namely: "This section shall not apply to schools in institutions subject to the visitation and inspection of the State Board of Charities."

Mr. Choate — Mr. Chairman, I move to strike out this proviso, this qualifying clause at the end of section 4, upon the ground that it nullifies entirely the effect of the restraints of section 4 as to charitable institutions in which sectarian or denominational tenets or doctrines are taught, upon the ground that it is a violation of an implied understanding had before this Convention when the discussions on the subject took place in our public hearings; on the ground that it defies the universal public sentiment of this State as it has been expressed in all quarters, and is in flagrant derogation of a sound and universal principle, that none but public schools shall receive the support of public moneys, and that the people of this State, or of any section of this State, shall not be taxed for the support of education of a sectarian nature in any schools whatever. Now, it is well to understand what the meaning of this section is, this final clause of this section, which has been most artfully contrived and is well calculated to deceive the unwary; and I beg the attention of gentlemen for a few minutes to it. "This section shall not apply to schools in institutions subject to the visitation and inspection of the State Board of Charities." What institutions are subject to the visitation and inspection of the State Board of Charities, it would not now be easy to say. Their powers of inspection and visitation as at present arranged by law are of a somewhat indefinite but yet limited description. I understand, however, that it is the purpose, if this section is adopted, to make it fit in with the

proposed amendment offered by the Committee on Charities, which will fix and prescribe the exact limits of the supervision and inspection of the State Board of Charities; and in order that gentlemen may understand what that is, I call attention to the report of that committee, being Document No. 59, in the public documents, in which the supervision and inspection of the State Board of Charities is thus described as it is intended to be made. I read from page 8 of Document No. 59:

"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, one hundred and forty-one orphan asylums and homes for the friendless, one hundred and twelve hospitals, forty-five dispensaries, a population of sixty-two thousand one hundred and fifty-four, together with the supervision"— and this is the important part, Mr. Chairman — "together with the supervision of a number of charitable and benevolent societies not included in the above list."

That is to say, as to all those charitable and benevolent societies not in the above list which it is the contemplation of the report of the Committee on Charities to permit to continue to receive public money for the support of their inmates, under restrictions and restraints which will be very properly applied by the amendment offered by that committee, it is now proposed to make section 4 in its main provision utterly inapplicable. What are those institutions? They are the sectarian institutions, Protestant and Catholic, Jewish and of every other description, every form of religious belief in this State; they are the institutions about which the dispute was when this Convention first came in session, when the public mind was agitated upon the subject whether they should not be cut off from every dollar of aid for any purpose, upon the broad doctrine that public moneys ought not to be applied to private charities. Now, then, here is not merely a relief from the restraints, but an implied enactment embodied in the Constitution that those institutions shall receive public money for the support of schools in them, although therein there may be taught, or shall be taught, denominational tenets or doctrines. For one, I am absolutely opposed to that. I do not think we can go before the people and face the people of this State with these two lines in our proposed Constitution. It will sink the whole ship, if we go before them so defiant and regardless of the express views of the people in all parts of the State. Now, Mr. Chairman, it is not the first time this subject has been under consideration here. Almost all the members of this Convention

were present at the meetings that were addressed by Mr. Coudert and Mr. Bliss, the authorized spokesmen for a very large portion of these charitable institutions, these institutions in which denominational tenets are taught and which now it is intended by this constitutional provision actually to authorize public moneys to be expended upon. Not for the support of the inmates; I do not mean that. We are all agreed, I believe, about that, that wherever they have public wards the public money may be used under proper inspection, accountability and restraint, for the shelter, the food, the clothing of these unfortunate children. The proposition now is, that if they are Roman Catholics, the State shall pay for teaching them Roman Catholic doctrines; if they are Methodists, the State shall pay for teaching them Methodist doctrines; if they are Swedenborgians, or Presbyterians, or Hebrews, and so on through the whole chapter. Now, what took place when this discussion was up before? They came forward and said they made no such claim. They repudiated any such claim. I read from a speech made by Mr. Coudert in this very presence, at the Secretary's desk. He said: "My friends on the other side unanimously speak of the common schools as the palladium of our liberties, as the corner-stone of our institutions, etc. This language is very fine, and I am quite willing to indorse it, and I shall not to-day say one word in opposition to this plan of amendment so far as it relates to the common schools. Let it be understood that this system shall remain intact — that public opinion will not tolerate a diversion of any public moneys from their lawful object to encourage denominational education. Put it, if you are so inclined, into our Constitution." And Colonel George Bliss, speaking on the same day, made an argument of great ability, and with which he was himself so well satisfied that he afterward printed a revised edition of it; and in that he says: "As to the schools, I do not care what action you take in this Convention with reference to an amendment bearing upon the common schools. Mr. Coudert has very largely anticipated what I had taken the pains, so that I might not be misunderstood, to write down, but I will take the liberty of reading it, so that there may be no mistake about it. I recognize that public opinion believes in using funds raised by taxation exclusively for the public schools, and that though these schools, as now conducted, do not meet the requirements which Catholics deem essential to education, it is useless to oppose public opinion as it now exists. * * * So, go on with any form of amendment you think necessary to prevent the withdrawal of public moneys from the public to parochial schools; you

will find no present opposition from me or those I represent. You will, I think, find practically no opposition from any Catholic."

Now, Mr. Chairman, what are these appropriations of public money that are being made? They are not for tuition in these sectarian institutions; they are not confined to one sect, to one denomination, to one city, or to any one portion of the State. They are stated as follows in a document submitted to this body, which has never yet found an answer as to these items: "New York city — apportionment of funds by the board of education of the city of New York to corporate schools, for the year 1892," and then it goes on and specifies here, amounting in all to sixty-one thousand dollars. "Brooklyn — apportionment of funds by the board of education of the city of Brooklyn, to denominational schools, for the year 1893," amounting to some thirty-one thousand dollars. Similar reports are given from Rochester, Syracuse, Buffalo, West Troy and so on. Mr. Chairman, there is a law on our statute books now, at any rate relating to the city of New York, referred to by Mr. George Bliss in his argument, to which I wish to call attention. He says: "The report of the board of education in the city says expressly that in all cases of non-public schools receiving public moneys, the State law prohibiting sectarian instruction and the use of sectarian text-books appears to have been complied with." Tell me, sir, what will become of such a statute as that when this constitutional amendment, with this proviso, goes into operation? Why, the first thing they will claim, and will claim with confidence, and I believe will claim with success, will be, that the Legislature under this constitutional provision, has no right to pass such a law, because it is embodied in the Constitution that public moneys may be used for schools in institutions subject to the inspection of the State Board of Charities, although they are the centers of instruction in denominational doctrine. Now, are the people of the State ready for that? Are we ready, as members of this Constitutional Convention, to go before them? Have we the effrontery to propose such an amendment as that? In my judgment it would sink anything that we should propose in other parts of the Constitution, no matter how meritorious it was. What the people of this State mean as to their public schools, is not that the public schools only shall be maintained, but that no public money shall be applied for education, except in schools and educational institutions that are under public control, and I wonder at the fact that a committee, even by a bare majority of one, has been led to propose to this Convention and to the people of the State such an amendment as that.

Now, I do not undervalue these charitable institutions, each one

protected, maintained, established by some religious denomination. I believe that they are all worthy. Take the most important of them, those instituted by the Roman Catholic church, these charitable institutions that are found in such numbers in all our great cities, why, sir, the Catholic church has led the march in charities for centuries, and I believe that its work to-day in that direction is not inferior to that of any other sect; and so it may be said of all these institutions. Assume, now, for the purpose of this argument, that they are absolutely worthy as charitable institutions. But what of that? A departure was made from what I think to be well-settled principles of political economy twenty-five or thirty years ago, when the State, instead of taking care of its own wards in proper institutions provided by itself, started off on the new scheme of handing them over to these charitable institutions, where they have been so admirably maintained, as has here been said. Now, let the State provide for their support, provide for their maintenance, but let not one dollar of the public money be paid for teaching in those establishments any sectarian doctrines or ideas whatever. They are not taught in our public schools. The children that go to the public schools are protected from such tuition, and the State moneys ought not, and, in my judgment, never will be, permitted to be spent in any such manner. If the Roman Catholics want their priests and nuns to go as teachers into these corporate parochial schools of theirs, let them go, but let them be paid at their own expense, at the expense of that mighty church which draws upon the revenues of its adherents as almost no other institution does. If the Episcopal church wants its priests and deacons to indoctrinate the young inmates of the institutions which they have founded with the peculiar tenets of the Episcopal church, let that church pay for it. They can well afford to do so. But let it not be said that we, a Constitutional Convention of the year 1894, dared go before the people of New York proposing that henceforth any money should be raised by taxation for teaching any child any doctrine of religion as distinguished from any other doctrine whatever. (Applause.)

Mr. Cassidy — Mr. Chairman, the President of this Convention has stated that if lines 13 and 14 of section 4, which are at war with the rest of the section are not stricken out, this Constitution which we are making ought to be sunk; and I stand here with him and say that if that part of section 4, which he would retain, is not stricken out, the Constitution which we are here framing ought to be sunk, and all those who advocate the pernicious principles in that

section. I wish to offer an amendment, Mr. Chairman, to section 4, so that it may read as follows:

"Neither the State nor any subdivision thereof shall use its property or credit, or any public money, or authorize or permit either to be used, directly or indirectly, in aid or maintenance, other than for examination and inspection, of any institution of learning not wholly owned and controlled by the State or a subdivision thereof," striking out, after the word "wholly," in lines 11 and 12, and inserting, "not wholly owned and controlled by the State or a subdivision thereof."

The Chairman — The question is upon the motion of Mr. Choate first.

Mr. Cassidy — I substitute that for the entire section No. 4, to amend the entire section so it will read like the amendment which I send up.

The Chairman — Is this a substitute for the whole section?

Mr. Cassidy — It is an amendment to the whole section.

The Chairman — The Chair holds that it is the nature of a substitute. The question now is upon the motion of Mr. Choate to strike out the last two lines.

Mr. Cassidy — May I speak on the substitute now, Mr. Chairman.

The Chairman — You may speak upon the motion before the House.

Mr. Chairman, I desire to preface my remarks by reading from the Constitution of the United States: "No religious test shall ever be required as a qualification to any office or public trust, under the United States." (Article 6, section 33.) "Congress shall make no laws for the establishment of religion or prohibiting the free exercise thereof." (First amendment.)

These two articles, Mr. Chairman, embody all that is contained in the Constitution of the United States upon the subject of religion, but, brief as they are, they proclaim religious liberty in its broadest sense as a fundamental right of citizens of the United States. At the close of the last war, however, these two articles were supplemented by this sweeping clause of the fourteenth amendment, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." But, Mr. Chairman, before the adoption of the Constitution of the United States, our own Empire State proclaimed in no uncertain tones her position on this subject. And in the first article of the Constitution adopted by her in the year 1777, we read these words: "The free

exercise and enjoyment of religious profession and worship without discrimination or preference shall forever be allowed in this State to all mankind." Little did the framers of that Constitution, Mr. Chairman, dream of Mr. Holls and his amendment, little did they think that after a hundred years of religious liberty that there could be found any man or set of men, anxious to steer the ship of State back into the pathless and turbulent sea of religious persecution, and yet if we are to adopt this amendment, all that has been gained in the struggles of the centuries will be lost. Now, Mr. Chairman, I am opposed to this amendment as proposed by the Committee on Education, because I believe it to be unconstitutional, a surrender to bigotry and fanaticism, and at war with the generally accepted doctrine of separation of church and State. It merely seeks to outlaw some of the agencies in the State, because of their religious character. The principle involved in the separation of church and State, is that the State, of right, exists merely for civil ends, that it should have nothing whatever to do with religion; that it should make no inquiries of its citizens, servants or agents whether such and such religious tenets are held by them or not. This principle was illustrated by Roger Williams, the father of religious liberty in the following language: "There goes many a ship to sea, with many hundred souls in one ship, whose weal and woe is common; and this is a true picture of the Commonwealth. It hath fallen out, sometimes that both Papists and Protestants, Jews and Turks may be embarked in one ship; upon which supposal I affirm that all the liberty of conscience I ever pleaded for turns upon these two hinges, that none of the Papists, Protestants, Jews, or Turks be forced to come to each others prayers or worship, nor compelled from their own particular prayers or worship, if they practice any. Nor ought any privilege to be accorded to one, that is not accorded to all. I further add that notwithstanding this liberty, the commander ought to command the ship's course; yea, and also command that justice, peace and sobriety be kept among the seamen and all the passengers. If any of the seamen refuse to perform their service, or passengers to pay their freight; if any refuse to help in person or purse toward the common charges or defense, on the ground that they are able to defend themselves, or that they do not care to help the weak; if any refuse to obey the common laws and orders of the ship concerning their common peace or preservation; if any shall mutiny and rise up against their commanders and officers, in such cases the commander or commanders may judge, resist, compel and punish such transgressors according to their deserts and merits."

The principle here contended for it that as the State shall not make a grant to a school simply because it is a religious school, so it should not refuse a grant on that ground.

The State ought never to consent to run with the bloodthirsty dogs eager to chase down their religious prey.

The churches are not exercising the most deadly influences in government to-day, and yet from the manner these A. P. A. dogs are barking you would think that no other influences for evil could equal them.

A church, though primarily a religious body, is also a civil corporation. And the State may make grants to it for civil reasons the same as to a peculiarly secular organization. For instance, if the State advertises for the use of a room or building, and the church offers one, the State may vote money to the church for the use of that room or building the same as it would for the use of a room in a railway depot. So, if the State makes grants to other parties for the shelter of the aged, poor and orphans, or for giving instruction in geography, mathematics and other secular branches, it may also make such grants to a church, asylum or school, just the same as to one under purely secular control. For in that case the State is dealing with the church not as a religious, but as a civil organization. When a church school renders the State a secular service by giving secular instruction, it may be given grants from the Regents funds, just the same as any purely secular school.

When the general government made grants of lands to the several States to foster instruction in agriculture, New York gave her agricultural lands to Cornell University, while New Jersey gave her allotment to Rutgers College, an institution of the Reformed Dutch church. Now, why was not the action of New Jersey just as legitimate as that of New York? Cannot agriculture be taught in a Reformed Dutch college as well as in one that is undenominational? And if the State is to continue to make grants from the Regents fund to academies governed by private corporations for teaching algebra and other secular branches, why should it not make such grants to a denominational academy the same as to any other? If a church school renders the same secular service as a non-religious school, why should not the State make a grant to the former as well as to the latter? This amendment, however, proposes that the State shall establish a "holy or unholy" inquisition, and shall hear and entertain charges that such and such doctrines are taught, and if such charges are proved, that such and such action shall be taken.

Now, the State, which exists merely for civil ends, has no more right to inquire into the religious character and teachings of school

corporations than into the religious character and teachings of an individual. The State has nothing to do except with the civil character of a citizen, and it has nothing to do with the school except with its civil character and the nature of the secular instruction given therein. As the State could not rightly refuse a pension to a soldier because he belongs to a church or taught certain religious doctrines, so it cannot rightly refuse a grant to a school corporation on any such grounds. As the State would have no right to inquire into the religious tenets or teachings of a man who is a candidate for the position of sheriff or senator, so it has no right to inquire into the religious character of a school which is a candidate of an agricultural college land grant or a grant from the Regents fund. The State has no right to discriminate in the matter of grants between two schools which render the State the same secular service, because of religious or ecclesiastical character or relations.

Those who urged this amendment, on the ground of the separation of church and State, are very much like the man who stood up so straight that he leaned over backward at an angle of forty-five degrees — they violate the very principle they claim to uphold.

The United States government gives newspaper and magazine publishers certain favors in the matter of postage, while the rest of us pay eight cents a pound on printed matter, they send their publications through the mail for one cent a pound. This is less than cost to the government. Indeed, newspapers are sent within the limits of their own county, free. This is equivalent to a government grant to newspapers. The ground on which this is justified, is that the circulation of newspapers increases popular intelligence, and is of service to the State. Now, the same privileges are given to religious newspapers established to disseminate certain religious tenets, some of these like the Methodist Christian Advocate being directly owned by the church. And this is right, for these religious newspapers do as much to elevate popular intelligence as political or commercial and other purely secular newspapers. But, if the government, in the matter of postal favors and aids, does not discriminate between religious papers and secular papers, why should it distinguish in the matter of grants from the Regents fund, between religious schools and those which are purely secular.

The amendment is objectionable as being ambiguous. Would it forbid the State to hire a building or room of a church and pay rent therefor? The money the church school received from the State in rent for one of the unoccupied rooms, might be a considerable aid to its treasury, and so "indirectly in aid or maintenance" of the school. The money paid by the State to a religious school, might

be just as much in "aid" to the school as money paid it from the Regents fund for its having taught a given amount of geometry, algebra or German. Would such a lease of a room be forbidden? If it be said that moneys paid for rent of a room are paid not to help the school, but to get the room, we might answer that the moneys given the school from the Regents fund are not primarily to help the school, but to help the State, and incidently the school, to give the instruction the State owes.

The amendment does not define what is meant by "control of any religious denomination." Matthew Vassar, being a member of a Baptist college, named Baptists for the most part, as trustees of Vassar College. And it is agreed that Baptists shall retain the majority of that board of trustees. Now, if it were proposed to make a State grant to Vassar College, could it be said that, being controlled by a board of trustees in which the Baptists have a majority, it is "under the direction or control" of the Baptist denomination? Cook Academy was founded and endowed mostly by Baptist money. The majority of its trustees are Baptists, and it is generally called a Baptist institution. But, could it, therefore, under this proposed amendment, be denied a grant from the Regents fund? It might be pleaded that it is not under the control of the Baptist denomination, but only under the control of a board of trustees, the majority of whom are of that denomination. If an academy was controlled not by the Catholic church as such, but by a board of trustees composed of Archbishop Corrigan, Mr. Coudert and other Catholics who would manage it in the interests of the Catholic church, would it be under the control of the Catholic church, or only under the control of the trustees? Elmira College is under the control of the Presbyterian denomination by the explicit language of its charter. But, though its president is always a Presbyterian, as the president of Vassar is always a Baptist, its teachers are of all denominations, and we may say it is no more a Presbyterian institution in any sectarian sense than Vassar is a Baptist college. Now, would it not be invidious to deny to Elmira college a State grant such as would be made to Vassar? Would it not be unjust discrimination to deny to Methodist Conference academies directly under the control of the church what it granted to Cook Academy, which not being nominally under the control of the church, is yet so practically from having a majority of its trustees of one denomination. What is meant by "wholly or partly under the control of any religious denomination?"

What is meant by the words "in which any denominational tenet or doctrine is taught." Is the immortality of the soul a denomina-

tional tenet? There are Christian denominations, for example, the Adventists, who deny it. How about the divinity of Christ which the Unitarian churches deny? Shall we say that it is not a denominational tenet because it is not peculiar to one denomination? But neither is predestination which is held not only by Presbyterians, but also by Baptists, Congregationalists and the Dutch Reformed. Nor is the doctrine that immersion alone is baptism, for this is held by the Greek church as well as the Baptist. Nor is the veneration of the Virgin Mary, for this is held not only by the Roman Catholic church, but by the Russian also.

If a professor in Cornell having an optimistic philosophy should declare that the day will come in the universe when all evil shall be done away and all be righteous, could Cornell be denied a State grant on the ground that this professor taught the "denominational tenet" of the Universalists?

Suppose a school says, "No, we do not teach any peculiar denominational tenet in school. In school we teach merely what is held by all Christians. It is only after school hours that our peculiar tenets or doctrines are taught." What then?

The proposed amendment would be pernicious in its working, because it is indefinite. Loosely construed it would admit the extremes of sectarian teachings, while strictly construed it might be used to exclude all moral teachings whatever. No one has yet defined "denominational tenet or doctrine."

Some one may urge that a given church may have a political "pull" which will enable it to get for its schools larger grants than it is entitled to. But if an academy was established by a secular organization, say by a farmers' club, that also might have a political "pull" which it might use to obtain undue favors. This might be an argument against grants to all schools belonging to private corporations rather than to the State, but it is not a reason for discriminating between denominational schools and other private schools under private secular control. If it be said that a given school may get a larger grant than is equitably due to it, it may be answered that a given soldier may get a larger pension than he should have, or a railway company an inordinately larger land grant. But this is an argument not for giving no pensions or railway land grants, or grants in endowment of schools, but only of increased watchfulness in making State appropriations to private corporations. It is said that the Roman Catholics obtain from the State for their asylums and other institutions vastly more than do the Protestants. But they have more institutions. It has not been shown that they

receive more than Protestants in proportion to the number of inmates of their institutions.

It is said that the Catholics wish to have the public school funds divided and a part given to their parochial schools. But there are others besides Catholics who would like to draw money from the State treasury, who yet will not succeed in obtaining it. There is nothing to which the people are more attached than our public school system, and nothing would damage a political party or a political leader so much as to consent to anything that would damage the public schools. There need be no fear that the people of the State will ever consent to have the public school system impaired.

Nor is it true that the Catholic church has so great political power that it can perhaps do what other churches cannot. The Protestants outnumber the Catholics eight to one in the United States, and by a similiar proportion in the State of New York. How absurd the idea that a tenth of the people can silence or control nine-tenths. Though one-tenth of the people, they do not hold anything like one-tenth of the seats in the national Congress, nor do they in any State hold more public offices than they might fairly be entitled to from their numbers, if equal in merit to Protestants. It is not a help to an aspirant to office, but rather the reverse, to be a Catholic. It would be next to impossible to elect a Catholic President of the United States or Governor of the State of New York Where a candidate gains one vote for being a Catholic he will lose three. Whether it be reasonable or unreasonable, there is a jealousy against Catholics which will be sufficient to frustrate any plans which any of them may cherish of aiding their parochial schools by injury to the public school system. There need be no fear whatever that the Catholic church or any other church will ever be strong enough to overthrow or cripple the public school system. More than that, the Constitution of the State protects the common school funds, and as I began by quoting from the Constitution, so I will close: "The capital of the common school shall be preserved inviolate. The revenue of the said common school fund shall be applied to the support of common schools." (Art. 9, sec. 1.)

Permit me, Mr. Chairman, before I close to read a letter from Prof. Norman Fox, chairman of the board of trustees of Cook Academy and of Rochester University:

ALGONQUIN, N. Y., *August* 4, 1894.

Hon. Owen Cassidy:

DEAR SIR.— Will you kindly send me — directing to this place, where I shall be till Friday, the 10th — a copy of the amendment

reported by the Committee of Education to the Constitutional Convention, the one restraining the State from making any grant to any school wholly or in part, under church control.

It seems to me that such a provision would be inequitable, that the State has no right to discriminate between schools controlled by churches and those managed by a purely secular corporation.

Take Cook Academy, for instance. The State of New York — to encourage higher education — not only establishes high schools, etc., of its own, but also offers a certain sum to any incorporated institution whatever that is doing a certain work. Under this provision Cook Academy draws about a thousand dollars — I think it is — a year from the Regents fund. The proposed amendment to the Constitution provides that this grant be hereafter withheld. And why? Because Cook Academy is a school "wholly or in part" under denominational control. Because forsooth it teaches not only geography and Latin, but also some elements of religion, it must be denied this grant, which would still be given it if it were under the patronage and control of an agricultural society or the Masonic order. I do not see the justice of this.

The amendment is urged in the name of the separation of church and State. In fact it violates that principle. The separation of church and State implies that the State exists merely for civil ends and that it has nothing to do with religion. Now, as the State should not make a grant to a school simply because it is a religious school, so it should not refuse a grant on that ground. As the State has no right to inquire as to the religious character of a candidate for the position of postmaster or brigadier-general, so it has no right to inquire as to the religious character of a college which is a candidate for an agricultural college land grant or any other such State subvention. The State should judge of a school purely on its civil and secular character, simply on the character of its secular teaching. If it also teaches religion and denominational tenets, that is a thing of which the State should take no cognizance whatever. This amendment proposes that the State should institute an "inquisition" and find out whether a school asking a grant does or does not teach this or that religious or ecclesiastical tenet. But for the State to do that is to go back to medievalism, to violate the principle of the separation of church and State. The State has no right to inquire as to the religious or ecclesiastical character of a school any more that it has to concern itself with the religious or ecclesiastical opinions of a citizen.

And the endeavor to discriminate between different institutions would lead to corruption. Cook Academy is really a Baptist school,

but to draw from the Regents fund we could say that it was not, for nothing — so far as I know — is said in its charter about its being controlled by Baptists. And what is a denominational tenet? Is it the existence of a God or the immortality of the soul? As to the doctrine of immersion, that is not peculiarly a Baptist tenet for it is held also by the Greek church. The result of an attempt to define practically the meaning of the amendment would be that boards of trustees who were less scrupulous would still draw public funds, while those more tender in conscience would be cut off. Take, for instance, a Roman Catholic school. They might teach in the school itself only secular knowledge, and then, after school, teach the children the church catechism. And instead of having the school directly controlled by the church authorities they might have it managed by a board of trustees, consisting of Citizen Michael Corrigan, Mr. Fred. R. Coudert and other Catholics, and while practically a church school, it would not be such technically and could still draw from the Regents fund. The amendment would be a dead letter except to introduce duplicity in drawing State funds.

It is said that Catholics get from the State for their institutions more than Protestants do. But they have more institutions than Protestants. It has not been shown that they get more than Protestants in proportion to the number in their orphan asylums, etc.

Again, an institution under the control of a secular organization, as a farmer's club or a trades' union, might have a political "pull," and get more than it was entitled to. It is not churches alone that can "work" the Legislature, and so there is no reason to discriminate between church institutions and those managed by secular corporations. Some soldiers get larger pensions than they ought to have, but that is not a reason for refusing all pensions. And if some church schools get more than should be given them, that is merely an argument for greater care in making appropriations.

If it were proposed that no State grant be given to any institution not owned and controlled by the State, the amendment would be consistent and logical. But when it tries to discriminate between church schools and those managed by other private but purely secular corporations, it violates the principle of the separation of church and State by instituting an investigation into the religious character of an institution, and as the amendment does not, and, indeed, cannot, distinctly define church control and denominational tenets, its enforcement would be impractical or would lead to dishonest evasion.

I should be glad to receive any printed documents pertaining to

this matter which have been laid before the Convention. I should be glad also to receive a list of the members of the Convention.

Respectfully yours,

NORMAN FOX.

I expect to be home — Morristown, New Jersey — after August tenth.

Also another letter from Prof. A. C. Hill, a Protestant of Protestants, and one of the foremost educators of the State:

Hon. Owen Cassidy:

DEAR SIR.— I am greatly interested in the proposed amendment to the Constitution relating to appropriations to sectarian schools. In its present form, the measure is very objectionable and if passed by your body will help to defeat the adoption of the Constitution when submitted to the people. Opposition will increase as the nature of the proposition is better understood. There are many schools "wholly or in part" controlled by religious bodies that are now doing educational work in the State. Most of these teach no peculiar religious dogmas, but are engaged in strictly educational work. A majority of their trustees are by their charters required to belong to some particular sect or church, and from this fact come within the class referred to as "partly under the control of religious denominations," and are, therefore, shut out from State aid. These schools are doing no inconsiderable part of the educational work that would otherwise fall to the State to do, at small cost to taxpayers. They are doing no harm, but are rather giving a moral and religious tone to education in the State. Why then should such schools be singled out and thus discriminated against in the matter of State appropriations? A corporation, the majority of whose members are agnostics, atheists or even anarchists, may establish schools and not come under the ban of the proposed constitutional enactment. The Masonic order, a farmers' club or any other corporate body may found schools for which State aid may be granted. Why should corporations composed of Christians or Jews alone be prohibited? The measure is an infringement upon personal liberty; a step toward union of church and State, an introduction of a negation of religion into our State Constitution. The measure ought to go further or be struck out altogether.

A. C. HILL.

Mr. Holls — Mr. Chairman, I do not propose to enter into this discussion now, but to reserve the time which has been given under

the courtesy of the Convention to the Committee on Rules for to-morrow, to close the discussion. I think it now only due to myself, as well as to other members of the minority of the Committee on Education, to make the announcement to the Convention which has already been made in that report, namely, that the two lines that the amendment offered by Mr. Choate proposes to strike out was adopted by a vote of the committee in which there was a minority, consisting of Messrs. Durfee, Hirschberg, Hill, Tibbetts, Cornwell, Fraser and myself — all the other members of the committee being in the majority, and indorsing this proviso, as I understand it. The minority consisted of seven members. Ten of the members voted to have these two lines in the section. I merely wish to announce that in order to make the record clear, reserving the argumentation of the subject until afterward.

Mr. Peck — Mr. Chairman, and gentlemen of the committee, it has been with a great deal of hesitation that I have assumed to lead on behalf of the committee in the reply to this proposed amendment. I wish to begin what I have to say by asking who authorized Frederic R. Coudert or George Bliss to barter or weigh the beneficence of the charity of the People of the State of New York? I stand here to-night representing nobody but the wards of the State of New York — the children, the poor, dependent orphans, the deaf, the dumb, the blind, whose delinquents are a matter of heredity. For them I stand — those upon whom the people of this State have laid its hand and placed as its wards in institutions of this State where it has been thought for twenty years that they best could be maintained, supported and educated. What is the principle that Mr. Coudert and Mr. Bliss raise? It is that the child shall be educated for the State, not that he be retained from sectarian influences, but that he shall be educated. Is there another class of children in this State for whom it is so important that the State should furnish education as those poor children upon whom it has turned the key? Shall it say to those children, "you, the most dependent; you, the most entitled to the sympathy of every human heart; you, of all the children of this State, shall have not one cent's benefit of the public funds for public education?" Is that the voice of the State of New York which has come down to us through its entire history? We are at the end of the nineteenth century, preparing to enter the twentieth, with our history, with our proposed Constitution. Do you propose to the people of this State to enter the twentieth century with such a blot on its escutcheon? What era is this? What era is it? What marks it? There have been grander capitols, there have been greater asylums, there have

been greater academies, there have been stronger forts and deeper dungeons than this era affords; they do not mark it; many of those you could have found in the marble city of Augustus; but there you could not have found an orphan asylum, there you could not have found a hospital, there you could not have found a deaf and dumb asylum. No! It is the mark of this era that men love one another, stretch out their hands to each other, and help each other. It is the asylum and the hospital which mark this age. And do you propose to the people of the State of New York to enter the twentieth century of this era saying that the children upon whom it has turned its key can have their clothes, that they need not starve, but that they must be raised in ignorance, and they of all others shall have not one cent of the public funds which have been raised for the public education? There is no class, there can be no class, in any community which deserve public education more than those children who are locked in these institutions. I would extend it beyond the proposed amendment. Where the courts by their strong arm have committed by their processes to reformatories the children who have grown up in meretricious surroundings, and to whom vice begins to cling — or will you say to them that, in order to be educated, in order to receive their share from the public taxes of public education, they must be clothed, and twice a day must be marched out of their institutions, taken to the schools from their reformatories with keepers attending them, taken from the hospitals or asylums with nurses to take care of them, and marched a quarter or half a mile to school, there watched and taken care of through the day, taken back to dinner, and then marched out again — two or three thousand of them at a time generally to school in the afternoon; and put the increased expense of this additional care upon the charitable people who are maintaining these institutions? Is that the message that you are going to send to the charitable institutions and to the charitable people, or the people of the State of New York? I shall not attempt to anticipate the answer you will receive. In your own hearts you know what it ought to be. We have had here within the past twenty-four hours a statement of what New York is to New York citizens; we have had a magnificent description of its great waterfall, of its mountains, of its beautiful rivers, of its magnificent scenery; but, gentlemen, beyond and above the natural characteristics of the State of New York is New York manhood. You know what that means. If you have ever visited the far distant settlements of the West you know when you reach a section settled from New York before you have been there for twenty-four hours. You find that you are confirmed in your judg-

ment when you begin to talk with the people, and you know that one of their highest prides is that they are New York people. When you return to this State from the greatest metropolis that you choose to visit outside of its borders and enter our own borders, you know the change you find; you know the difference there is in business matters and the difference there is in the ways of viewing questions. I cannot tell you what it is, but it is founded on a broader view, a deeper manhood, perhaps, a broader, a more extended, a more self-possessed manhood than we find anywhere else. That is my honest impression, and I believe that every man who has come back to his home in New York is happier in his home than he was before he left the boundaries of his State. That is what New York pride, after all, has for its foundation. And shall we change that? Shall we seek, with such a manhood, and after such a history as we have had, to change this whole tenor, to change its entire subtone, and assume a narrowness, a bigotry, an intolerance, and say, because children are so unfortunate that the only home they have is in a public institution, the only home they can have is something furnished by charity, that those children, under such circumstances as that, who, if they had had homes, would have gone where their parents live, and would there have been taught religious tenets, and would have had religious training — that because they have no home except the home furnished by the charitable Christians of the communities — they shall not have the benefits of a home, and the religious training also? Why, gentlemen, upon my honor, I would rather have a child taught to venerate the Great Spirit of the American Indian, I would rather have it taught any religion upon the earth, than no religion. I do not want the homes of the dependent children of the State of New York to furnish the breeding places of the anarchists and socialists of the future. I want that they should have religious training during their tender years. And, certainly, I do not want to say that because they have no home they shall go ignorant in the State of New York.

A man who would advocate the amendment proposed by the President of this Convention, after he has thoroughly and carefully weighed it would — if it was a new question, if it was first proposed to-night to have free schools — vote against it. The two things must go together; and the mind that conceived the one would never have conceived the other. We must have our free schools permeating into the very lowest homes, the homes that promise the least for the children, or we must give up our schools, or we ought to give up our schools. Gentlemen, as American citizens, as New Yorkers, as men of the nineteenth century, let us

stand shoulder to shoulder for our traditions, for the things that are inborn in native-born New Yorkers.

I do not care the snap of my finger in what language you put this. It may very well be that the language criticised by the President is inadequate. It is not a matter of language. It is not a matter of expression. It is not a matter of words. It is a matter of humanity, of Christianity, of patriotism. Let us have the principle — expressed as you please — but let us make our common school money reach these dependent children. Do not vote for anything that does not send the public school money to the most dependent child in the State of New York. (Applause.)

I have omitted to say one thing, which if you will pardon me I will add. I want to say that this is not new in New York. It is not something unheard of, or that takes the people by surprise. For twenty years we have had these words in our Constitution. Now expand them. That is all that is necessary. Expand them to reach the crisis which you think you have reached. You think there is a public sentiment demanding of you intolerance and bigotry, and that that public sentiment will injure the work of this Convention if you do not heed it. But I tell you, gentlemen of the Convention, there is nothing of the kind in the State of New York. These few agitators make a great noise. The shallows are noisy, but the deeps are dumb. We have had Masonic and anti-Masonic agitations in the State of New York, but they were not allowed to mar its institutions. We have had native American agitation in the State of New York, but it did not put its dirty hand on the Constitution. Shall we have this baseless, this senseless agitation which is now being wafted in the air, very bitter it may be, but not reaching many people, reaching the lungs of no honest, strong American — shall we allow it to blot and stain the Constitution which is to be offered to the people of the State of New York? Are we going to send that kind of thing down over the people of the State?

I was going to read this section which has been in the Constitution for twenty years, that you may see how it may be broadened:

"Neither the credit nor the money of the State shall be given or loaned to or in aid of any corporation or association or private individual."

Now, that would be very easily expanded to any charitable institution, if you please.

"This section shall not, however, prevent the Legislature from making suitable provision for the education and support" — both, mind you — "for the education and support of the blind, the deaf

and dumb, and juvenile delinquents as may be thought proper." (Applause.)

Mr. Countryman — I would like to ask the gentleman who has just taken his seat a question. I wish to know whether there is any objection on Christian or moral grounds to sending the children of these charitable institutions to the common schools?

Mr. Peck — There is only the objection of the additional expense, trouble and burden that is placed upon the charitable people of the community. Now, if you have an institution with children enough in it for a school, for a public school, is there any sense in the world in making those charitable people buy overcoats, umbrellas, overshoes and all that kind of thing, for the mere purpose of walking those children to a school a little ways off, a quarter of a mile, if you please, and then marching them back again, and so adding largely to the expense of maintenance, when all that you have got to do to accomplish the same purpose is to hire a teacher for them, and put him right there in the institution with them.

Mr. Countryman — Would it cost any more than is necessary ——

The Chairman — The Chair cannot allow this conversation. Gentlemen will address the Chair.

Mr. Lauterbach — I have this amendment to offer to Mr. Choate's amendment. His is a motion to strike out, and mine is a motion to strike out and insert.

The Chairman — The Secretary will read it.

The Secretary — Mr. Lauterbach moves to strike out lines 13 and 14, and to insert instead the words, "This section shall not apply to orphan asylums or correctional institutions in which education is incidental only."

The Chairman — The question is on Mr. Lauterbach's amendment to Mr. Choate's amendment.

Mr. Lauterbach — Perhaps I had better take the floor to explain the amendment, but without going fully into the subject, as I hope to do at some future occasion. Judge Countryman, as I have the floor for the moment ——

The Chairman — Mr. Lauterbach will address the Chair.

Mr. Lauterbach — Then may I call the attention through the Chair ——

The Chairman — Every gentleman here is listening.

Mr. Lauterbach — Mr Countryman, I desire to add to the explanation which has been made by Mr. Peck (because your ques-

tion, I think, covers the whole controversy), that there are institutions in which children are confined, which are correctional in their character, and yet are under the supervision of religious associations. The character of the children is such as to render it impossible that they should be sent to the ordinary common or public school. If they were sent there the result would simply be the decimation of the schools which they would attend. In answer to your question I would like to refer, for example, to the institution with which Mr. Andrew H. Green, of New York, is connected. It is a Protestant correctional institution, and is one of the best in the land. It harbors committed children — those committed to it by public magistrates. Now, there is a suggestion in this amendment, Mr. Chairman, that no money of the State shall be paid to any school or institution of learning that is under religious or denominational administration, in whole or in part. Now, those children are under such administration. It may be in theory an excellent thing, but in practice, disastrous, that they should be sent to distant common schools that seven, eight, nine hundred, or a thousand (for there are a thousand children in this institution with which Mr. Green is connected) that these thousand committed children, some of them with deeply imbedded inherent vice shall be taken from the institution in which they are harbored, housed, and cared for — and something else — where they are educated; and that is the crime — educating them; for there is no objection to harboring them, no objection to caring for them, no objection to putting food in their stomachs and clothes upon their backs through the administration of the angels, who are secured by Andrew H. Green and others to do this; but when you educate those children who need it so much more than any other children on the face of the earth, then come the zealots and say that you must stop. I want to answer your question — what is to be done with them? Are they to be taken in files, with keepers on either side, down the Boulevard, and down Tenth avenue to One Hundred and Twenty-ninth street, and marched into the schools where the pure, the innocent, the properly-trained children of the mechanics and laborers and the tradesmen are gathered? Are they to be put under the administration of the local school principal or some one else, with money taken from the public school fund, instead of being taught in the institution where they belong, and where it costs less to provide the education, where the curriculum is exactly the same as that of the public schools, for it is always conducted under the supervision of the superintendent of education; where they are well trained, and where they are well provided and cared for. Mr. Chairman, addressing

you, and through you addressing the gentleman who makes the interrogatory, and every other gentleman, I ask, is not this absolutely senseless? I am willing to listen to reasonable clamor founded upon sense; but, unless you mean to drown these children, unless you mean to rear criminals steeped in ignorance, if you mean to care for them at all, in what respect, I ask, is that care more consonant with justice and with decency or better exhibited, than in providing them with education. That should be the first essential. Physical care is important, but not as vital as a proper education. Their spiritual welfare and intellectual development are necessary; in this you will all agree with me on every side. You concede these children ought to have both secular and religious education, and yet there is a spiritual teacher who enters that institution for the purpose of administering religion, then the concomitant and corollary, and the result of that must be, according to the amendment submitted to the committee, that they are not to receive one word of secular education of any character.

Mr. Countryman — My question was pointed at the exception to the general operation of the section at large; and I do not understand the gentleman's remarks to be directed to that particular exception. The exception is a legal one and it is in these words: "This section shall not apply to schools in institutions subject to the visitation and inspection of the State Board of Charities."

Mr. Lauterbach — Strike that out. That is a mistake. I am not a member of this committee, and I do not know where the notion came from, but I do appreciate the difficulty of seeking to provide for this suggestion of the committee proper, for it is an anomaly, a paradox. The moment I read it I recognized it was a dangerous proviso. Why? Because the Legislature of the State might put every institution, including parochial schools, under the supervision and jurisdiction of the State Board of Charities, and in this manner State or local funds might be applied to parochial or sectarian or denominational schools, which nobody desires.

Mr. Choate — May I ask Mr. Lauterbach a question?

Mr. Lauterbach — Certainly, Mr. President, with pleasure.

Mr. Choate — Do you understand there is anything in my position, or in what is proposed by my amendment, that will prevent such institutions as you describe receiving, under proper restraint such as you propose, money for the shelter, for the clothing and for the support of the children, as they have always had it?

Mr. Lauterbach — I understand that there is no such restriction,

and I understand that you do not desire to prevent those children from being educated, do you?

Mr. Choate — Not at all. My desire is (if the Chair will let me say so in answer to the question) that if they are to receive their tuition under supervision of a religious body, or if it is to consist in whole or in part of religious tenets, the religious body that proposes to insert these tenets into the minds of those childen shall pay for their education. (Applause.)

Mr. Lauterbach — But the committee's amendment would prevent both secular and religious education, and might even be construed to prevent any aid to a secular institution. Every one connected with this subject starts with the agreement that in response to a sentiment here, that has really no foundation in fact, there shall be a new clause inserted in the Constitution to the effect that no money shall be paid to any parochial, sectarian or denominational school. One would imagine from the excitement that there were being spent vast sums of money upon denominational, parochial and sectarian schools; but actually the sums of money that have been paid out in those directions in the last year amounted to only about three thousand dollars, and in any year before that to not quite as much; and it is limited to a sectarian school in Poughkeepsie, and to a few other small sectarian schools where the trustees of the district have found it more to their convenience to make a contract with the existing Catholic school-house than in any other manner; and they would be sorry (and Mr. Arnold, of Poughkeepsie, will tell you so) if as a result of this constitutional amendment they were prevented from so doing. But there have been political zealots in the Catholic church, whom no one has supported, whom I can find to have no encouragement whatever, who have through one journal and through one or more misguided men, said they wanted to have for their parochial schools some portion of the public school funds. We are all agreed, that whatever is necessary to be done to prevent the possibility of any such abuse in the future (because no such abuse exists at present) shall be put into this Constitution. We are all agreed upon that. That is, I think, a unanimous agreement. There is, however, a sum of money paid for the education of other children, but not in parochial schools, who are receiving an education as an incident of their care and support in orphan asylums and in correctional institutions where they are housed, and where, I believe, every one concedes they are legitimately housed. They are the children of the poor, full orphans, half-orphans or whose living parents are unable to care for them or unfitted to be intrusted with

their care. Some, those who are merely waifs, are in orphan asylums; others in correctional institutions, who have already in their tender years acquired evil and vicious habits, and have become, if not actually criminal, at least *quasi* criminal in character, and have been committed as a measure of safety to the public. Up to 1857 it was the infamous practice to take those children and put them in the public alms-house, and then the principle which these zealots proposed was maintained. There was a garment put upon them scarcely to cover their nakedness; they were provided with inadequate and filthy food, but there was no education except in everything that was vicious, everything that was depraved, everything that tended to degrade them, the necessary result of their terrible associations. At the instance of the State Board of Charities which existed at that time, and still exists, the law was put upon the statute books that no child should be sent to any public institution of that kind, and that under no circumstances should they be committed to an alms-house, but that they should be contracted out to families or to private institutions, or to public orphan asylums, in farming them out, or in putting them under guardianship, that they should be preferentially placed under the guardianship of those families or those institutions whose religion was the same as that of their parents. The principle was recognized that it was most important that every child who became the ward of the State should receive religious education. Does any one dispute the propriety of that proposition? Does any one claim that the State, or any of its civil divisions should go into the business of maintaining alms-houses, orphan asylums, and kindred institutions? Shall we put the 20,000 children of the State who are dependent upon the State for support under the care and maintenance of professional politicians who are prone to corrupt, abuse and ruin every institution and every public work with which they are connected? And so, since 1875, the principle has been maintained that it is the duty of all public officers to see to it that the children are sent to institutions where the religion of their fathers shall be taught them; that the children of Protestant parents shall be put in Protestant asylums, that the children of Hebrew parents shall be put in Hebrew asylums, that the children of Catholic parents shall be put in Catholic asylums, and in the commitment of children this rule has prevailed. No one disputes the propriety of that. Now, those public, those private, those charitable institutions ——

Vice-President Steele — The hour of adjournment having arrived the Convention stands adjourned until to-morrow morning at ten o'clock.

Saturday Morning, September 1, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, in the Capitol, at Albany, N. Y., Saturday morning, September 1, 1894, at ten o'clock.

President Choate called the Convention to order.

Prayer was offered by the Rev. A. Kennedy Duff.

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

Mr. Gibney — Mr. President, I would like to be excused for Monday and Tuesday of next week.

The President put the question on excusing Mr. Gibney, as requested, and he was so excused.

Mr. Bowers — Mr. President, I offer the following resolution:

"Whereas, This Convention has learned with great sorrow of the death of a son of our colleague, the Honorable David McClure, of New York;

R. 196 —"Resolved, That we extend to our colleague our sincerest and deepest sympathy in his affliction."

Mr. Durnin — Mr. President, I desire to second the motion that has just been offered by the gentleman from New York (Mr. Bowers). The bereavement that my friend, Mr. McClure, has met with in the loss of his son is a grievous one. A boy, promising in his future, a student fully up to the standard of the academies in which he studied, with all the grand hopefulness of a great future, he has been suddenly cut off in the prime of his youth, the hope of a father and the darling of a family. This is a bereavement that can be appreciated only from an acquaintance with its surroundings. He was the beloved boy of a fond father, cut off in the prime of his young manhood. I know that any expression of sympathy coming from this Convention will be appreciated by a fond father and a loving mother, and, therefore, I second the motion of Mr. Bowers.

The President put the question on the passage of this resolution, and it was determined unanimously in the affirmative, by a rising vote.

The President — Are there any reports from committees?

Mr. McMillan — Mr. President, I offer the following report:

The Secretary read:

Mr. McMillan, from the Committee on Governor and State

Officers, to which was referred the proposed amendment introduced by Mr. Lauterbach (introductory No. 35), entitled proposed constitutional amendment to amend section 1 of article 4 of the Constitution, in regard to the powers and duties of the Governor, reports in favor of the passage of the same, with some amendments, and the title amended so as to read as follows: (O., I. No. 35, P. No. 457), "Proposed constitutional amendment to amend section 1 of article 4, and section 1 of article 5 of the Constitution, in regard to the terms of office, powers and duties of the Governor," and so forth.

Referred to the Committee of the Whole.

The President — Are there any motions or applications before going into Committee of the Whole?

Mr. Mereness — Mr. President, the report of the Committee of Forest Preservation is the next business on the special calender, and inasmuch as Mr. McClure, who is chairman of that committee, cannot be present when that is reached to-day, I ask that it be deferred until his return, without losing its place on the special calendar.

The President put the question on agreeing to the disposition of the report from this committee as suggested by Mr. Mereness, and it was determined in the affirmative.

Mr. Pashley — Mr. Kinkel is suddenly called away by illness in his family, and desires me to ask the Convention to excuse him for to-day. He intends to be here Monday, if possible.

The President put the question on excusing Mr. Kinkel, as requested, and he was so excused.

Mr. Root — Mr. President, I call up and move the adoption of the report of the Committee on Rules.

The President — There are two reports from the Committee on Rules, which one is this?

Mr. Root — The first is the amendment to rule 24.

The President — The Secretary will read the resolution. It is now in order.

The Secretary read:

Resolution introduced by Mr. Barhite:

R., No. 191.—"Resolved that the Committee on Rules be forthwith directed to report an amendment to rule 24, striking out the words 'two-thirds' and inserting in the place thereof the word 'majority.'"

The President — The rule is open to the consideration of the Convention.

The President put the question on the adoption of the rule as reported, and it was determined in the affirmative.

The President — The Secretary will read the other resolution recommended by the Committee on Rules.

The Secretary read:

Mr. Root, from the Committee on Rules, in accordance with the resolution offered by Mr. Cookinham, in the words following:

R. 195.—"Resolved, That the proposed constitutional amendments hereinafter mentioned be made special orders for August thirty-first, at 10 o'clock A. M., in the order stated below, and that they each be considered in the Committee of theWhole until disposed of, except that general order No. 74, in regard to apportionment, take precedence over all other business after it is reached, on the day now fixed for its consideration," reports the following order of business to be taken up by the Convention unless otherwise ordered.

The President — Does any member desire this list to be read again?

Mr. Bowers — That was ordered printed. It has not been.

The President — It is printed. Does any gentleman desire to make any remarks upon this?

There being no discussion offered on the committee's report, the President put the question on agreeing thereto, and it was determined in the affirmative.

The President — Are there any other motions before we go into the Committee of the Whole?

Mr. Crosby — Mr. President, I desire to be excused from attendance on Monday.

The President put the question on excusing Mr. Crosby, as requested, and he was so excused.

Mr. Davenport — Mr. President, official duties compel my attendance during the morning at my office in Brooklyn on Monday. I ask to be excused for the morning session of Monday.

The President put the question on excusing Mr. Davenport, as requested, and he was so excused.

Mr. Holls — Mr. President, two hours and fifteen minutes have been allotted to further debate of section 4 of the educational article. If we go now into Committee of the Whole, that will bring the end

of the debate to half-past twelve. It seems to me that it would be impossible to take up much of any other general order before one, and the applications for time to speak on this subject are so many that I would move that the debate be prolonged for one-half hour, until one o'clock.

The President put the question on the motion offered by Mr. Holls, and it was determined in the affirmative.

The Convention thereupon resolved itself into Committee of the Whole on general order No. 61, relative to free common schools, and Mr. C. H. Truax resumed the chair.

Mr. Lauterbach was recognized by the Chair.

Mr. Holls — If Mr. Lauterbach will yield a minute, I think a statement from the Chair as to the time allowed to both sides in this debate would materially assist us all.

The Chairman — As the time stood before this late extension, the side represented by Mr. Lauterbach had still one hour, and the side represented by the chairman of the committee had seventy-five minutes, or an hour and a quarter. This late extension gives fifteen minutes more to each side.

Mr. Gibney — Mr. Chairman, for information of the members, I would ask that the Secretary read the amendment of Mr. Lauterbach.

The Chairman — Mr. Lauterbach's amendment reads: "Strike out lines 13 and 14 and insert instead 'this section shall not apply to orphan asylums or correctional institutions in which education is incidental only.'"

The Chairman — Mr. Lauterbach has the floor.

Mr. Lauterbach — Mr. Chairman, I mentioned last night that the sum of money that was devoted by the State toward the support of parochial schools as such, schools in which secular instruction alone was afforded, and was afforded under the direction of religious denominations, amounted to a very small sum *per capita* per annum. So that there may be no misapprehension about it, I will say that that referred to the support that is given by the State or any civil division of the State to any of the schools known as parochial schools. There are, as I understand it, some seventy-five thousand children who are being educated in parochial schools, but they receive no money from the common school fund, except to the extent that I indicated last evening. Of course, I make no reference to the amounts that are taken from the common school and other funds, and paid to the orphan asylums toward the secular

education of children in those asylums. I do not know that a dollar is paid toward any religious education in those schools, but I do know that most of the schools are under the jurisdiction of the common school superintendents and officers of each school district, that the teachers are designated by the authorities and that the curriculum is precisely as is the common school curriculum, and that whatever money they receive is given for the purpose of affording a common school education, differing only from that given in the general public schools in the fact that the school is conducted within the walls of the asylum itself instead of being apart therefrom, and my only purpose in speaking upon this measure is to prevent the possibility that the power to educate those children in the asylums shall in any respect be militated against, but that it may continue, but without any attempt to have any money applied to the religious education of those children in those institutions, toward which in fact no part of the common school or any other public fund has ever been applied. In some few instances a part of the school fund is devoted to the secular education of children in orphan asylums under the acts of 1849 and 1850. In some about seven dollars *per capita* is allowed for school books. In the Catholic Orphan Asylum of New York, in which there are eleven hundred children, all the money received from the common school fund, or any public fund, by that institution is $7,000, which goes to the purchase of books to be used in a curriculum precisely corresponding to the general common school system. They are entitled to receive, under the law, $110 per annum *per capita* for the support and maintenance of the children, including education. They do not, in point of fact, accept one single dollar. They have the right to go to the treasury and receive the money, and yet, having the backing of their own religious corporation to sustain them, that institution which has supported an average of a thousand children per annum in the city of New York, for at least twenty years, and which could take from the city treasury under the existing law, if it so desired, over a hundred and ten thousand dollars per annum, has not taken one single cent beyond the $7,000 per annum referred to. It is said that even that payment should be abrogated. I do not conceive that there is any great demand for it; but if your amendment referred only to that fund, I should say, "Well and good, eliminate it; let them raise the $7,000 in some other way," and let other orphan asylums do likewise. But your amendment goes much further; it provides that an institution in which education shall be conducted and which shall be under religious denomination shall receive no money from any public source either for educational

purposes, or for any other purpose. You are absolutely endeavoring to cut off the whole supplies of these institutions because secular education may be maintained in them. Your amendment is not limited to the common school fund nor to the literature fund, to no special fund, but you are providing that no moneys whatever shall be given for the aid or maintenance of the institutions. I will read: "Neither the State nor any subdivision thereof shall use its property, credit or any public money, or authorize or permit either to be used, directly or indirectly"— any money or credit —"in aid or maintenance,"— not only for education, but, in aid or maintenance (other than for examination or inspection), of any school or institution of learning, wholly or in part, under the control or direction of any religious denomination or in which any denominational tenet or doctrine is taught." If it be beyond peradventure that the orphan asylums or protectories or correctional institutions to which children may be committed are not "schools or institutions of learning," then there is no point in having any proviso to this section; if you can convince yourselves with certainty that there will be no fanatic judge upon the bench, no General Term of any district in which bigotry shall prevail, so that no decision can ever be made that an orphan asylum or a protectory is a school or institution of learning, I have no objection to sweeping away all provisos. But who can guarantee it? Our amendment prepared by the Committee on Judiciary provides, as I understand it, that the right to appeal from departments, where local influences exist, to the Court of Appeals, where we know that we are always safe, because local prejudice does not exist, is to be hereafter greatly limited. But should this serious question be presented in such form as to afford a simple question of fact in some department of the State where prejudice does exist, then, as I understand the scheme of judicature that is presented for adoption to this Convention, and which will be submitted to the State, the situation might be such that even an appeal to the Court of Appeals on a subject of such importance could not lie. Now, I state it again as my personal impression that the term "school or institution of learning" does not refer to the case of an orphan asylum or a correctional institution. That is my belief. That is probably the opinion of those who desire that no proviso shall be attached to this section; and if we could have a guarantee or assurance of that, I would say affix no proviso, because a proviso may be misconstrued. Now, after this very drastic amendment has been prepared, the majority of the members of that committee prepared this proviso, originally it excluded *eo nomine* orphan asylums, reformatories, protectories,

from the terms of the amendment, but referring as I suppose to make the amendment more succinct after examining the act under which the State Board of Charities is now performing its functions; and announcing themselves that by no possibility could it be construed that the Board of Charities would have any jurisdiction over any school or institution of learning, they with perfect propriety, without any of the deceit that was implied in one of the addresses last evening, prepared the proviso in its present form. But there is one view of the matter in which the proviso might perhaps be abused. The Legislature might hereafter extend the jurisdiction of the State Board of Charities over schools and institutions of learning, and in that way the parochial schools would be relieved from the restrictions of this amendment. That provision might readily have been amended by saying, "institutions of learning of the classes as they now exist," and that would cover the case, because classes as they now exist, supervised by the State Board of Charities, do not include any school or institution of learning. But when the criticism was made last night, I thought it proper that no possible loophole should exist, and submitted the amendment which now is before you for consideration.

Now, gentlemen, that is all that I am seeking to accomplish. I desire simply and only that you shall not make such a provision as will prevent a dollar being paid to an orphan asylum or a correctional institution because tuition goes on within its walls of a secular character supervised by those who affect some particular religion. If your amendment were limited to the common council funds I would ask for no proviso. If your amendment in terms excluded charitable institutions I would ask for no proviso. But what you have here is so dangerous, goes so far, may reach to the extent of absolutely prohibiting the payment of a single dollar to these institutions, that I insist upon some protective provision. If some one shall be able to establish as a matter of fact that tuition goes on in an orphan asylum and that it is dominated by some religious sect, some one might plausibly claim that no money be paid to it. I am confident you do not mean to effect the destruction of the whole system that would result from an enactment of this kind in the event of such a construction of the law. Impose whatever reasonable limitation you please, but exclude in the body of the section orphan asylums and correctional institutions, so as to rescue them from this danger, or adopt the amendment which has been suggested. I am not a stickler for phraseology, but I am a stickler for this. I do not desire that the possibility shall arise that all aid

and assistance of every character shall be withheld by the State from any institution because tuition is given within the walls of that institution. Limit the right to give education, if you please, only to such asylums or homes as will be supervised by the Superintendent of Public Instruction. They are, in fact, so supervised. Do as you please about those things, but do not enact a proposition which, if intrusted to inimical hands, will result in drying up the source of supply for the orphans of the State, or for those unhappy children who will be sent to correctional institutions. The law now contemplates that religious instruction may be given, and also that secular instruction must be afforded. Now, there may be the criticism that the State should not expend any money for the religious education of children. I do not think it should; I do not think it does. The $110 per annum *per capita* that is given in the city of New York for the maintenance of each child; the $80, including the amount paid from the school fund under the act of 1850, that is given in the city of Troy to Protestant and Catholic alike for support and maintenance, does not suffice to put raiment upon the body, food into the stomach, and to provide shelter for the unfortunates that are within those walls. There is abundance of money supplied by all these institutions from private sources which pays for the religious education of the children. Not one dollar of your money is applied to that purpose. The small amount paid by the State, less than two dollars a week, that is paid out of the funds derived from local taxation or excise funds in greater part, is hardly sufficient to perform the service, care and maintenance which these free agents perform. You are paying nothing for religious instruction. The expenditure would be small were you to provide it, but you do not provide it. Or if you believe that you do, put into your Constitution whatever you choose in respect to an absolute enactment that no single dollar of any fund shall go for religious education; but do not put upon your statute book, without a proviso, that which not only will prevent secular education, but that may go still further and that may prevent a dollar being given for aid or maintenance in any institution that may be said to be, or decided to be, a school or institution of learning. I am confident that there is no intent to do this, but do not permit it to be done carelessly though without intent. I have sought during the last two weeks, in interviews with every one that I thought was in favor of the measure as it stood, to frame a provision that would be acceptable. I have not been met in the spirit in which I think I deserved to be met. We have in the Charities Committee perfected what I think is a complete system for the supervision of charities, a system that shall

supervise the $20,000,000 expended by the State and its civil divisions, and which to-day is without supervision and without check. In that amendment we have simply provided for the care and support of any children in those institutions. If I was sure that the charities article would be enacted with provision for inspection, I would not ask for any proviso. Do not put in jeopardy 145 orphan asylums, the protectories so noble in their beneficence, all these institutions that it is conceded on all hands do so much good as the servants and agents of the State; do not, in the interest of morality, endeavor to enact into your Constitution that which will not only prevent education, but which may make these unfortunates houseless and homeless. Your law does not permit them to be taken into alms-houses. What shall be done with these your wards? Dry up the source of supply; scatter these children to the wind, and if your consciences will approve your conduct I am satisfied.

Mr. Hirschberg — Mr. Chairman, it is so very evident to me that a few words of common sense will dispose of all this argument, that I take advantage of this opportunity to explain the attitude of those members of the committee who are opposed to this proviso, or any proviso in this section of the Constitution; and those few words of explanation will demonstrate that this entire argument is wasted and uncalled for. Now, it is conceded that it is entirely appropriate to put in an educational article, a provision that the money of the State shall not be used for religious instruction. That clause was framed in the strongest, broadest and most positive language that could be devised. A proviso was suggested, a long one. It was defeated in the committee and ultimately the two lines now in question were adopted by a small majority of the committee. Now, the objection to the proviso is this, that by putting in such a proviso the effect is that in attempting, and while pretending to put in the Constitution a provision that public funds shall not be used for religious instruction, it is made to read that in certain institutions it may be so used.

Mr. Lauterbach — Will the gentleman pardon me a moment if I ask a question?

Mr. Hirschberg — If it is not taken out of my time.

The Chairman — The Chair holds that the question will have to be deferred until after Mr. Hirschberg has finished.

Mr. Hirschberg — Section 4 provides that no money of the State shall be used in aid or maintenance of schools or institutions of learning which are wholly or in part under denominational control.

Then the proviso goes on to say, and that is the mischief of it, that this section shall not apply at all to charitable institutions. That is to say, in charitable institutions the public money may be used for denominational tuition, or at all events it is subject to that construction; and the only argument for putting in the proviso that has been suggested by the gentlemen for whom the last speaker is an advocate, is that some judge may be so lost to the proper meaning of the words as to hold that schools and institutions of learning mean orphan asylums and institutions for the reformation of juvenile delinquents. Now, it seems to me ridiculous to put in a provision to meet such an unlikely emergency. We will assume that the judges understand the English language, and that they can construe a plain, simple provision of the Constitution; and the answer was made by the gentlemen on the committee, who voted against this proviso, that if it is necessary, as the gentleman claims, to have in the Constitution a provision which shall permit instruction of the inmates of these charitable institutions; it belongs in the charity article and not in the educational article; and that it all there is of it. Now, there is a charity article proposed here. It is general order No. 67; and the insertion of a single word in it would meet the whole case. It provides, on page 2, lines 18 and 19, that "none of the institutions mentioned in this section shall hereafter receive any public aid, unless authorized so to do by said Board of Charities, and only for the care and support of such persons as may have been sent to such institutions by due process of law, or under such rules as will be established by said Board of Charities." If that is made to read, "And only for the maintenance and instruction of such persons as may have been sent to such institutions by due process of law," then the Constitution will be ample to protect the right of education, in the ordinary elements, of the inmates of those institutions; not religious instruction, but instruction in the secular sense; and the two parts of the Constitution will be read together, the one providing that in schools and institutions of learning as such, no money shall be given if in those institutions religious doctrines are taught, and the other providing that in charitable institutions, such as are known as charitable institutions and recognized as such by law, the money that is furnished by the State shall be devoted to the uses which the State prescribes, among which is that of education. I find the criticism to be based upon this, and that is why the amendment is proper, because whatever safeguard is to be found necessary it should by this Convention be placed where it belongs, and not placed in an educational article, where it can easily, by implication, be given a false meaning, and

where it necessarily involves the allowance under organic law of just that very thing which we are trying to forbid.

Mr. McDonough — Mr. Chairman, as one of the Committee on Education, as a Roman Catholic, as a life-long Republican, I cannot let this occasion pass without expressing my views upon this subject. I am sorry that at this late day this religious question has arisen in this Convention. I am sorry that an effort has been made here to put before us a false issue; I am sorry to have you believe that something is wanted here that there is no need for to-day. In 1850, in the height of Know-Nothingism in this State, this act was passed:

"The schools of the several incorporated orphan asylum societies within this State, other than those in the city of New York, shall participate in the distribution of the school moneys, in the same manner and to the same extent in proportion to the number of children educated therein as the common schools in their respective cities and districts. The schools of said societies shall be subject to the rules and regulations of the common schools in such cities or districts, but shall remain under the immediate management and direction of said societies, as heretofore."

Will the Republican party of the State of New York in 1894 be less liberal than were the Know-Nothings of 1850? Under this act as read to-day, and only under this act, are the sects drawing any school moneys in any of the institutions of the State. Now, it is proposed to wipe this out, for fear the children should receive some religious instruction in these institutions. Last night, while listening to the able and distinguished President of this Convention, I could not help but contrast his words with the words of that other eminent New Yorker, that man who deserves the praise of every citizen of the State of New York, when he spoke from this rostrum — I mean Eldridge T. Gerry — when he said that these children are the wards of the State; that they have been taken up by the State; that as their parents, if living, have neglected to do their duty, and if the children have no parents and no guardians, the State becomes the parent, and that the State should give them a religious education, in order to make of them good citizens. Upon what theory do you tax one man to educate the children of another man? Ask yourself why I am taxed to educate your children, or you are taxed to educate mine? Why does the State of New York pour out twenty millions a year for education in the public schools? It is upon the theory that it makes the children better citizens. To educate them is to make them obedient to the laws, to make them

respect their neighbors as themselves, to make them respect their neighbors' rights and their neighbors' property, but unless you reach the consciences of these children, you do not accomplish the purpose that you are seeking. Now, here are these children in these institutions. What are you going to do with them? I recently visited an institution, one in New York, the Negro Orphan Asylum. There were 300 of the little blacks there. I asked the person in charge whether there was any religious training. "Oh, yes." "What is it?" "Non-sectarian." "Who is it by?" "A Methodist minister, twice a day." What are you going to do toward educating these children and others like them? Are you going to take them out of that institution and take them to the next public school? You will depopulate the public school if you do it. Moreover, it will cost less to educate them in these institutions than it will in the public schools. Many of these institutions are on the outskirts of the city, far away from the public schools. We have one in this city a mile and a half up Western avenue. It is much cheaper and much better to educate them there than elsewhere; and you are not paying for the religion, you are paying for the reading, the writing, the arithmetic and the grammar; and because they get religion in addition it does not make them any the less good citizens. These asylum schools are now public schools, under this act of 1850, and that is the answer I make to the gentleman from Orange. They are subject to the visitation of the public school authorities. They must report to the public school authorities, and their teachers must be qualified under the laws of the State to teach. I say there is not a parochial school in the State of New York drawing one dollar of the public money, notwithstanding all that the President said about diverting public school moneys to sectarian schools. Not one dollar, I say, is paid to a parochial school. The school at Poughkeepsie, so often alluded to, is not a parish school; the school at Poughkeepsie is a public school, under the Board of Public Instruction, and regulated by that board. The only thing about it that makes it look like a parish school is that the women who are teaching in it wear black dresses and carry at their sides a cross; that seems to be objectionable. The school at West Troy is a public school, under the Board of Public Instruction; and it was glad to get that school, for had it not had it, it would have had to build its own; and it saved it many dollars. The school at Plattsburg, the school at Ogdensburg, and the school at Lima also mentioned, are public schools, and under the Board of Public Instruction, and the Lima school was asked by the Board of Instruction, to be conducted as such, so as to save

them the expense of building another public school. The President of this Convention, when he said Colonel Bliss wanted no money for schools, either misinterpreted or misunderstood the words of Colonel Bliss. It was the parish schools he said they did not want any money for. Colonel Bliss read a letter from an eminent ecclesiastic of this State, in which he said: "We are not concerned about parochial schools; these can take care of themselves;" and Colonel Bliss, in commenting on it, said: "So go on with any form of amendment you think necessary to prevent the withdrawal of public moneys from the public to parochial schools." Colonel Bliss did not mention asylum schools. The Catholics are not drawing a dollar from the State for parish schools, and they are not asking a dollar. No one has yet spoken in this State, with authority to speak, asking a division of this school money. If some editor in New York has proposed it in his paper, with a view to putting some one in a hole politically, he had no authority to do it, and no demand was made here for such division. Their parochial schools are one thing; the schools in these institutions are another. Now, this article is very ingeniously drawn. What have the churches of this State done to the people that would lead us to think them so wicked, that we should condemn them in the Constitution? What offense, I say, have they committed? Are you afraid of your liberties? Are you afraid if children are educated in the religion of their parents that they will destroy your liberties? You are aiming here at religious bodies and religious bodies only. Why, three years ago, one of the most eminent gentlemen of this State, who was a candidate for the nomination for Governor, was turned down, in a Republican Convention, because he had written against religion. Now, you propose to enact here an amendment in the Constitution that is an attack on all religious bodies. Why, if you said there should be no State aid in any schools in which socialism is encouraged, that there should be no State aid in any school in which nihilism is encouraged or in any school in which anarchy is encouraged, and you embodied that in a proposed amendment to the Constitution, and went to the people with it, every one in the State would say that your work amounted to a condemnation of anarchy, of nihilism, of socialism. What do you do now? You go to the people and say, "Not a dollar of aid to any school in which religion is taught." That is a condemnation of religion. I tell you that these religious bodies are not so far apart as you think they are. They got together and united at the polls in Wisconsin — Catholics, Lutherans, and others — and they carried the State. I expect as much opposition to this amendment from Protestants as from

Catholics, and you will find it so, mark my words. It is a condemnation of the whole Christian religion. My learned friend, the chairman of the Committee on Education, says it does not prevent the teaching of religion in the schools. He says that the Bible may be read. Well, if the Bible may be read, hymns may be sung, and prayers said, and I think that is the sum total of some religions. But that is not true of others, and so this may be ingeniously construed to exclude some and admit others; and I am not sure but that that was the real object intended. The distinguished gentleman, who came here from New York to advocate this measure, Dr. King, went down to Washington in 1889, as the agent of the Evangelical Alliance, and advocated there, and had introduced in Congress, a proposed amendment to the Constitution of the United States that provided as follows: "Sec. 2. Each State in this Union shall establish and maintain a system of free public schools, adequate for the education of all the children living therein, between the ages of six and sixteen years, inclusive, in the common branches of knowledge, and in virtue, morality, and the principles of the Christian religion." Dr. King advocated that measure in Congress. He wanted the principles of the Christian religion taught five years ago; he wanted an amendment to the Constitution of the United States to compel us all to accept that, and his friend, the distinguished Senator from New Hampshire, Mr. Blair, said that the effect of this would be to cut off two sects only, I suppose the Catholics and the Jews. Now, the gentleman that drew that came here with this, and it has the same purpose, the same intent. What system of religion will we have in the schools if this becomes a law? Your proposed amendment says that no money is to be appropriated for "institutions of learning wholly or partly under the control or direction of any religious denomination, or in which any denominational tenet or doctrine is taught." Any denominational tenet or doctrine? Very well, take away the distinctive doctrines of the Baptists, take away the distinctive doctrines or tenets of the Methodists, take away the distinctive tenets of the Presbyterians, of the Episcopalians, of the Catholics, etc., and what have you left? What will schools teach? They will teach a State-made religion. It is a union of the church and State, instead of a separation. The courts will have to tell what kind of a religion they shall teach. It will be some sort of religion, I know, because the chairman of the committee says the amendment does not prevent religion in the schools. Now, what is it? Who is going to tell us what this religion is? I don't know but it will be like that of Mr. Jones, the distinguished superintendent of the House of Refuge on Randall's Island, who,

some years ago, in order to show that that institution was non-sectarian, got up a religion of his own. He took what he thought were the most beautiful prayers from the Episcopal church, the most eloquent from the Catholic, and hymns from the Methodists and Presbyterians, and he combined them all, and then claimed that, inasmuch as he had the best of each, he had something superior to any, and he blessed it and called it Jonesism. This new religion that we are to have under this amendment of ours, should, out of regard for the worthy chairman of this committee be blessed and called "Hollsism," and thus have his name go down the ages as one of the great reformers. (Laughter.)

Now, gentlemen, it may be possible that we are wiser than all mankind. It may be that our experience of a hundred, or a hundred and fifty years, in national life enables us to do what the older nations cannot do, but I doubt it. Human nature is much the same the world over, and we can learn something from the other countries that have lived and existed as nations longer than we have; and notwithstanding that it may be un-American, I propose to show you how much more tolerant other countries are than we propose to be; and with your permission, I will call your attention to school laws of other countries relating to religious education. In Germany religious instruction is compulsory, both in public and in private schools. It is regulated by law, is entirely impartial, and is considered an essential part of the education of each pupil. Roman Catholics, Protestants and Jews have masters of their own faith, but no one can give religious instruction who is not authorized by the general government. Let me say here, that these facts have been prepared for me by an official of the Regents' office, who is thoroughly familiar with the subject, has traveled abroad, has made a life study of this subject and knows what he is talking about. Except in the country, I still refer to Germany, all elementary schools are confessional. In the case of these rural mixed schools, the religious belief of the teacher depends upon that of a plurality of the pupils. There must be at least twelve pupils to demand it. That is Protestant Germany.

In France, in infidel France, in France where the bomb thrower, the assassin and the regicide flourishes, they have adopted our proposed system. France has developed the most complete national system ever devised of compulsory, gratuitous and secular public education. Religious instruction may not be given in the public school buildings or their dependencies. Public schools are to be closed one day in each week in addition to Sunday, that parents

may give their children religious instruction outside the school buildings, if they desire to do so.

In England, the time reserved for religious exercises and religious instruction, is to be at the beginning or at the end of the recitation, and is to be indicated in a time table approved by the education department and suspended in the class room. I desire to hurry through this and can give you only a summary of it. They recognize (in England) that each denomination has its rights. And the same is true of Scotland; the same is true of Ireland; the same is true of Catholic Austria; Protestants are entitled to and receive religious instruction in their own schools. The same is true of Hungary; the same is true of Belgium, and the same is true of Canada. Even Catholic Quebec provides for separate religious instruction for the Protestants in the schools. Denmark has religious instruction in its schools; Holland has its religious instruction. In Mexico, which we seem inclined to follow, the program of the public primary schools includes manners and morals, but not religion, which is left to the care of the family and clergy; Sweden has religious instruction; Norway has religious instruction; Switzerland has religious instruction. Now, then, it is proposed that we shall depart from this old system and adopt something new, something we know not of. I was almost persuaded when I heard the learned President last night talking of the great amount of money the Catholic church was receiving from the people of this State to think that there was something in it, but I find that the church is not, as I have said, getting a dollar for its parish schools. Now, let me show you how many of such schools they have, and let me show you what sacrifices are being made by them for conscience sake. There are in the common schools of this State, according to the census of 1890 — I take the United States census — 1,042,160 children. There are in public schools not common 7,810. There are in private schools, exclusive of parochial, 77,000. There are in parochial schools of this State 119,242 children educated. Of these, the Baptists have 1,991; the Catholics, 108,152; the Lutherans, 8,620; the Methodists, 2,312; the Presbyterians, 848; Protestant Episcopalians, 3,736; all others, 3,147. Now, there are 108,000 Catholic children, about one-tenth as many as are in all the common schools of the State, educated in parochial schools, without costing this State one penny. Of these, there are 40,000 in New York city. It costs thirty dollars per head to educate a child in the common schools of New York city per annum. The Catholics educate 40,000 of them without costing the State one dollar. That is $1,200,000 a year that the State is saved. If they had to erect

buildings for these 40,000 children, the city of New York would have to build at least thirty new school-houses, and with the enormous cost of property there, these school-houses would cost on a fair estimate $3,500,000. The annual interest on this sum is $175,000 at five per cent interest.

The Chairman — The Chair will inform Mr. McDonough that his time has expired.

Mr. McDonough — May I finish this statement? It will just take a moment. I wish to have this in the record, if the Chair will allow me. There is a saving, then, on interest, of $175,000. Outside the city of New York the 68,000 children educated, at fifteen dollars per head, would cost $1,020,000, and to provide them with school-houses would cost $1,000,000, the annual interest of which, at five per cent, would amount to $50,000 more; so that there is a total annual saving to the public by these parochial schools, of $2,445,000; and Catholics ought to have credit for that. They are giving to the State of New York. They are paying their taxes for the public schools also, and they do this for conscience sake. Now, they are not asking much when they ask, in common with other denominational institutions of the State, that the children sent to their institutions by the State shall be provided with a proper system of education.

The Chairman recognized Mr. Gilbert.

Mr. Gilbert — Mr. Chairman, I give way to the President of the Convention for some special purpose.

Mr. Choate — Mr. Chairman, it seems to me that some confusion is introduced in the debate by the consideration together of my amendment to strike out the last two lines of section 4, and Mr. Lauterbach's supervening amendment to insert something in place of those two lines. On conferring with Mr. Lauterbach and with other gentlemen, it has seemed to me entirely clear that the sense of the Convention is almost, if not quite, unanimous in favor of striking out those two lines; and it occurred to me that the debate would be relieved of some of its difficulty if a vote were taken on that separately; and that might be done now, leaving the vote on the much more serious question of what, if anything, shall go in place of the two lines, to be taken on Tuesday, at any rate not taken up now; and I would, therefore, ask that the motion be separated and that a vote be taken now upon my amendment to strike out the two lines, leaving Mr. Lauterbach's and other amendments that are to be made for future consideration.

Mr. Lauterbach — Mr. Chairman, there seems to be a general assent that the phraseology of the two lines which were criticised and which the amendment of Mr. Choate proposes to remove, and which my amendment also seeks to strike out, shall be eliminated. The question then will be whether other words will be inserted in their stead.

The Chairman — Do I understand you to consent to the motion made by Mr. Choate being put now?

Mr. Lauterbach — I consent that the matter be eliminated.

The Chairman — The question then is upon the motion of the gentleman from New York (Mr. Choate), to strike out lines 14 and 15 in section 4, of general order No. 61.

Mr. Platzek — In regard to that, Mr. Chairman, I only want to call attention to one fact. A number of gentlemen not present to-day, were here yesterday, when the motion prevailed that discussion should be had and no vote taken until Tuesday.

Several voices — No.

Mr. Platzek — Out of deference to them, I think the vote should not be taken.

The Chairman — The Chair would state that that is not the question that was not to be voted on until Tuesday.

Mr. Platzek — I have no objection to striking out the lines.

Mr. Veeder — Is there any necessity for a formal vote, if it is substantially assented that the lines be eliminated?

The Chairman — The Chair can have but one way of determining whether it is or not. The question now is upon the amendment to strike out lines 14 and 15.

Several members suggested that it should be lines 13 and 14.

The Chairman — It is lines 14 and 15 in the copy that I have.

Mr. Holls — There are two different prints of that, Mr. Chairman.

The Chairman — Well, the question now is upon the motion to strike out at the end of section 4, the following: "This section shall not apply to schools in institutions subject to the visitation and inspection of the State Board of Charities."

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

Mr. Lauterbach — I move then, Mr. Chairman, that the form of my amendment be changed by eliminating the words "strike out" and simply having it words of addition.

The Secretary read Mr. Lauterbach's amendment as changed, in the language following:

Add at the end of section 4, the following words, "this section shall not apply to orphan asylums or correctional institutions in which education is incidental only."

Mr. Forbes — Mr. Chairman, I move to amend the amendment offered by Mr. Lauterbach as follows: "This section shall not apply to corporations organized under general laws applicable to all orphan asylums or institutions for the care and maintenance of dependent persons under sixteen years of age, committed thereto under provisions contained in said general laws. Such general laws may be repealed or amended."

This, Mr. Chairman, has in its favor the fact that it allows any of these institutions that the Committee on Charities have agreed should receive the aid of the State, to receive such aid in the future as they have received in the past. This is irrespective of any idea that we may have in regard to the propriety of the course into which the State entered many years ago, that is whether the dependent children of the State should be committed to institutions under religious care, or whether they should be taken care of by the State itself. As it seems to me, the great difficulty that has arisen in regard to this subject is the fact that it is new and untried, and that special laws, only applicable to special cases, have been enacted. I quote from a daily newspaper: "There is much contrariety as to the rate and method of payment to the per capita institutions. In a recent report made by the State Charities Aid Association, it is stated that four of them receive allowances for needy mothers at the rate of $216 per year, and two at the rate of $260 per year. Two receive allowances for infants at the rate of $120 per year, and two at the rate of $138.70 per year. These incongruities are due to piecemeal legislation. In one case the rate of payment was first fixed by law at forty dollars per year per capita; three years later it was raised to sixty dollars; four years later to seventy-five dollars; five years later to ninety dollars, and three years later to one hundred and ten dollars." Now, it seems to me that it is a practical question — that if all the institutions of the State should be placed upon one common footing, that then and thereafter there would be no difficulty upon this subject whatsoever.

There are only two questions before us. One is, shall we continue the policy of the State and give State aid to institutions for the care of dependent children, or shall we reverse that policy? It seems to me, from what I have learned during the sittings of this

Convention, that the majority are in favor of continuing the present policy of the State. The next question is, how can we accomplish that purpose? I think that we can accomplish that purpose by laws which are uniform, and which are just, and which are applicable to all the citizens of the State. Why not establish this policy once for all, and not leave it to shifting and special legislation? This would establish the very quintessence of freedom — freedom of caring for the poor.

If we should agree among ourselves in this body that we would take care of this particular class of children, we could do it under general laws without going to any central authority and asking for a statute for that special purpose.

The Chairman — The gentleman from Franklin, Mr. Gilbert, yielded the floor for the purpose of allowing an amendment to be offered only.

Mr. Gilbert — Mr. Chairman, I desire if I can, to contribute some important element to this discussion. I shall not go into figures or details. This is not an auditing board. I shall attempt to deal very briefly, as I must, with fundamental principles. It is of paramount importance to the State, that we arrive at a just conclusion, and in order to do this we must have a clear understanding of the terms we use and the principles we are dealing with. Now, I ask your attention, first, to some of the terms we make use of. Let us make no mistake at this point. If we do, we shall be like the mariner who consults amiss his compass. Now, in this proposition that is before us, we find the words, "religious denomination," and "sect." I ask you to consider those words at the very threshold of this discussion. A denomination may be religious, but it is not religion. A denomination is one thing, religion may be another. I ask you, gentlemen, to consider carefully the distinction between a religious sect and religion itself; because in answer to some things which have been said here and throughout the State and land, I maintain this proposition; namely, that there should be religious instruction in the schools of the State. What do I mean by religious instruction as applied to schools? I will tell you exactly what I do not mean. I do not mean anything that is sectarian or denominational. Now, what do we mean by sectarian? "A sect," according to the Century Dictionary, "is a community or body of persons who unite in holding certain special doctrines or opinions concerning religion, which distinguish them from others holding the same general religious belief." Mark this definition. It assumes, in the first place, that there is a generic, a fundamental,

a common religious belief. That is the first thing. In the second place it recognizes the fact that in addition to what is fundamental and common, there are certain things that are special; and you do not come to a denomination in the proper sense of that word; you do not come to the word sect within a proper definition of that word, until you have passed beyond the domain of that which is fundamental and common, and have reached that which is special, that which is properly denominated sectarian. Now, then, I am prepared to state what my creed is in regard to education. I am opposed to the expenditure of a single dollar of the public money for the purpose of promoting any sectarian or denominational instruction anywhere. Let me say before proceeding further, that in my opinion we shall never reach a safe conclusion, and I use the word "safe" advisedly, because danger lies all around us; we cannot reach a safe conclusion, unless we recognize the distinction which I have made; and we must be guided by some principle in the light of which we may adjust ourselves to existing circumstances and passing events as they occur. We must go precisely as the pilot does across the great sea, guided by something that is stable, permanent and eternal, and only then are we safely guided in legislation, involving matters of such vital moment as those with which we are concerned here to-day.

Now, Mr. Chairman and gentlemen, I contend that it is not within the province of the State to expend any of its money for the promotion of whatever is peculiar to any sect or denomination. A Methodist, for example, has something that is peculiar to him. I care not what it is. There shall not one dollar of the public money be used for the purpose of promoting that special tenet of his. The Roman Catholic has something that is peculiar to him. I care not what it is. Not one dollar of the public money, with my consent, shall go toward the promotion of that, or any other special tenet, however speciously it may be taught or whatever form it may take. I am against it. I am against it to-day, and always, and I believe I stand upon the only policy which an American State can safely adopt, namely, the perpetual separation of the State from every organized church of every name whatsoever. We have been taken abroad, across the ocean, for examples from European countries. They are misleading. They have had State religions and to what extent they have them still I do not stop to consider. But, here in America we do not have, and by the grace of God we never shall have, a union of church and State religion. But does that mean we will have no religion? I answer most emphatically, no. Mr. Gerry was right, in this room, when he said that irreligion leads

to anarchy. It does. But what is religion? Why, gentlemen, you may sweep away all these peculiar things, and the great eternal things of religion remain like the great sky above us when a conflagration has swept over a city. Now, what is religion? Why, appeal is occasionally made here, and properly, to the oaths that we have taken. That oath was that we would be true to God, and true to man, within the sphere of our officials duties. There was religion. The State has a religion. It believes in a God; it believes in our responsibility to him; it believes in the brotherhood of man, and the reciprocal duties of men. It believes in these things, and those are the great fundamental things of religion. Now, somebody has asked, "when you get together these common things, what have you got? They say it is a State religion. I say, you have simply religion. And what is that, and what will it do? Why, when we have taught the pupil obedience to God, and obedience to the Constitution and obedience to law, what becomes of anarchy? What becomes of darkness when the sun rises? Teach religion that is common, teach it to the child, but you need not teach him about baptism; you need not teach him about preordination, you need not teach him about a thousand things more or less that are peculiar to this and that and the other denomination; but teach him the great fundamental things upon which all good things upon earth depend, and all our hopes beyond rest. Teach those. And so I would have our schools not godless schools; I would have the same religion enter into the school that enters into this Convention, and that is, loyalty to God and loyalty to men, the rights of men. That will leave no room for anarchy.

Now, gentlemen, I want to say another thing about the meaning of terms. When that discussion went on in this assembly, to which I listened, Mr. Bliss and others talked about Catholics and Protestants as if the issues were between Catholics and Protestants. This I totally deny. It is not so at all. Is there such a denomination within this country as Protestant? I wait for an answer. I repeat it, for I want an answer. Is there such a denomination or such a sect as Protestant? There is no such sect or denomination as Protestant in this country. Let us dismiss, then, all argument based upon any such distinction as that. "Protestant" is a term that arose when there was a State church. It was a protest against what was then believed to be — I care not to discuss whether correctly or not — what was then believed to be the corruption and perversion of true religion. I do not say whether it was or not, but that is what was said. It was a protest against what was claimed to be untrue, corrupt and demoralizing. Is there any such

thing here? Have we a State church in the commonwealth of New York? Not yet. Not yet is any church so entrenched within this government that it can be said of those who do not accept its peculiar tenets and polity that they are Protestants. Not at all. So that all the fallacious arguments based, as they are, upon that distinction, fall to the ground.

Mr. Burr — Mr. Chairman, may I ask the gentleman a question?

Mr. Gilbert — I shall be very glad, indeed.

The Chairman — The Chair declines to allow any gentleman to be interrupted.

Mr. Gilbert — I should be very glad to answer questions; very glad, indeed.

The Chairman — Your time is up, Mr. Gilbert.

Mr. Burr — May I ask the gentleman a question, now, at the close of his address? You have said, sir, there is something peculiar to the Roman Catholic church — you have said, sir, that there is something specious in the condition or belief of the Roman Catholic ——

Mr. Gilbert — No; I did not say anything about specious as applied to the belief of Roman Catholics.

Mr. Burr — You have said "Not yet," "not yet," and yet and still again "not yet" ——

Mr. Gilbert — Yes, sir.

Mr. Burr (continuing) — Has the Roman Catholic church had any voice in this country ——

The Chairman — The gentleman from New York must ask his question.

Mr. Burr — What do you mean by that? What do you mean by this insinuation?

Mr. Veeder — I rise to a point of order. The gentleman is out of order.

Mr. Gilbert — May I answer the question?

The Chairman — The gentleman is out of order. The point of order is well taken. You need not answer the question.

Mr. Gilbert — I shall be very glad to do it. It is perfectly simple.

Mr. E. R. Brown — Mr. Chairman, I regret very much that there should have been, in so small a matter, so much evidence that at some remote time in the past there had been bitter religious con-

troversies in the world. I suppose the law of heredity would account for the awakening of this Convention, as we all are descended, or mostly all, either from Holland or from England, or from France, in which countries at some time this contest has raged with reality.

It is too late, perhaps, for me to place before the Convention the real attitude of the majority of the Committee on Education, but it may be just that I should say at this time, notwithstanding the circumstance that the two lines referred to have been stricken out, that those lines were inserted on the understanding obtained through a member of the Committee on Charities, who is also a member of the Committee on Education, that the proposed article on charities would closely and narrowly govern and limit the visitation of the State Board of Charities. The article had not been presented. I find that the article as presented is much broader than the Committee on Education was led to believe. Prior to the adoption of this proviso a proviso had been adopted which specifically named the exceptions which the committee intended to embody in this proposed enactment. It was rather lengthy, and for the sake of brevity, this manner of expression was used. So much for the form in which the committee embodied the sentiment of the majority.

Now for the reason why the committee tried to embody this exception. It was, after full discussion before the committee, stated very authoritatively that this proposed sectarian amendment was not intended to effect any fundamental change in the existing order of things; that there was nothing in the State of New York which it was necessary for us to overturn or to revolutionize. We found that there had been some petty innovations which the modern telegraph and newspaper had exploited throughout the State for the purpose of arousing the ancient bigotry that characterized man three or four centuries ago; and for the purpose of preventing the further spread of this feeling of bigotry, and as some excited gentleman said in the public appearances before this Convention, and said before the committee, for the purpose of preventing a religious war, which, forsooth, we stood in danger of, the committee in its wisdom thought it wise, after great hesitation and deliberation and by a narrow majority, to make a declaration against the invasion of the common schools of the State by any religious denomination. There was not in the mind, I believe, of any man in that committee any such immediate danger, but people, with the old feeling of bigotry aroused by trifling incidents, stood knocking at the doors of this Convention, in large numbers,

for the admission of a principle that was as old almost as the principle, "Thou shalt not steal." It is certainly as old as the State itself. It was established, and we feared in the adoption of this amendment that we might, in laying down this great principle, overlook or retrograde from some of the humane, just ideas that have obtained in these days. For that reason we provided, or attempted to provide, as it seems in an unsatisfactory manner, that the State of New York and the civil divisions thereof, upon which rested the obligation to take care of the truants, of the orphans, of the pauper children of the State, should not be prohibited by constitutional enactment from affording such children some sort of religious instruction. As a matter of practice, of course, the various religious denominations do very largely take care of these children, but the obligation in reason, and in the last resort, rests upon the State and upon the civil divisions thereof. (Applause.) For my own part, I believe that this was logical, that it was just; and that it was much more becoming in the committee, when it answered to this vague and indefinite feeling, having its origin in a want of charity, when it answered to that demand of the public, that it did a much more becoming thing when it took care that these poor, these wretched and these ignorant ones, the duty of the caring for whom had been cast upon the State, should not be neglected — that it did better when it made that exception than it did when it made the rule.

Not only that, but, as a member of that committee, I was anxious myself that another exception should be made. For a hundred years or thereabouts it has been the custom in the State of New York for the State to aid religious academies, not as religious academies, but academies founded by the churches when they first moved into the State at its organization. There are many of them under the control of the churches. They have been the beacon lights in the rural districts of the State of New York for a hundred years, controlled by Methodists, controlled by Baptists, controlled by Presbyterians very largely, controlled in some instances by the Roman Catholics. I sought to have the committee refrain from laying the strong arm upon these institutions and saying that for all future time they should not be recognized by the State. I wanted exception made in behalf of all such institutions, and I believe, for my part, that the committee would have done itself more honor in making such an exception than it did in laying down the rule.

But, Mr. Chairman, what was my surprise in coming into this Convention, after the report had been presented by my friend, the chairman of the committee (Mr. Holls), after its wisdom had been

exploited by our honored leader (Mr. Root), and we had succeeded in incorporating into the Constitution the perpetuity of an institution, with the proviso that its powers may be increased, modified or diminished, at the pleasure of the Legislature; after we had framed a provision by which there should forever be a corporation in the State of New York which could be stripped of every atom of power by the Legislature at will, then what? We proceeded to the enactment of a provision which we already find in the Constitution *verbatim et literatim,* and my friend, the chairman, suggested the amendment of the words "capital of," and my cynical, but genial friend from Orange (Mr. Hirschberg) also suggested the addition of the word "the" and then this committee solemnly proceeded, after providing for the establishment of a corporation that amounted to nothing, to re-enact in solemn grandeur a provision that had stood in the Constitution since 1846. Then what? We get down to the declaration of this principle, a principle old enough, perhaps, to be in the Constitution, but a principle, too, that is old enough and secure enough so that the people of the State of New York could get along, if it was not in the Constitution.

And after we have proceeded to enact "Thou shalt not steal," in the best language that we can find, then the Convention devotes itself to a long argument and a bitter debate as to whether the State of New York shall set an armed guard at every orphan asylum door in the State and say, "if you come with the public money to clothe or to feed these children, well enough; but, if you come with a farthing of public money to provide for the education of these children and one religious word shall be taught, although not at our expense, we will shut you out." Which is the higher duty of the State? Is it the duty to clothe and to feed or is it the duty of the State to educate these children? If it is the duty of the State to educate them, wherein does its highest duty reside? Is it that it shall educate them in trigonometry or the higher mathematics, or in literature, or is it to imbue them with those moral and religious principles which will make them true men? That is the point we come to in the discussion of this question; and, for my own part, no matter what the action of this Convention may be, let me say now and frankly that as to those unfortunates who are cast upon the State from the Roman Catholic church, let them be educated, if need be, at the expense of the people of the State, in Roman Catholic institutions; as to other denominations, let them be educated at the expense of the State in other denominational institutions, but not in the religion which my friend from Franklin has exploited here, a religion that has no Roman Catholicism, that has

no Methodism in it, that has no Presbyterianism in it, a religion which is a skeleton and a fraud.

Mr. Chairman, if the language adopted by the Committee on Education is not apt, find apt language. Do right by the unfortunates, do right by the historic academies of the State, take care of them, and I assure you that, notwithstanding the voice of one crying in the wilderness against this proviso, you will find that the people of the State of New York will respect your judgment, and will approve this Constitution more quickly and gladly than they will if, yielding to some vain logic, some imaginary danger, you carry it to that extent that you strike down the power of the State to do its highest duty toward the unfortunates and toward these ancient educational institutions.

Why, Mr. Chairman, when I consider what this committee is engaged in, and when I consider what this Convention has done, or rather, what it has not done, for the educational sytsem of the State of New York, I am regretting your action more than I can express. The only theory upon which you can be constructing this educational article, it seems to me, is upon the principle upon which the mighty ocean and the beauteous land were constructed. You are dealing with grains of sand and with drops of water; and you have called in modern science so that you might make atoms out of these particles, and then deal with the atoms, in constitutional enactments. You are not satisfied with taking the original units, but you desire in this matter to make provision for something which, as in the case of the Regents' trifles, are too small for preservation, or as in the case of the sectarian amendment, you destroy trifles which are too small to excite your enmity or opposition.

Why, I am astonished, Mr. Chairman, astonished at the words of our President, not in his declaration of the grand principle which is embodied in this proposed amendment, but surprised that he should deem it necessary to speak of the action of that committee as one filled with effrontery. Effrontery? How, and why? The effrontery of extreme care in taking care of the unfortunate, the poor, the ignorant, when the duty to take care of the poor, the unfortunate, and the ignorant rests upon us? I was very much amused, also, Mr. Chairman, to observe that when our President, like a knight of old, threw his lance full at the breast of that committee with all his power, to see that the chairman of that committee yet remained unharmed. He had dropped like a jack in the box, and after the flight of words that we listened to from the President had passed, he appeared again and read the roll of honor from that

committee, read the roll of honor, with his own name at the head. Thus, Mr. Chairman, we are treated to a dramatic incident of great interest and beauty in this Convention. Why, Mr. Chairman, it is a very unusual proceeding for the leader of the House to commend, as he did highly commend, the committee for its wisdom, for its consistency in taking care of the Regents in the very efficient manner to which I have called attention, and for the President of the Convention to condemn the committee with such unwonted severity for the care with which it has provided for the poor and the unfortunate. Oh, Mr. Chairman, this is a brave new world that has so many goodly creatures in it, that will have a religion without a sect, that will have a principle which it can enact into constitutional law without an exception. And, after all, my friend from Orange, with the Mephistophelian air, thinks this exception does not amount to anything, and he is in favor of striking it out, because on any fair interpretation of the section with that provision left out the construction would have to be just the same as it is with it therein contained — this dreadful provision which my friend, the President, has condemned in such unmeasured language. He comes to the support of the President, claiming it is wholly innocuous. Mr. Chairman, make no mistake; principles may be all right, but do not forget that there are very few principles to which it is not necessary to affix some limitations when you apply them to the practical working of governments. (Applause.)

Mr. C. B. McLaughlin — Mr. Chairman, I had supposed, up to the time that this discussion opened, that if there was any one thing that the people of this State, irrespective of party, irrespective of religious belief, desired, it was that the public school fund of this State should be used solely for the support and maintenance of the public schools, and I am surprised that the gentleman from Jefferson should stand upon the floor of this Convention, in the year 1894, and advocate a division of the public school fund of this State; that he should seek, if you please, to strike down a system, which can only redound to the good interest of this State, because when the time comes, if it ever does come, that the public school fund of this State is divided and scattered among the different religious denominations of the State, that day the citizens of this State will rue. Why, just see the position which the gentleman from Jefferson advocates, that the people of this State shall engage in religious instruction. What religion? Will it be Catholicism? Would he have them engage in teaching the doctrines of the Methodists, the Presbyterians, or what? An answer would be desirable upon this point. I speak with some little experience

upon this subject. It was my good fortune to have been educated in the common schools of this State. It was my good fortune afterward to have some supervision of the common schools of this State; and I say to this Convention, if there is any one thing that we want to prevent, it is the interjection into the common schools of any question of religion. Now, we are told about the poor and the unfortunate. Why, Mr. Chairman and gentlemen, I will go as far as the gentleman from Jefferson; I will go as far as any man in this body; I will put into the charities article whatever you want; but when you ask me to put into this article and vote for what is a division of the public school funds, I will not do it. I will not vote for it, because it seems to me to strike right at the very vitals of the State itself. See the spectacle in this body the moment we begin to discuss it. We have arrayed upon one side feeling, and upon the other side feeling, and the very spectacle which is here presented will be intensified in every part of the State. Fix this article so that now, and for all time to come, there shall be no question but that the State is engaged in just one cause, educating its children, making them good citizens. The State knows no religion; it has no religion. It seeks what? To make good citizens for the State, and nothing else. We know no Catholics; we know no Jews; we know no Methodists, and, I hope that time will never come when the State shall know one sect from another. (Applause.) I say to this Convention it will not do when we seek to create class or division among the citizens of this State. I hope to see this section so framed that we can go to the people of this State with an article which says that the school fund of this State shall be use for one purpose, and one purpose only, and that is to educate all of the people, all of the citizens in the common schools of the State. (Applause.)

Mr. Towns — Mr. Chairman, I rise to support the amendment of Mr. Lauterbach, of New York. I deplore as much as any one in this chamber, that a discussion which should have taken the range entirely of a legal argument as to whether or not the State should regard a solemn contract that it has made, has been diverted from that wholesome character to one of sentiment and religious excitement. This question, as I take it, Mr. Chairman, has nothing to do with religion. It is purely a question as to whether the State of New York, or we, her representatives, shall stand by the contract which the State solemnly entered into. It is well said by the President of this Convention, in speaking upon the judiciary article, when he called upon his fellow-delegates and begged them that whatever they might be known as, under whatever name they

might go down to posterity, God forbid that they should go down under the name of a repudiating Convention. Now, the argument which the President addressed to the Convention upon that question is just as much in place, is just as appropriate and just as apt, applied to the question now before the Convention as it was on the evening that he uttered it. In 1875 the State, becoming wearied of its system of charitable organizations and economy, determined to confer upon certain charitable institutions the right of caring for the poor and the indigent and such infants and youths as might be committed to their charge, and it provided in the laws of 1875 that children between the ages of three and sixteen, might be committed to such charitable institutions by any judge or justice upon a sufficient complaint, or by their parents or guardians, and it provided further that in committing such children or in confiding them to the care of such institutions care should be had and note taken of the religious convictions of the children so committed. That seemed to work very nicely, but still, in the year 1877, that provision was repealed, only to be re-enacted in 1879; and since then it has continued upon the statute book and has been reaffirmed in the general laws of 1884. Now, what we all seek to do here, what all good citizens seek to do, if I understand the sentiment of this Convention, is to stand by our contract made with the State, which was that there are certain indigent children, certain helpless children, certain waifs, certain children who have fallen and to whom it is necessary to apply the stringent rules and regulations of discipline, that they shall be committed to private institutions or *quasi*-public institutions, charitable, orphanage and correctional institutions, and that the State shall pay so much for their support, for their maintenance and for their education. For it would be folly to commit these children to State institutions, if only their material welfare was provided for. The State, in its wisdom, saw that, and the Legislature at different times has continued to see it. So that it has been handed down from 1875 to the present day as a sound, good, charitable and Christian doctrine that those waifs, those unfortunate children, those unfortunate persons whom it might be found necessary to commit to such institutions should have not only food and raiment, but should be instructed in the elementary principles of education. Still, the President, in speaking to this proposition for the elimination of lines 13 and 14 from section 4, reported by the Committee on Education, said: "We are perfectly willing to give these children food and clothing; we are perfectly willing that they should be provided with the necessities of life, such as covering for their

nakedness and food for their hunger, but we want to stop right there; and, if Catholics shall come seeking to impart instruction in their peculiar doctrine and religious teaching, they shall be paid for such services out of the funds of the Catholic church; or, if the Episcopalians should come, they shall be paid from its moneys." No one could go further in that direction, Mr. Chairman, than myself, but it is not a question here of paying for the religious teaching of these unfortunate children. The question here is whether or not section 4 deprives these institutions of the possibility of receiving any money for food, or for clothing, or for any other purpose, providing in those institutions the peculiar doctrines and religious tenets are taught. I think that there can be no doubt that the purport of section 4 is, unless it is amended in some way or other, the purport and the true meaning is, to deprive these institutions of any moneys whatsoever, unless they eliminate from those institutions the doctrines of their religion; unless they take away from those institutions the very thing that has built them up in the land and made them powerful, and beneficent, and benevolent organizations. I say, if we do not want this Convention known to posterity as the repudiating Convention, we should do something to amend, something to enlarge the scope and meaning of this section, something to take away that dreadful consequence which is embodied now in its provisions. We object not only to being known as a repudiating Convention, Mr. Chairman, but I hope that we shall not be known as a tricky, as a disingenuous Convention. I hope that the Constitution which we frame here now will not go down to posterity filled with pitfalls, constructed in sentences which are equivocal, and have a double meaning, that any one may seek to apply his peculiar doctrines and his peculiar desires to the construction of the same. All that it is sought now to do — and as I understand we all agree, so far as the charities article is concerned, and that is proper, that that is fit — is, that the State, which has profited so much by this course which she has pursued so many years shall continue them as they at present exist, that they shall continue to be supplied with the funds raised by taxation and otherwise from the State, to a certain amount, and for which the State has received nothing but good, nothing but benefit, nothing but an enlargement of its moralities, its virtues, by the pursuit of such a course. There is no one among us, as I understand, who would return to the old system which existed prior to the inauguration of the present system. What is said by the changed article? It is true that these charities are beautiful and beneficent; it is true that they do a good work; it is

true that the Catholic church, on account of its energy, on account of the superior number of its co-workers, on account of the undivided attention which it pays to such matters, has led the van, so far as numbers are concerned; it is true that the Presbyterian institutions and the Hebrew institutions are doing noble work; but still we say that those people committed to their care shall only be allowed to receive food and raiment. It is not contented that religious instruction is prohibited in these institutions, and the money which they are to receive is to be taken away from them, if their peculiar religion and doctrines are taught. Now, sir, whether we give that education or not, so far as religious doctrines are taught, if the State's moneys pay anything, they are being expended for the benefit, for the enlargement and for the prosperity of those institutions, whether Catholic, Hebrew, Protestant or any other religion is taught. So that the question is not whether the State shall pay moneys to institutions where religion is taught, or not, for their benefit, but the question is, as propounded and thrust upon this Convention by section 4, that as soon as you attempt to teach in those institutions, this money which they receive for food and raiment, this money which they have heretofore received in spite of their religious teaching, is to be taken away from them. What is food, what is raiment, what is even religion, at the present day, unless you have education? That is the magic weapon by which we all achieve anything which we are able to achieve to-day. Are you going to educate those children in those institutions, under the bigoted teachings of their respective denominations, without giving them any instruction, any secular instruction, any instruction in the knowledge of the day which is so necessary to equip them for the battle of life? To do that would be to encourage bigotry. To do that would be to encourage denominational and sectional aggrandizement. To do that would be truly inimical to our institutions, and would be an interjection, pure and simple, of religion into public institutions or *quasi*-public institutions. Now, what the friends of this proposed amendment seek to attain by it, is simply that those institutions, to which all of us are committed, it seems — I have heard no word of criticism against them, are committed to their continual prosperity, are committed, at least, favorably to granting State aid — all that we ask is that they shall be taught, not from the moneys of the public schools, sir, not from moneys raised by taxation for the purpose of public instruction, or common schools, but that they shall be taught with these funds that are already provided for them, and which it is intended to provide for them; that they shall be taught

in the elements of common school education, and be thus equipped when they are discharged from those institutions to undertake the battle of life. Now, Mr. Chairman, all of us recognize that religion and that the religious denominations are the leaven which hold society together to-day. We all recognize that the Catholic church, that the Protestant denominations are the most efficient police force which society has to-day to withstand the onslaughts of atheism, anarchism and for the perpetuation of all that is good, moral and lofty in our lives. Why is it, then, that we should seek to hamper in any way those noble teachers of doctrines which hold our very fabric of society together, which are the foundation of this State, which are the foundation of all good and successful government — why should we seek to impair their efficiency by the insertion of an article which is covert, indistinct, but which, if it means anything in the world, means that children committed to their care, the children whom they foster, the children whom they seek to nurture and bring up and educate to good citizenship, shall not receive any instruction at all, if in the institutions where they abide any religious tenet, doctrine or denominational theory is taught? Mr. Chairman, what we need to-day is more religion. The different sects and denominations should get together, and the voice of the preacher should be heard proclaiming to the world that it is easier for a camel to go through the eye of a needle than that a rich man should get to heaven. That is the kind of religion that we want. We don't want the religion that comes from the voluptuous lips of well-fed ministers and priests, preaching to the rich, encouraging them in their onslaughts against society, against morality, against honesty, instead of trying to persuade them from the absorption of all the wealth and the riches of the world; we want those who go out into the fields, who preach on and up, proclaiming good, healthy, sound religious doctrine to the whole world, and we do not want anything, any religious doctrine that will curtail that spirit, that will cut it down, or that will deprive the coming generations of this world of its beneficent influences.

Mr. Marshall — Mr. Chairman ——

The Chairman — The time of those speaking in favor of Mr. Lauterbach's motion has expired.

Mr. Holls — Mr. Chairman, I yield one minute, at the request of Mr. Lauterbach, for the purpose of permitting Mr. Marshall to present an amendment. I wish I could concede more.

Mr. Marshall — Mr. Chairman, I wish to say a few words in support of this amendment. In view of the shortness of time

allotted to me, I will content myself with an indorsement of what has been said in support of Mr. Lauterbach's amendment. I have framed an amendment with that as a basis. In order to avoid any possible errors in the way of interpretation, and so as to put on record in accurate form the idea that no money of the State is to be used for any purpose, other than for secular instruction, and that that instruction shall be confined to the inmates of the institutions which are described in Mr. Lauterbach's amendment; and, to make it further clear, that there can be no possible subterfuge by which any institutions, other than those of the character mentioned, shall be within the purview of the language, I have even gone so far as to describe the institutions as being those to which children may be committed by judicial process; so that we have the sanction of public authority in every instance. I now offer, as an amendment to Mr. Lauterbach's amendment, the following:

"This section shall not prohibit secular instruction to the inmates of any orphan asylum or of any institution to which children may be committed by judicial process, in which education is incidental only."

The Chairman — The Chair calls the attention of the gentleman from New York to the fact that there is now an amendment to Mr. Lauterbach's amendment before the House.

Mr. Lauterbach — Can I, Mr. Chairman, by unanimous consent or otherwise, permit the substitution of this amendment for my own? I believe there is no objection to that.

Mr. Holls — No objection.

The Chairman — The amendment may be taken in place of Mr. Lauterbach's amendment.

The Secretary again read the amendment offered by Mr. Marshall.

Mr. Durfee — Mr. Chairman, as one of those who compose what, with the fine irony that marked his utterance, and for which, doubtless, he desires to be distinguished, the gentleman from Jefferson styled the "roll of honor," I desire for a moment to ask the attention of the committee that I may express the ideas which controlled my action in declining to support the amendment in the committee, and which will control my action, with reference to the amendment now pending. It has already, in large degree, been stated by the gentleman from Orange (Mr. Hirschberg), and stated with greater force and clearness than I, myself, could state it. It seems to me, Mr. Chairman, that no court and no body of men will ever, or can ever, construe an orphan asylum or a reformatory or a correctional institution of that character in which instruction

is given in the rudimentary branches of knowledge, as a school, or an institution of learning within the purview of this section. I do not at all share the apprehension which has been expressed upon this floor that such a construction is likely; nor do I believe that it is possible. But, if this were otherwise, and, if any express provision should be made for the instruction of inmates of such institutions, it belongs, not in this article, but in the article which relates to the conduct and control of those institutions. We are here, Mr. Chairman, seeking to lay down a principle. Let us make it clear, definite, certain; let us not engraft or seek to engraft upon it any exception. We are here, standing for the protection and the defense of the common schools of this State, the schools of the masses, as distinguished from the schools of the classes, the schools which have proved the crucible in which have been fused into one homogeneous mass the diverse elements of our citizenship; the schools which make for the safety, for the perpetuity of the State. Let us make our utterance here distinct, clear, emphatic, and by so doing we shall eliminate from all the discussions of the future in this Convention, and every succeeding Convention, any element of religious bitterness, and shall take away every occasion for controversy over matters of religious belief. For once let it be established in the fundamental law that the schools of the State are safe from invasion or attack by any denomination, and the main ground of religious dispute in connection with public questions is forever removed. Mr. Chairman and gentlemen, I trust that this Convention will recognize that in this article, at least, there is no place and no need for any exception, and that this amendment, and all amendments, tending to create any exception to the principle enunciated in the first paragraph of this section, will be voted down.

Mr. Vedder — Mr. Chairman, there is danger upon a question of this nature that one cannot say anything without being misunderstood, and I am somewhat timid in speaking upon it, for fear that I may not be understood. I believe, Mr. Chairman, in all religions. I believe that there has never been a system of religion, whether found upon Christian or heathen ground, but that has had a great deal of good in it, and I am in favor of them all. I believe in permitting the Baptist, the Jew, the Presbyterian, the Catholic and the poor Indian who may see the Great Spirit in the clouds or hear Him in the wind, to seek God in any way they please, and get to heaven in any way they can. That is my religion. I believe, however, that the different systems which people may have in getting to heaven ought to be separate from politics or from State affairs; that each should be distinct in its own sphere. I do

not believe that the money which, by the power of the State, shall be taken from the Presbyterian should be used for the teaching of Methodist doctrine; I do not believe that the money which shall be drawn from the Catholic by the police power of the State, in the way of taxation, should be used for the purpose of teaching the Baptist doctrine, and I do not believe that those, if there be such, who have no particular denominational religion, should be taxed to teach in the schools of the State any religion of a denominational nature. It is impossible, Mr. Chairman, to teach any branch of so-called secular education in any school in the State, without necessarily teaching religion. Every secular or temporal advance in knowledge is a tendency toward spiritual education and spiritual attainment. No man can see the mountains trembling with thunder, or the hills wrapped in the flames of God's lightning, can see the mighty storms of winter, and feel the calm breath of summer, can see the great beasts of the fields and the motes that people the sunbeam, can go out in a starry night, and in that stillness, which is the next thing to silence, and see God's wondrous works, and say there is no God and no immortality, unless that man is mad. Religion is being taught all the while, and everywhere where anything is taught. I believe in common schools. In them should be taught nothing sectarian or denominational. I mean in the schools, the support for which is drawn by taxation from the body of the people, should be taught nothing but the moralities of the English alphabet and the religion of the multiplication table. When you get beyond that and want to go into particular branches of religion, let those who believe in sectarianism pay for it themselves. (Applause.) Now, most eloquently Mr. Lauterbach, of New York, told us of these children of the charities. Mr. Chairman, charity depends altogether upon other sentiments and emotions of the human heart, than that of religion — I mean denominational or sectarian religion. He who sails the sea of charity has circumnavigated all religions of a denominational nature. What we mean by not having any of these funds derived from taxation used for sectarian purposes, does not preclude the use of the State money drawn by taxation for the education of those unfortunates that Mr. Lauterbach has spoken of, who are the children of the State. There is no person in the State of New York, from the highest to the lowest, from the millionaire to the widow with the widow's mite, but would say God bless the State, the institution or law, the men who will give something for the education of those children that are the children of the State. We are bound to take care of

them, and we propose to do it. There is nothing in this section which prevents it. The very amendment of Mr. Marshall proves it. Mr. Marshall says that he wants the State funds to be used where secular education is to be taught, and there is nothing in this amendment which prevents secular education being taught in any of these institutions. An orphan asylum is not a school; it is not an institution of learning. What this amendment announces is this, that an institution, standing by itself, which is a school, which is an institution of learning, protected and maintained for that and that purpose only, shall not have the funds of the State, if it is under any denominational control, any denominational species of religion. That applies to the people of the State, to the children of the people of the State, and not to the children of the State itself; and there is a vast difference between these two. Let us take care of those who by their crimes, who by their misdemeanors, who by their faults, who for any reason whatever are put into these institutions which are erected by private benevolence, though denominational, and let us educate them by taxation raised by the people, but let the education be secular and under State or public domination. No one objects to that. All we demand is this, that the schools which are erected for the people and by the people, and all institutions of learning for which the people pay, shall not be under any denominational or sectarian control.

Mr. Chairman, it has been suggested very strongly by Mr. Hirschberg that all that is demanded to-day, rightfully demanded, by Mr. Lauterbach, can be and should be had, and its place is in the charity article. That is its proper place, and no one will object to its being put there, because we are all agreed, and there can be found no man in this Convention who will say that there are children of the State that ought not to be educated; and, if the State says they are to be educated, the State will not, with microscopic eye, investigate whether they happen to have a Baptist for a teacher, or a Catholic, or a Hebrew, or a Methodist, in those schools. The public will employ the teachers; it will furnish the money, and the children shall be educated in those branches which shall fit them to become good citizens of the imperial State of New York. I want, Mr. Chairman, a divorce of church and State; and, as Mr. McLaughlin said this morning, the debate here shows the necessity of getting these subjects beyond the domain and realm of politics. It has been illustrated on this floor. Let the divorce between church and State be eternal, so that each, in its proper sphere, shall be as distinct as the waves, but one as the sea, in the State of New York, so far as the welfare, the liberty

and the happiness of this people are concerned. It is only in this way that justice will forever be established, and it is only in this way that peace can forever be within our walls and prosperity within our palaces.

Mr. Cookinham — Mr. Chairman and gentlemen, my time has dwindled until I have only two minutes. You will know when I have completed that I have left out a very much better speech than I have made; but I rise for the purpose of saying that there is an immense misconception upon this question now among the delegates upon this floor. It has been argued as if these children, who are the subjects of charity, were to be left to the four winds of heaven, unless the State of New York, by its great and powerful hand, should take them in charge and provide for their welfare. Such, Mr. Chairman, is not the case. There are private charities sufficient to-day to care for them all. There is a heart in the American people; there is a heart in every Presbyterian and every Catholic, in every Jew and every Gentile, to take those little ones under their care and to provide the means for their maintenance and education. Do not lose sight of that, fellow-delegates. This morning a delegate rose in this chamber and announced that the son of a noted and most estimable delegate had fallen asleep in death. Every heart in this chamber was moved as it has not been moved before during these sessions. Think you, fellow-delegates, that the human heart is to be closed against charity because the State of New York does not provide for these charges? No, a thousand times, no. Those angels which Mr. Lauterbach spoke of last night will still be in the institutions; they will still soothe the fevered brow; they will put the cup of cold water to the parched lips. Do not forget that. And, if there be one delegate upon this floor that proposes to vote for this amendment of Mr. Marshall, let him remember he is not voting in favor of the little children, but he is voting to establish a principle which I, for one, would vote a thousand times, were I entitled to, to keep forever out of the Constitution of this State. That principle is to appropriate, not millions of dollars, not thousands of dollars, but one single cent for the purpose of a sectarian school; I speak freely, and I would that my friend who sits near me (Mr. McDonough) could agree with me upon this proposition, that the public schools of the State are not and should not be for the religious education of children, but for the secular. On that he and I disagree. He is as honest as I, and I as honest as he. Would that we could all agree that the State should fulfill its functions and the church hers, but not the Presbyterian, not the Catholic church, but that church which

is pictured by the incomparable pen of the inspired writer, when he says: "She looketh forth as the morning, fair as the noon, clear as the sun and terrible as an army with banners." I hope, Mr. Chairman and gentlemen, that the motion to insert the amendment of Mr. Marshall will be voted down.

Mr. Holls — Mr. Chairman, I have asked my friend, the gentleman from New York (Mr. Root), to close this debate, and before he speaks there are just a few words which I think it may not be improper for me to say. I shall not attempt to argue on this subject at length, or to reply in detail to any of the very able and adroit speeches which have been made upon this question, still less, to any of the personal allusions to the committee made in the speech of the gentleman from Jefferson (Mr. Brown). I could not reply to his characteristic saponaceous smile, of which his speech principally consisted. I do not wish to say, in this discussion, one word in unkindness to any one. I hope that not a word of mine will give pain, or will for one moment be considered to be inspired by anything akin to fanaticism. I fully agree with the wise words of Bishop Wilson that "fanaticism makes sad havoc in the mind." If there is any secret association, any movement, which naturally shuns the light, which works in darkness and which seeks to promote in this country religious hate or proscription of any part of our fellow-citizens, I abhor it as much as any gentleman on this floor. Sir, this is not a question, as my friend from New York (Mr. Lauterbach) has said, of charity, or humanity. Whatever we may think of the abstract principle of State aid to any enterprise, by no vote of mine shall anything be done to cripple or strike down the noble religious charities or institutions which are to-day doing some of the best work of this State. Whatever I have advocated, and what I now advocate, is in the interest of those institutions, of the church and of the denominations which support them, just as much as I consider it to be in the interest of the State; for, sir, I do not consider that there can be a conflict of true interest between the State of New York and any part of its citizens, organized as a religious community for the purpose of inculcating faith, hope and charity into the minds of its members. Whatever this Convention shall decide on, this question cannot be decided wisely, unless it is done merely from one motive, and one alone, and that is, the desire to be absolutely right in principle; and, if it is that, it will be wise and expedient, no matter whom it hurts, no matter whom it helps. That is the only criterion. The arguments which have been made here to show that this section, as it now stands,

with the proviso stricken out, is a proscription of religion, or shows in any way indifference or hostility to it, recall to mind the saying of the great Cardinal Contanini: "Nothing calls forth so much brilliant argumentation, so much acuteness and plausibility as that which is false and erroneous." Sir, the principle sought to be established by this section, as it now stands, and as I hope it will stand, because I know it will be indorsed by an overwhelming majority of the people of this State — that principle, so far as religion is concerned, is a simple one, and it is this, that any instruction given by the State must necessarily be secular; and to say that it is secular does not say that it is irreligious. It is senseless to use that argument. The State exists for one purpose; religious communities for another. We do not say that our legs are blind because we do not see with them. They do not exist for that purpose. Analogies are always dangerous; but, sir, if they were not, I would say that the osseous fabric of the human body must necessarily decay and go down if the nerves and fibres be not healthy; but at the same time that does not mean that our bony structure must do the breathing and the digesting. One is necessary to the other, but their functions are entirely different; and the absolute proof that this principle is true, and that State instruction must be secular, is found, if we follow out the thought one step further; for then we see that, if the State can teach any religion, it must, in all honor and justice, teach all religion, and this means that it must decide what is religion and what is true religion. If the State of New York has the right, directly or indirectly, to provide religious denominational instruction for any child, it has the duty to see that even the very least of these poor children gets the whole truth, the whole revelation of God, not abating one jot or tittle, and gentlemen will see how absurd it is to ask the State of New York to decide what faith that shall be. It has been suggested that we would make the schools godless; that the persons who advocate this amendment here and who, I hope, will triumphantly carry it through this Convention and before the people, will go down to history as being the promoters of godless schools, as though that were a very terrible indictment. Sir, it would, indeed, be terrible if it were true that what we are doing is an act of hostility to true religion. But it is not. We simply establish and wish to maintain the principle of free, independent secular schools, and that is a very different thing. And that is the remark with which I close and yield the floor to my friend from New York, that secularity, in the opinion of all those who opposed this proviso, and who now ask this Convention to pass the section and the article as it stands —

secularity is the only true principle, and, hence, the best policy for the State, for every church in the State, and necessarily for us here who hold the supreme power of State. If the church wants to go on, and I hope it will go on, in its glorious career of making men better and purer and holier, the first condition is to "render unto Caesar the things that are Caesar's." It will not be until that is carried out to its full extreme and its full extent, as it will be by this new Constitution in the State of New York, if adopted — not until then, that the church and the people of this State will be in the true position to devoutly, humbly and freely to "render unto God the things which are God's." (Applause.)

Mr. Choate — Mr. Chairman, in conference with Mr. Lauterbach, I move that no vote be taken on any of these amendments until we go into Committee of the Whole on Tuesday morning.

Mr. Carter — Have we any further time to consider these amendments?

The Chairman — The time expires at one o'clock.

Mr. Carter — I have a general amendment I would like to make at the proper time.

The Chairman — It must be offered now.

Mr. Holls — I rise to the point of order that this time is limited for the debate on this proposition, and, as I understand it, general amendments are in order after the amendments to this section have been voted upon.

The Chairman — It will be received now by the Secretary, but not read. Mr. Root has the floor.

Mr. Root — Mr. Chairman, I am glad that this little interruption has taken place, because I would rather have a lucky eleven minutes in which to make my remarks than an unlucky thirteen, which I would have had.

I came to this Convention, Mr. Chairman, in common with many of my fellow-delegates, expecting to vote to prohibit all State aid to any sectarian institution, whether educational or charitable. It is with great regret that I have found an impression gaining ground in the Convention that the attempt to prohibit such aid to sectarian charitable institutions better be abandoned, and that an offer proposed by the advocates of such aid to those institutions better be accepted, to the effect that there should be merely supervision of aid to charitable institutions, and not absolute prohibition of such aid to sectarian charitable institutions. I now find, sir, that the very gentlemen who have been securing the acquiescence of this

Convention in leaving charitable institutions free from a prohibition are insisting upon attaching to the proposition against State aid to sectarian institutions a proviso, which, in my judgment, will send us out of this Convention, if adopted, not merely having failed to prohibit State aid to sectarian charities, but having absolutely put into the Constitution an authorization of such aid. There can be no mistake, Mr. Chairman, about the effect of the proviso offered by Mr. Lauterbach, from New York; no mistake as to the effect of the proviso offered by Mr. Marshall, from Onondaga. They both mean, and both accomplish, so far as the subject that I am now discussing is concerned, the same thing. After the clear and emphatic declaration of principles, contained in section 4 of the proposed article, that the money of the State shall not be used in aid or maintenance of any school or institution of learning wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet is taught, it is now proposed to say that this section shall not prohibit the appropriation of money for secular instruction, to the inmates of any orphan asylum or of any institution to which children may be committed by judicial process, if such education is incidental only; and that is, by the most friendly rules of construction, equivalent to putting into this proposition these words: "We hereby authorize the use of public money for the maintenance of charitable institutions under sectarian control and for instruction in schools connected therewith, under sectarian and denominational control." That, sir, is the act we are now invited to substitute for the contemplated prohibition of all State aid to sectarian charities. I, for one, sir, will never vote for an article which contains such a constitutional authorization of State aid to sectarian institutions, or for any Constitution which contains such an article; and I believe, sir, that the great body of the people of this State will refuse to give their sanction to any such provision. It is unnecessary, sir, to accomplish the purposes of the gentlemen who offer it; for there is not a man in this Convention who has suggested or who will suggest that the section, as it now stands, in the slightest degree interferes with the use of the State money for the maintenance of any orphan asylum, or any house of refuge, or for any charitable institution; in the slightest degree interferes with the use of the money of the State for the support or the maintenance of any inmate of any charitable institution, even though that institution may be under sectarian control, and even though instruction may be given in it. The proviso proposed can do nothing to accomplish any benefit for the institutions in which these gentlemen are interested, but it throws open the

door for the accomplishment of what we all of us here agreed to avoid, the giving of State aid to sectarian instruction. The gentleman from Jefferson calls it a small thing. I beg leave to say, sir, that it is the greatest question and the most important principle which has come before this Convention or will come before it until its final adjournment. Your fathers, Mr. Chairman, came to this country from that heroic little land in which Spanish soldiers under the iron hand of Philip the Second and the Duke of Alva strove to impress the power of the State of Spain upon the consciences of the countrymen of William the Silent and John of Barneveldt. Mine left their English homes in the reign of Charles the First to escape that controlling force of church and State united, which forbade them the right to liberty of their conscience. They came to a barbarous and inhospitable shore; they fought and conquered the savage; they felled the forests; they cleared the land; they established a State; they secured their independence of foreign control. They set up a reign of law and order, of peace and prosperity, and then they opened their hands of welcome to the fathers of the gentlemen who propose this amendment; they opened their hands to the fathers of the gentleman from New York, to the fathers of the gentleman from Onondaga, to the fathers of the gentlemen upon the other side of the chamber, who are so anxious to have this proviso inserted, and they welcomed them, not to savage and inhospitable shores, not to wars with savage foes, not to privation and hardship, but to a peaceful and a happy land, where home and comfort met them at the threshold, and they gave to them the freest exercise of conscience; they welcomed their religions with them, forgetful of all the tyranny they themselves had endured; they welcomed Hebrew and Catholic alike; they imposed no hostile, or professional, or business, or social bar against the full exercise of religion and the full privilege of citizenship, upon religious ground; but, Mr. Chairman, there is one thing, and one thing only, which those people, generous, broadminded and liberal said, have always said, and say to-day, that never in this State of ours shall be repeated that union of church and State, which drove your fathers and mine from their homes in the old world. And that, sir, is the principle which we seek to embody in this Constitution of ours by the declaration reported by the Committee on Education. It is the greatest principle which this Convention has an opportunity to declare; and, Mr. Chairman, it should be, it must be, it shall be, cut down, modified, affected by no proviso, by no limitation, to secure or protect any private interest. Therefore, I believe that every true American, of whatever

religion, will be for this section as it stands now. It is not a question of religion, or of creed, or of party; it is a question of declaring and maintaining the great American principle of eternal separation between church and State. (Applause.)

President Choate resumed the chair.

Mr. Lyon — Mr. President, Mr. Cassidy stated to me late last night at his hotel that he was in receipt of a telegram saying that there was illness in his family, and requiring his leaving on the midnight train. He asked me to present his excuse and to say that he had not hitherto been absent from a single session.

The President put the question on excusing Mr. Cassidy, and he was so excused.

Mr. G. W. Clark — Mr. President, I desire to offer the following resolution:

The Secretary read the resolution offered by Mr. Clark in the language following:

"Resolved, That the session of this (Saturday) afternoon be from two until four o'clock, instead of three until five o'clock."

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

Mr. Nichols — Mr. President, I have a telegram from Mr. Parkhurst saying that he is detained with his family, who are not at all well, and will probably not be able to return until Tuesday evening, and desires to be excused until that time.

The President put the question on excusing Mr. Parkhurst, as requested, and he was so excused.

Mr. Lauterbach — Mr. President, I move that the vote upon all pending amendments take place on Tuesday morning instead of to-day, on going into Committee of the Whole.

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

Mr. Peck — Mr. President, I would like to have added to that "and any other amendments which may be offered after these are disposed of."

The President — I think that cannot be done without a change of rule No. 27.

Mr. Peck — Mr. Marshall's amendment is an amendment to Mr. Lauterbach's, and I cannot offer another. I am ready to offer it now. All I want is to have a vote on it, no discussion.

The President — That can only be done by unanimous consent when you get into Convention.

Mr. Lauterbach — I accepted the amendment.

Mr. Peck — I did not know that the amendment had been accepted. Can I offer an amendment now?

The President — No, not now. Mr. Lauterbach's motion is that all votes on all pending amendments be not taken until Tuesday, when we go into Committee of the Whole.

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

Mr. Platzek — Mr. President, Mr. Williams has been called home on account of illness, and asks to be excused for this afternoon and Monday morning's session.

The President put the question on excusing Mr. Williams, as requested, and he was so excused.

Mr. Lauterbach — Mr. President, I ask to be excused for the balance of the day.

The President put the question on excusing Mr. Lauterbach, as requested, and he was so excused.

Mr. I. S. Johnson — Mr. President, I desire to give the notice which I gave last night, that I shall move a call of the House instead of at 3.15, at 2.05, unless there is a quorum here.

The President announced the notice given by Mr. Johnson.

Mr. Lyon — Mr. President, I am in receipt of a telegram from my family, was in receipt of a telegram yesterday, and may be obliged to leave this afternoon. I have telegraphed with the view of remaining, if possible, but, if I am obliged to go, I ask to be excused.

The President put the question on excusing Mr. Lyon, and he was excused.

The Secretary announced a meeting of the Committee on Revision and Engrossment at 2.30 P. M.

The hour of one o'clock having arrived, the President declared the Convention in recess until 2 P. M.

AFTERNOON SESSION.

Saturday Afternoon, September 1, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, at the Capitol, Albany, N. Y., Saturday afternoon, September 1, 1894.

President Choate called the Convention to order at 2 P. M.

The President — The next order of business is the amendment in reference to the Niagara river, and Judge Cady will please take the chair.

The Convention resolved itself into Committee of the Whole on general order No. 63 (printed No. 442, introductory No. 390), entitled "Proposed constitutional amendment to amend the Constitution by the addition of a new article relating to the diversion of the waters of Niagara river."

The Chairman — The Secretary will read the amendment.

The Secretary read the amendment as follows:

Proposed constitutional amendment to amend the Constitution by the addition of a new article relating to the diversion of the waters of Niagara river.

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

The Constitution is hereby amended by the addition of the following new article:

ARTICLE —.

"Section —. No charter, license or privilege to divert from their natural channel the waters of the Niagara river or any portion thereof above Niagara Falls shall be granted to any corporation, association, person or persons, except for sanitary, domestic or fire purposes, and such waters shall not be diverted for any purpose except as herein expressed. All corporations, associations, person or persons who have heretofore been licensed or granted the right to divert the waters of said river shall be under the direction and control of "the Commissioners of the State Reservation at Niagara," or such other official or officials as may be given the control of said reservation, so long as said corporations, associations, or persons shall be permitted to divert the waters of said river. Each of said corporations, associations, person or persons shall only be permitted to divert any portion of the waters of said river in such amounts and upon such conditions and for such compensa-

tion to the State as said commissioners or official or officials having charge of said reservation shall prescribe and determine. But this section shall not be so construed to affirm or impair the charter of any such corporation, association or persons or any right, privilege or license under which they or either of them may claim to divert the waters of said river."

Mr. Barhite — Mr. Chairman, I would ask that the Secretary read the report which accompanied this amendment. I think that will be a saving of time, as that will state all the facts and will not necessitate my making very extended remarks in regard to the facts of the case.

The Chairman — The Secretary will read the report of the committee.

The Secretary read the report of the Committee on Legislative Powers and Duties as follows:

Report of Sub-Committee of Committee on Legislative Powers, Relative to the Diversion of the Waters of Niagara River.

To the Committee:

Your sub-committee, to which was referred the resolution offered by the Hon. Andrew H. Green, of New York, in the following words, namely:

" Resolved, That it be referred to an appropriate committee to report to the Convention what, if any, amendment should be made to the Constitution to restrain the Legislature from granting to, or conferring upon, corporations or individuals privileges, rights or licenses to divert the waters of the upper Niagara river, or any portion thereof, from their natural channel, and that said committee, in their report, inform the Convention of those rights and privileges heretofore granted, and the particulars and extent and the consideration therefor," would respectfully report:

That they have made a diligent and careful examination of the question submitted to them, both with respect to the fact and the law. They have examined the statutes of the State for fourteen years last past, to ascertain what rights have been granted, and the decisions of the courts, which are of assistance in determining what claim the State of New York has to the waters of the Niagara river and the soil thereunder. On the twenty-eighth day of July, some of the members of your committee visited Niagara Falls and made a personal examination of the river, and the work which has been done by the companies already authorized by law to divert the waters of Niagara river from their natural channel.

On that occasion your committee was waited upon by the representatives of different corporate interests which may be affected by the action of the Convention, and received from them valuable and interesting information as to what they had done, what they proposed to do, and what they claimed their rights to be.

From the knowledge derived from the various sources mentioned your committee can report the following facts:

That the oldest company taking water from the river above the falls is known as the Niagara Falls Hydraulic Power and Manufacturing Company, which was organized in or about the year 1879, under the manufacturing act of 1848, but has received no special rights or charter from the State. This company is the owner of a canal, seventy feet wide and fourteen feet deep, which extends from a locality known as Port Day, about one mile above the falls, to a point below the falls where the water is used to propel turbine wheels situated in the high bank of the river. This company at the present time is furnishing about eight thousand horse-power, and the capacity of its present canal is 231,000 cubic feet of water per minute, equal to 1,727,880 gallons. This company is now engaged in increasing the capacity of its canal to 100 feet in width and fourteen feet in depth. The flow of the canal will then be 462,000 cubic feet per minute, equal to 3,455,760 gallons. This company pays nothing to the State for its privilege.

By chapter 83 of the Laws of 1886, the Legislature granted to a company, known as "Niagara River Hydraulic Tunnel Power and Sewer Company of Niagara Falls," a charter for the purpose of constructing, maintaining and operating, in connection with the Niagara river, a hydraulic tunnel or sewer for public use of sewerage and drainage, and for furnishing hydraulic power in the town of Niagara, Niagara county. The charter of this company was amended and its powers increased by chapter 589 of the Laws of 1886, chapter 109 of the Laws of 1889, chapter 253 of the Laws of 1891, chapter 513 of the Laws of 1892, and chapter 477 of the Laws of 1893. The name of this company was changed to "The Niagara Falls Power Company," on the 11th day of November, 1889. By the act of incorporation, and the various statutes amending the same, this company has been given extraordinary and almost unlimited power in different directions. It has the right to condemn lands; it may increase its capital stock to $10,000,000; its rents or charges for electricity or water, except those charged against a city, town or village, for municipal purposes, are made a lien upon the premises on which such water or electricity is used, and may be collected of the person contracting therefor, or the lien may be

enforced against the property; it is authorized in any manner not expressly prohibited by law or by local ordinance, to conduct, convey and furnish the waters of the Niagara river, but not in excess of the amount authorized by law, or any power, heat or light developed therefrom, to, in and through any civil division of the State, and to sell, furnish and deliver the same to any and all bodies or persons, public or private, wherever situated; and for any such purpose said corporation, from time to time, may enter upon any private property for which it may obtain such right, or upon any public bridge or street, highway, road, land or water, and may use the ground thereunder; and it may use and occupy any portion of such street, highway or road, or any such public land or water, in such manner as shall from time to time be permitted by the local or public authority having control or supervision thereof, subject, however, to all private rights therein, including any right to compensation for any such use and occupation.

This company is prohibited from taking from the river more water than shall be sufficient to produce 200,000 effective horsepower. It has paid nothing for the privileges granted, and has not agreed to pay anything, except that by one of the amendments to this charter, namely, chapter 513 of the Laws of 1892, it is provided that the right to take water from the Niagara river is granted upon the express condition that the company's acceptance shall bind it to furnish, free of charge, electricity for light, and also for power (as soon as said company shall begin to furnish electrical power in Niagara Falls), and also water for use of the State in the State reservation at Niagara, and the public buildings thereon, when requested by the Commissioners of the State Reservation. Your committee understands that the Commissioners of the State Reservation have never called upon this company to furnish either power or light, but have insisted upon paying for whatever the company might furnish them. The company has operated extensively under its charter, and at the present time is the owner of a large and extensive plant, partially in operation. For the accommodation of its turbines it has constructed a wheel pit 186 feet deep and 140 feet long. It has also built through the solid rock a tunnel from the wheel pit to an outlet below the falls, which tunnel is about 7,300 feet long, twenty-one feet high and eighteen feet broad at its widest part. The tunnel is used as a tail race, through which the water discharged from the wheels flows again into the river. It will, however, only carry sufficient water for the generation of 100,000 horsepower; and if the company desires to use the full amount of power which its charter authorizes, the construction of another tunnel of

equal capacity will be required. The present tunnel, when working to its full capacity, will draw from the river about 516,000 cubic feet of water per minute, or 3,859,680 gallons. This is something like three per cent of the entire body of water flowing over both the American and the Canadian falls. It may be said, in this connection, that the United States army engineers, in 1868, when making a survey of the Great Lakes, computed the amount of water flowing over Niagara Falls to be 16,500,000 cubic feet per minute, or 123,420,000 gallons. This amount has been computed at other times and by other experts, and their figures agree substantially with those given above. If the company under discussion uses its full limit of 200,000 horse-power, it will draw from the river about six per cent of the entire volume of water. It may be said, in passing, that the same company has obtained from the Canadian government a grant for the use of an equal amount of water to be taken from the other side of the river.

Another company, incorporated for the purpose of taking water from the Niagara river, is the "Lockport Water Supply Company," which receives its grant by charter 106 of the Laws of 1886. This company is authorized to issue capital stock in an amount not to exceed $10,000,000, and to take water from the Niagara river at a point near Tonawanda. Its purpose is to supply the water taken from the river to the city of Lockport, and any towns or villages in Niagara county, for municipal, sanitary, domestic, manufacturing or agricultural purposes. According to the terms of the grant, work was to be actually begun within five years from the date of the act, but, by charter 438 of the Laws of 1890, its powers were extended and jurisdiction given to supply water throughout Niagara, Erie and Orleans counties, and the time in which work must be begun was extended to ten years from the time of the passing of the amendment. The name of this company has been changed to that of the "Lockport Water and Electric Company." It is not limited in the amount of water it is authorized to take from the river, and no compensation has been or is to be given to the State for the powers and privileges granted. Your committee understands that no work has been begun under the provisions of this charter.

The "Niagara County Irrigation and Water Supply Company" was incorporated by chapter 259 of the Laws of 1891, and is given power to construct a canal connected with the Niagara river, and to thereby supply water to Lewiston and other cities and villages in the towns of Niagara, Lewiston and Porter, for manufacturing and many other purposes. There is no limit to the amount of water

which this company is authorized to draw from the river, and no compensation has been given or is to be given for the power granted. By the charter, work was to be in good faith begun within five years from the date of the act of incorporation, but your committee understands that, as yet, no steps have been taken to carry out the purposes of the company.

"The Lewiston Water Supply Company" was incorporated by chapter 561 of the Laws of 1888, with a capital stock of not to exceed $50,000,000, and was required to begin work within five years from the date of its incorporation. This company was authorized to supply water for many different purposes, and was not limited in the amount to be taken. No work has been done under this charter.

"The Buffalo and Niagara Power and Drainage Company" was incorporated under chapter 366 of the Laws of 1889, and was authorized to build a canal from within the city of Buffalo to a point below Niagara Falls, for developing, accumulating, conducting and storing water-power and furnishing the same for domestic, municipal, sanitary, commercial, manufacturing or agricultural purposes. This company was authorized to take water from any point in the Niagara river, and the amount which could be taken was not limited. Work was to be begun within two years, and completed within five years from the date of its incorporation. No work has been done under this charter.

The "Model Town Company" was incorporated by chapter 707 of the Laws of 1893, with a capital stock of not to exceed $10,000,000, and was given permission to institute a town at a point on Niagara river below the falls, and can obtain its water from Lake Erie, and, except for motor power for factories, from the Niagara river. By chapter 605 of the Laws of 1894, the name of this company was changed to "Niagara Power and Development Company." This company takes its waters from the Niagara river at LaSalle, about four and a half miles above the falls, by a canal forty feet wide on the bottom and from sixteen to eighteen feet in depth. The construction of this canal has been begun, although no large amount of work has yet been done. It will be three and a half miles long and will connect with a tunnel about seven miles in length and eighteen feet in width, and twenty-two feet eight inches in height. The company expects to develop 100,000 horse-power with 218 feet fall. It already controls about twenty-five square miles, or 16,000 acres of land. The projectors hope to complete the canal in from eight to ten months. There is no limit to the amount

of water to be taken from the river, and the company has paid nothing for its franchise.

The "Niagara, Lockport and Ontario Power Company" was incorporated by chapter 722 of the Laws of 1894, with a capital of not to exceed $10,000,000, and is authorized to draw water from the Niagara river and convey it by canal to the escapement at or near Lockport, and to discharge it into Eighteen Mile creek and Lake Ontario — Eighteen Mile creek itself flowing into the lake. This company is authorized by its charter to supply water to Lockport and other cities and villages in Niagara, Erie and Orleans counties to be used for manufacturing, commercial and irrigating purposes. There is no limit to the amount of water which may be taken, and it has paid nothing, and has not promised to pay anything, for its rights and privileges.

This company has simply completed its organization, but intends to begin operations as soon as the requisite capital is supplied.

No other persons or corporations have been authorized to divert the waters of the Niagara river, except as above stated, so far as your committee, after diligent inquiry and search, have been enabled to ascertain. Two of these companies are actually using the waters of the Niagara river; one of them has begun the construction of its canal, and one, incorporated last winter, is making preparations to begin work. All of them have received extensive powers and privileges, and their operations can be carried on almost without limit.

As to the danger which may result to Niagara Falls and the State Reservation from the operation of these companies, your committee is of the opinion that the amount of water which is at present taken from the river will not make an appreciable difference in the appearance of the falls and the rapids above the falls. It may be said, however, that of the immense amount of water flowing over the precipice, not more than one-fourth or one-fifth goes over the American side. As stated before, the only two companies that are at present drawing water from the Niagara river above the falls are the Niagara Falls Hydraulic Power and Manufacturing Company and the Niagara Falls Power Company — the first, by canal, which at present has a capacity of 211,000 cubic feet per minute, and which will, when the plans of the owners are carried out, have a capacity of 462,000 cubic feet per minute. The limit prescribed by statute for the Niagara Falls Power Company is 1,032,000 cubic feet per minute, or a total for both companies of 1,494,000 cubic feet per minute, or a little over nine per cent of the total flow of the river. The companies which are incorporated, but have not yet begun to

operate, are not limited in the amount of water which they are authorized to use, and while the completion of their plans must require immense sums of money, yet in these days of large enterprises your committee does not apprehend that the want of money, if their plans are likely to prove profitable, will be the chief obstacle in their way.

In return for these immensely valuable franchises, the State of New York has not received one cent or any consideration, except the condition by the Niagara Falls Power Company to furnish the Niagara Reservation with water and light, while your committee understands that for a grant similar to the one obtained on this side of the river, this same company has agreed to pay our thrifty Canadian neighbors several thousand dollars per year rent, viz., about $25,000, depending upon the amount of water used.

The State Reservation at Niagara, according to the figures from the Comptroller's office, has cost the State of New York in round numbers $2,500,000. This reservation was founded and this immense sum has been expended to give the people not only of the State, but of the whole world, an opportunity to view at slight expense one of the grandest and most sublime scenes on the face of the globe, and if corporate and individual ambition is not checked and made subordinate to public rights, there is certainly danger that the falls of Niagara, like the falls of Minnehaha, may live in the tradition of song and story, but will be sadly deficient in the amount of water flowing over their brink.

The point above the falls on the American side, at which the water may be taken, is also of serious moment. A small amount diverted from the river a short distance above the cataract will affect the American falls more than an equal amount taken from the river farther away. The currents of the two falls are divided by Goat Island. The head of this island is about 3,000 feet above the falls. It necessarily follows that any water taken from the river on the American side between the falls and the head of the island, or at any distance above where the influence of the island in dividing the current is felt, will be largely drawn from that portion of the river which, if left to itself, would flow down the American channel. But if the water is taken from the river above and beyond the influence of the island, the level of the water will be restored before reaching the dividing point, and the bad effect will not be entirely on the American side.

But it is not likely any company can take water within a distance of three miles above the falls, except the Niagara Falls Power Company and the Niagara Falls Hydraulic Power and Manufacturing

Company, for those two corporations and the State almost entirely own or control the bank of the river for that distance. The danger is, however, that the companies which propose to operate above this three-mile limit, being unrestricted in the amount of water they may use, are liable to draw so largely as to seriously interrupt and lower the entire stream, especially when their use is added to that taken below them.

It is doubtless true that the people in the extreme western part of the State, to whom the sight of the falls and river is a stale and almost daily exhibition, view with satisfaction the increased prosperity which may come to their particular section as the result of the operation of these various companies, and look with disfavor upon any attempt to preserve the property of the State, which may at the same time curtail their individual success.

Believing, as your committee does, that the property of the State may be seriously injured and antagonized by the acts of individuals, the question arises: what claim has the State upon the bed of the Niagara river and the water flowing through the channel? This question may seem complicated by the fact that this river is one of the boundary waters of the United States, and may be under the jurisdiction and control and be the property of the general government. An investigation of the matter leads to the conclusion that the bed of the river from high-water mark to the center of the stream belongs to the State of New York. In support of this conclusion your committee call attention to the case of the People ex rel. Burnham v. Jones (112 N. Y., 597), where it is held that the line of riparian ownership along the line of Lake Ontario extends only to high-water mark.

In the case of the Illinois Central Railroad Company v. The State of Illinois (146 U. S., 387), the Supreme Court of the United States says: "It is the settled law of this country that the ownership of any dominion and sovereignty over lands covered by tide waters within the limits of the several States belong to the respective States within which they are found, with the consequent right to use or dispose of any portion thereof when that can be done without substantial impairment of the interest of the public in the waters, and subject always to the paramount right of Congress to control their navigation, so far as may be necessary for the regulation of commerce with foreign nations and among the States." The court further says in the same case: "The same doctrine is in this country held to be applicable to lands covered by fresh waters in the Great Lakes, over which is conducted an extended commerce with different States and foreign nation."

In the case of Shively v. Bowlby (152 U. S., 1), the court holds that a riparian owner bounded by a navigable river has no right or title in the shore below high-water mark in New York, and cites several cases from the Court of Appeals in this State in support of that proposition.

The question may be asked whether Niagara river is a navigable river, whether the existence of the falls, which at a certain point interrupts navigation, does not change the character of the stream. This proposition was discussed in the "Matter of State Reservation at Niagara" (16 Abb. N. C., 159). This case arose over the action of the Commissioners of the State Reservation in condemning lands of riparian owners at Niagara Falls for the use of said reservation. The owners of Goat Island and other small islands in close proximity claimed that they were entitled to the use of the water-power afforded by the Niagara river as it flowed past them, and that the State of New York, if it took these islands under the right of eminent domain, should compensate the owners for the value of the hydraulic power of which they would be deprived. Commissioner Marsh, in the opinion in that case written by him, says: "By the law pronounced by the courts of New York, the rule of construction which carries title to the middle of the stream does not apply where grants of land are bounded on navigable rivers, or on those which form the boundaries between nations or States." He further says: "In Kingman v. Sparrow (12 Barb., 201), it is announced as that judgment of the General Term in the eighth district — in whose jurisdiction the *locus in quo* is situated — that the common-law rule, as applied to grants bounding premises on rivers, has no application to lands bounded on the Niagara river on the grounds that it is both a navigable and boundary stream. This decision stands unreversed, and has not, so far as we have seen, in any adjudicated case, been subjected to hostile criticism." The commissioner further says, at page 187: "A river, navigable in its general character, does not change its legal characteristics in that respect, by a disturbance which, at a given point, breaks the continuity of the actual navigation. And we are, therefore, obliged to apply to the Niagara river at the falls, the same principles which govern navigable streams; and to hold that the owners of Goat Island, and the other islands, do not carry their title to the middle of the stream, nor even to the middle of the American portion of the stream, but only to the boundary of the islands; that the bed of the river surrounding those islands belongs to the State, as do the waters that flow over them; and that whatever rights, short of prescriptive rights, may be claimed

by the island proprietors in the use of the waters running past their premises, they are subject and subordinate to the rights of the State, as owner of the bed of the river, and may be lawfully terminated whenever the State may choose to resume its sovereignty, as it may at any time without cost or liability to such proprietors for any damage to them. (People v. Tibbets, 19 N. Y., 523, 528.) In addition to this, it is not to be forgotten that notwithstanding this impediment in the actual navigability of the river, the frontier character of the stream is not affected by it nor the principles applicable to such a stream." An appeal was taken to the General Term of the Fifth Department from the decision of the commissioners, and from the order of the Special Term confirming their report. The opinion of the General Term is found in 16 Abb. N. C., 395. Mr. Justice Bradley, who wrote the opinion of the court, says, referring to the Niagara river: "Because it is navigable in fact and constitutes the natural boundary line between this and another country, is the reason why the proprietary right from its margin to such boundary line is in the State, and that the riparian owners have taken by the grant referred to only to the water's edge of the stream, and that the fact that at the particular place in question the river is not navigable by reason of the interruption produced by the falls, does not qualify or distinguish it as a public river in its general character." The General Term affirmed the appraisal report and the order of confirmation. An appeal was taken to the Court of Appeals, but that court dismissed the appeal on the ground of want of jurisdiction.

From the principle derived from the above decisions, your committee concludes that the State of New York is the owner of the land under the water of Niagara river from high-water mark to the center of the stream, except such portions as may from time to time have been conveyed to riparian owners, and is also the owner of the water flowing over the land on the American side of the boundary line.

Your committee believes that an amendment to the Constitution is needed to prevent further grants. The course which different Legislatures have pursued within the past eight years in giving away extremely valuable franchises without exacting compensation for the State, which they represented, is sufficient reason for taking from their hands the power to do anything further in the same direction.

The question as to what shall be done with these corporations which have already received their charters is one of difficulty, for

the reason that they do not stand on the same legal plane and within the same class. Two of them have expended large sums of money and are operating their respective plants, and the amount of water which they can take will not do appreciable injury to the falls. The others, which have not yet accomplished any large amount of work, may, being unlimited in the amount of water which they can draw from the river, do irreparable damage to the property of the State.

After due consideration, your committee believes that the easiest course would be to place the companies already incorporated under the control of the Commissioners of the State Reservation at Niagara. This body is charged with the duty of protecting, preserving and caring for the property of the State at the falls. It is this property which the operations of these companies are likely to injure. The commissioners could allow water to be taken from the river in such quantities and in such manner, and for such compensation as their judgment might dictate to be for the best interests of the State, and at the same time preserve, so far as possible, the manufacturing interests which may inure to the benefit of the western counties.

Your sub-committee would, therefore, recommend to the committee, and through it to the Convention, the adoption of the following amendment to the Constitution of the State: "Article ——, section ——. No charter, license or privilege to divert from their natural channel the waters of the Niagara river or any portion thereof above Niagara Falls shall be granted to any corporation, association, person or persons, except for sanitary, domestic or fire purposes, and such waters shall not be diverted for any purpose except as herein expressed. All corporations, associations, person or persons who have heretofore been licensed or granted the right to divert the waters of said river shall be under the direction and control of 'The Commissioners of the State Reservation at Niagara,' or such other official or officials as may be given the control of said reservation, so long as said corporation, association or persons shall be permitted to divert the waters of said river. Each of said corporations, associations, person or persons, shall only be permitted to divert any portion of the waters of said river in such amounts and upon such conditions, and for such compensation to the State as said commissioners or official or officials having charge of said reservation shall prescribe and determine. But this section shall not be so construed to affirm or impair the charter of any such corporation, association or person, or any right, privilege or license

under which they or either of them may claim to divert the waters of said river."

All of which is respectfully submitted.

JOHN A. BARHITE,
Chairman of Sub-Committee.

Mr. Barhite — Mr. Chairman, the task which the committee has undertaken, the committee which has submitted this report, has been by no means an easy one. The work of ascertaining, collecting and collating the facts upon which this report is based has been a long and laborious one and those facts are presented in this report. Your committee has found, after a careful examination of the Niagara river and after a careful examination of the statutes in reference to charters already granted by the Legislature, that while at present the amount of water which is being diverted from the river at the present time is not seriously damaging the falls or the property of the State, that within the past eight years something like eight corporations have been granted charters by the Legislature which permits them to divert the waters of the Niagara river. And these are not only the ordinary charters of corporations, but they are given almost unlimited power. They are not only given the power to use whatever water they may see fit, but they are incorporated with a large capital stock. Although they are private corporations incorporated for private purposes, they are given the right of eminent domain. The charge for the electricity which they may sell to their patrons is not only made a contract but is made a lien upon the property where the power is used and may be enforced against the property itself. It is the opinion of the committee, in view of these facts and in view of the enormous powers and privileges that have heretofore been granted by the Legislature under these charters, that unless something is done by this body to prevent the Legislature from making further grants, there is serious danger that the falls of Niagara and the property of the State at that point will be seriously damaged if not ruined. Of course, it is a general impression, and it is claimed by these corporations, that the waters of the Niagara river are inexhaustible; that it would be impossible for any corporation or any number of corporations by their united efforts to do anything that would damage that magnificent stream. But they do not bring to us any facts that would bear out an assertion of that kind; that while the sources of supply in the Great Lakes are inexhaustible, the river is only so deep and so broad and only a certain amount of water can flow down between its banks and over its bed. According to the

reports made by the United States army engineers in 1868 it appears that the water flowing over Niagara Falls is 16,500,000 cubic feet per minute, or 123,420,000 gallons. Of this quantity of water only about one-fourth or one-fifth flows over the American falls. It appears from the figures given to your committee by these two companies that are already engaged in drawing water from the river that they will draw, if worked to the full extent of their charters, 1,494,000 cubic feet, or about nine per cent of all the water flowing over both the Canadian and American falls. This is yet but the beginning. There are besides these two companies six others that have been incorporated by the Legislature during the past eight years. It is true that the charters of some two or three have lapsed, but besides the two that are now in operation, there are others that are beginning operations to draw water from the river. The committee, by their report, saw fit to recommend these two things: in the first place, to forbid further grants being given for the taking of water from the river, and, in the second place, the companies who have already received their charters should be placed under some sort of control, so that they might not themselves entirely despoil the river. But the difficult point has been right here. They do not stand in the same class, as a matter of fact. They do not stand on the same legal plane. The oldest company at the river has no charter or license from the State. It simply takes its water under claim of riparian ownership. That company has been in existence for something like twenty years. The canal from which it draws its water has been in existence for something like thirty-five or forty years, and it has simply, and does now, as it says, simply depend upon its rights as riparian owner for the water which it takes from the river. Another company which was organized in 1886 has in its charter a clause which provides that in return for the privilege granted to it, it shall furnish free of charge electricity for light and also for power and also water for use of the State on the State Reservation at Niagara and the public buildings thereon when requested by the Commissioners of the State Reservation. That company claims a contractural right with the State. It is limited in the amount of water which it can use. The other companies, which are to commence operations as soon as they can get the necessary capital, are not limited in the amount of water they may take.

After studying the question, your committee recommended that the best and wisest course to pursue would be to place all of these corporations under the control and direction of somebody in the employ and in the service of the State, who shall be authorized to

say how much and in what manner, and for what compensation, if you please, these companies shall be permitted to divert the water of the Niagara river. There is no question that at least two of these companies have already invested large sums of money in their respective plants. It has been the intention of the committee to present such a report as will, so far as possible, preserve what properay these companies have already at that point. We believe that that can be done without injury to the interests of the State. While it is true that there may be a certain amount of what may be called surrplus water in the river that can be taken for manufacturing interests, beyond that point no corporation nor any body of men should be allowed to go. I sincerely believe that the State has some rights in this property; that it is not for its interests to either allow the reservation, which has cost the people of this State already something like two and a half millions of dollars, or the falls themselves, to be entirely despoiled for the advantage and benefit of private parties and private interests.

The proposed amendment, which was originally presented to this Convention, provided that these corporations should be placed under the control and management of the Commissioners of the State Reservation at Niagara, but, after due deliberation, it has been deemed best on the part of the committee to change that part of the amendment and to place the corporations under the charge and control of the Commissioners of the Land Office. The gentlemen of this Convention know who these commissioners are. They form a constitutional body. They are the Lieutenant-Governor, the Speaker of the Assembly, the Secretary of State, the Comptroller, the Attorney-General, the Treasurer and the State Engineer and Surveyor. With the exception of the Speaker of the Assembly they are elective officers of the State. They are responsible to somebody, to the people of the State, for their acts, and would be not only with reference to the waters of Niagara river, but with reference to every other matter which may come under their jurisdiction.

The question may be asked, has not the Legislature power to deal with this matter? To that, my answer is yes. It may be then asked, why should it not be left to the Legislature? My answer to that is, that it is a body which consists of some 150 or 160 men, and from their course in this matter during the past seven or eight years there is no guaranty that they will adequately and properly protect the property of the State in the future. I do not bring any charge against the Legislature of collusion or improper motives in granting the charters which they have granted to these various companies,

but they certainly have been very lax in their duty. They have granted almost every conceivable power to every one of these companies.

Another reason: it is the intention of the committee to place the control of these corporations within the hands of a definite body, of a few men, to whom you can point the finger, and say, you are responsible for it, if they do not do what will meet the desires and wishes of the people of the State. On the other hand, if it is left to the Legislature, and they pass any improper enactment, you cannot point to any single member in that body as being responsible for the work; or, if you do, he will say, "I was not there; I did not vote for the measure," or give some other excuse. You can simply find fault with the two bodies of the Legislature itself. But if the control is placed in the hands of the Commissioners of the Land Office, they are only seven in number. They may be of different political faith, and you have a small body that can control the whole matter.

Now, further than that: the committee has sought by this proposed amendment not to give any constitutional recognition to the companies which have already received their charters; we say that the "section shall not be so construed to affirm or impair the charter of any such corporation, association or persons, or any right, privilege or license under which they or either of them may claim to divert the waters of said river."

We simply say that the companies that are there so long as they shall be permitted to take the water from this river shall be under the direction of a definite body, but at the same time we do not take away their charters or rights at any time.

One further consideration, and I am done, and that is this: after careful investigation of the law, not only on my part, but on the part of other lawyers in this Convention, it is my opinion that these companies have nothing but a license from the State of New York, a license which is revocable at any time by the State, when it may choose to revoke it and it is perfectly legitimate and proper that the State should know, although it may have heretofore in the Legislature granted certain privileges, it is proper that it should assume control over the amount of water which these companies may use.

With that explanation, Mr. Chairman, I desire to introduce a substitute, a substitute which I have examined carefully, which embodies the points which I have made. I have presented it to a number of different members of the committee from which this report emanated and I think they are perfectly satisfied with it. I

think the substitute does all they intended to do and perform, and adequately protects the right of the State.

The Chairman — The Secretary will read the substitute.

The Secretary read the substitute as follows:

Proposed constitutional amendment to amend the Constitution by the addition of a new article relating to the diversion of the waters of the Niagara river.

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

The Constitution is hereby amended by the addition of the following new article:

ARTICLE —.

"Section —. The Legislature shall not hereafter grant any charter, license or privilege to divert from their natural channels the waters of the Niagara river or any portion thereof above Niagara Falls to any corporation, association, person or persons, except for sanitary, domestic or fire purposes, and such waters shall not be diverted for any other purpose except the corporations, associations, person or persons, who have heretofore been licensed or granted the right to divert the waters of said river, or who may be now engaged in the actual diversion or use thereof for manufacturing or business purposes. All corporations, associations, person or persons who have heretofore been licensed or granted the right to divert the waters of said river, or who may be now engaged in the actual diversion or use thereof for manufacturing or business purposes without express license or grant, and all corporations, associations, person or persons who may hereafter be granted the right to divert the same for sanitary, domestic or fire purposes, shall be under the direction and control of the Commissioners of the Land Office, who may from time to time, after due notice to the Commissioners of the State Reservation at Niagara, and to the said corporations, associations, person or persons, having grants or licenses to divert, or now actually engaged in the diversion or use of said waters, make such orders and regulations and give such directions in regard to the diversion and use of said waters as shall be just and equitable. But this section shall not be so construed as to affirm, enlarge, or impair the charter of any such corporation, association or persons, or to affirm, enlarge or impair any right, privilege or license under which they or either of them may claim to divert the waters of said river."

Mr. Hawley — Mr. Chairman, it is proposed now to put into the Constitution, or to attempt to put in the Constitution, another legislative act, and it is proposed that after that act, which ought to be considered and passed only by the Legislature, has been placed upon the files of the members of this Convention, that upon the eve of asking for its passage by this Convention, a new and different act shall be sprung upon us as a substitute. The substitute seems to be in harmony with the general purpose of the scheme which is here developed. That is to say, it is a substitute carefully drawn to perfect and to save the rights of the parties who are already engaged in what is considered this bad and nefarious business of using the waters of Niagara river for the purposes of power. That is to say, this scheme, in all its length and breadth, is an attempt to enthrone the parties who are already engaged in the use of this power in an enduring monopoly. It says, and the chairman of the committee says, that the Legislature has improvidently granted to these parties a foothold on that territory, and because it has, we will protect them in the rights that have thus inadvisedly been given them by the Legislature, and we will say that they shall never have any rivals in that field upon which they have thus entered. That, Mr. Chairman, is, in my judgment, the whole length and breadth of this scheme, and I would like to know its genesis. I would like to know how many men there are in this Convention, and who they are, who are stockholders in the concerns that are now operated? But, Mr. Chairman, the scheme has another, and, to my mind, an even more vicious feature than this. It proposes to say, or to hedge about with so many difficulties as to practically say, that no citizen of the State of New York shall hereafter have any advantages in this way from the Niagara river upon the territory of this State, and yet the Niagara river is an international boundary, and it stands upon the face of this report that the Canadian government has already granted to a New York State corporation a privilege upon the Canadian side, and all that you will have accomplished by passing this amendment is to say that all the capital and all the enterprise and all the advantages that shall flow from enterprises of like character hereafter shall accrue to the Canadian government, and not to the State of New York, and you have not protected the Niagara river in the slightest degree. I have a fancy, from the hasty consideration that I have been able to give this substitute, and from hearing it read, that it has another feature which is reprehensible in a constitutional provision. It is said that it does not contemplate any impairment or any interference with any vested rights; that any rights which the

parties who had there expended immense sums of capital have already obtained, and yet it proposes to put them under the domination, or at least under the direction and control, of a body to which they never had any allegiance before and, I think, Mr. Chairman, that it is a very serious question as to whether even we, holding the sovereign power of the State, have the power to do that thing. And so, Mr. Chairman, I care but very little whether the amendment proposed is the amendment upon our files or whether it is the substitute, or whether it is any collocation of words that attempts to do the thing which lies upon the face of this proposed amendment. It is a thing which belongs and ought to be left in the hands of the Legislature. It is a thing which is surrounded by a multitude of detail. It is a thing about which one course may be desirable this year and another course may be desirable next year. It is a thing with which we ought to have nothing whatever to do. It is a thing which, in my judgment, is fundamentally vicious and bad, and is intended to create a monopoly and to be for the advantage of the Canadian government, to the detriment of the people of the State of New York.

Mr. Root — Mr. Chairman, I offer the following substitute:

The Chairman — The Secretary will read the substitute.

The Secretary read the substitute as follows:

"The Legislature shall not hereafter grant the right to divert from their natural channel any of the waters of the Niagara river above the Niagara Falls except for sanitary, domestic or fire purposes, and such waters shall not be diverted for any other purpose except by the corporations, associations or persons who may be now expressly authorized to divert the same, or who were on the 1st day of September, 1894, engaged in the actual diversion thereof for manufacturing or business purposes. All corporations, associations and persons to whom the right to divert such waters has been heretofore granted, or who were on the 1st day of September, 1894, engaged in the actual diversion thereof for manufacturing or business purposes, or to whom the right to divert the same for sanitary, domestic or fire purposes may be hereafter granted shall be under the direction and control of the Commissioners of the Land Office, who may from time to time, after due notice to the Commissioners of the State Reservation at Niagara and to the parties interested, make such orders and give such directions as regard the diversion and use of such waters as may be necessary. This section shall not be construed as to affirm, enlarge or impair the charter of any corporation, association, or persons, or to affirm, enlarge or impair any privilege

or license under which they or either of them may claim to divert the waters of said river."

Mr. Root — Mr. Chairman, the object of the substitute is simply to abbreviate the expressions in the one offered by the gentleman from Monroe (Mr. Barhite) and it contains I believe the same substantial provision. It seemed to me upon listening to the report of the sub-committee which has been read to us here, a report which I think shows very praiseworthy and effective industry and zeal, which certainly presents very interesting and important facts, that the preservation of our scenery was worthy of the attention of this body. It would certainly be a great disgrace to the people of the State of New York if the waters of Niagara Falls were diverted from their natural channels and applied to milling purposes, so that in place of that wonder of the world there would be but a dry ledge of rocks such as may now be seen at the once famed falls of St. Anthony, and it seems to me that this provision is appropriate to prevent the accomplishment of such an untoward result. It aims to accomplish two things: First, the prevention of any further grants by the Legislature. This provision is of the same description as that which has been so long in the present Constitution prohibiting the Legislature from ever selling the Salt Springs in Syracuse, a provision which was regarded appropriate so long as the necessity existed, but the occasion no longer exists, and the provision is taken out of the Constitution. The occasion exists I think because it appears already under special grants or special charters that corporations are at work that claim the right to take from this stream so large a proportion of the water as to materially reduce the flow over the American falls. The second thing which this amendment proposes is to put under the control of the commissioners of the land office, officers elected by the people, of responsibility and dignity, all of the companies which are now engaged in taking the waters of the Niagara river under express grants from the State, and to regulate the taking of the water by these corporations, and at the same time while it prohibits any further grants, it provides that it shall not affirm, enlarge or impair any rights which now exist. The words were intended to be adequate to attain that. The gentleman says that it creates a monopoly. It creates no monopoly which does not now exist. It permits any present grants to stand so far as they may be lawful and no further. So far as there may be an existing right and no further, the right to monopolize a certain number of gallons of the waters of the Niagara river. It prohibits anybody else from taking any water from that

river. The proposed features of the amendment struck me very favorably and I will vote for it.

Mr. Jacobs — Mr. Chairman, there is a greater disgrace which may fall to the State of New York than that of despoiling the Niagara river, and that, in my opinion, would be the disgrace of passing either one of these substitutes. This sudden transformation, this elaborate report and succinct amendment to me were all child's play, something to dazzle our eyes, and at the last moment and in a thin House, at the close of the session, we were to have two elaborate substitutes suddenly sprung upon us. I do not know how to characterize such an operation as that in a Constitutional Convention in the State of New York; but, if I was in the Legislature and such a performance took place, I would know how to characterize it; that it was a stock-jobbing operation, nothing more or less. I do not say that such was the object of the gentlemen. It was, no doubt, foreign to their minds, but I have no doubt that that will be the effect of the passage of either one of these substitutes, and their incorporation into the Constitution of this State. Now, our friend from New York (Mr. Root) is rather tender upon this subject. He can talk very freely and very plausibly when he feels perfectly safe and absolutely sure that he is right. But to-day he talked rather gingerly and rather timidly and as if he would rather dodge around. I do not know but what I would feel the same way, had I been in his place. I believe that under the present Constitution the charters of corporations can be interfered with and annulled, but, if either one of these substitutes is put in the Constitution, what are now mere licenses and privileges, will be made absolute rights in the Constitution and there remain forever, and while they are not now monopolies, except by way of quiescence, under those substitutes they may become constitutional monopolies which nobody can interfere with. Now, we learn something as we go along. I was a little suspicious about this at first. There was a reticence on the part of the chairman of the committee, in reference to who was responsible for this proposed substitute. I would like to have him inform us who gave him this substitute? We have learned one other thing, and that is not to put our trust in reports of committees. I shall never again have any confidence in a report of any committee that is presented to this body. I shall view them carefully, for I shall expect to see pop out of them, like a jack out of a box, some nefarious scheme. Think of it, gentlemen, in this Constitutional Convention of the State of New York, in the year of grace 1894, it is possible that something should be proposed, which, if it has been sprung in the Assembly, would have

filled all the newspapers with indignation. Every one of us, if we had been Republican Assemblymen, would have got away from it, and said it is none of our doings, and yet the leader of this House (that is, he is called the leader, and I think he is) comes here with a substitute to make permanent and forever a monopoly. I think the substitutes, sir, should lay over. They ought to be printed and they ought to be given careful consideration. We can only detect in the hurry of the moment some things which are obvious. How much more there may be under the blanket, I don't know. We have simply lifted one corner of the blanket, and I think we have seen enough to convince us that we should be suspicious. Let us drop it.

Mr. A. H. Green — Mr. Chairman, this amendment that has been proposed here has been denounced as a scheme by the gentleman from Seneca (Mr. Hawley), and he is very anxious to know where the genesis of it is. Well, so far as this Convention is concerned, I am the genesis and the author of it, and, if there is any scheme about it, it is on the part of its opponents, a scheme against the intention which I have here, and which the committee has, in our efforts to protect the Niagara river. It seems to be a scheme on their part to sustain and uphold a lot of monopolies which have a hold at Niagara, and help them keep it. That is the effect, and the full effect, of the remarks made by the gentleman from Seneca. Now, sir, let us see how this came here. We want to know all about this genesis, the birth of this thing — how it came here. I introduced a resolution on the subject, which was referred to the Committee on Legislative Powers and Duties, to report "what, if any, amendment should be made to the Constitution to restrain the Legislature from granting to, or conferring upon corporations or individuals privileges, rights or licenses to divert the waters of the upper Niagara river, or any portion thereof, from their natural channels, and that said committee, in their report, inform the Convention of these rights and privileges heretofore granted, and the particulars and extent, and the consideration therefor." This was referred to the committee to report to the Convention, what, if any, amendment should be made to protect the interests of the State. Our respected President named that committee. I do not believe that he was in league with any schemers or corporations to get that committee to provide in the report to sustain a lot of jobbers to get control of the waters of the Niagara river from the State without paying a single dollar for it, when they go over into Canada and have to pay their money for like privileges. I do not think he had any such purpose. I think the committee have devoted themselves

industriously, earnestly and ably to the work, and for one, I am very much obliged to them. I come from the other end of the State, and, in order that gentlemen may know why I feel such an interest in this subject, I will state that since the foundation of the Niagara Reservation Commission I have been a member of that commission, and, probably, have spent as much time in the work of that commission as any other man on it. Now, this rotten scheme, as we might suppose it to be from the remarks of the gentleman from Seneca, this scheme to protect the State, was inaugurated by that commission. That is the way it came here. Why did it come here? It was because I have been called upon, year after year, to visit the Legislature and appear before its committees, in order to prevent various corporations and individuals from carrying out their plans, which, if put into execution, might destroy the falls of Niagara. I hope the gentleman from Seneca will give me his attention. The gentleman from Kings, who has spoken on this subject, is always humorous, if not wholly logical. As I have said, I am a member of the Niagara Reservation Commission, and I state that, as the gentlemen might not know why I am so much interested in this measure. I have been to the Legislature year after year opposing these applications for the diversion of the waters of the Niagara river. Let me read here from the reports of the Reservation Commissioners, and first from that of 1892:

"The Niagara is one of the most remarkable of rivers. The basin drained by it comprises more than 270,000 square miles. It carries the discharges of all the Great Lakes, excepting Lake Ontario. That there should be variation in the volume of water in the river and that at the falls is to be expected.

"In order that the natural flow at the falls may not be diminished it is important that the Legislature should hereafter refuse to grant to individuals or corporations the right to divert the water of the river for manufacturing or other purposes. Although the volume of water in the Great Lakes is estimated to be nearly 6,000 cubic miles, and the supply apparently inexhaustible, it is inevitable that a succession of large diversions would seriously diminish the flow at the falls, and thus detract from the grandeur of the spectacle and contravene the purpose of the State in establishing the reservation."

That was in the report of 1892, in which year there was an attempt made to secure grants for the diversion of the water of the river.

In 1893, while the Legislature paid no sort of attention to the recommendation of the commission, the attempt was repeated.

Our report of 1893 says: "During the winter the Niagara Falls Hydraulic and Power Company sought to secure the enactment of a bill giving it permission still further to divert the water of the Niagara river, and to enlarge its existing canals for this purpose. It was plainly the duty of the commissioners to oppose the bill. The president of the board appeared before the Assembly Committee of Commerce and Navigation in the interest of the State against action by the committee favorable to the bill. He was ably assisted by the Attorney-General. The bill was not reported.

"The commissioners would again record their strenuous and unchangeable opposition to all proposed legislation of this nature and to all schemes or enterprises in the interest of corporations seeking to obtain the right to divert the water of the upper Niagara. The State has already granted away a franchise of enormous value to a corporation purposing to use the water of the river for manufacturing purposes. The commissioners are of opinion that the State should hereafter steadfastly refuse to make such grants. The water in the river is generally low enough from natural or unavoidable causes, and the probability is that the volume of it is gradually diminishing."

The commissioners were unalterably opposed to all schemes in the Legislature seeking to divert the waters of the Niagara river. That is the sort of scheme in which these commissioners are engaged; scheming to protect the interests of the State and not scheming to protect the interest of a lot of speculators who have obtained charters and benefits through the Legislature without paying one cent for them. You might just as well give them a thousand acres in the Adirondacks as to give them this water for nothing. Just see what it is. If you want to obtain a horse-power otherwise than by water, it costs you from twenty-five to forty-five dollars a year, but here you get two or three hundred thousand horse-power from the State and do not pay a single dollar for it. I would like to know if that sort of scheme should be allowed to go here? The State has already granted an immense amount of power to corporations.

Furthermore, the ingenuity of lawyers presented to the Legislature some little amendment that might have been construed as a contract and that would render their grants irreparable. I happened to notice it and went up to oppose it. The Legislature, in spite of opposition, passed it — that same Legislature we seem to respect so much. While there is an abundance of water out there, to avoid the expense of elevating machinery we take what little water is necessary for sprinkling purposes from this power company,

and every year we paid the company for it. This amendment was to the effect that they should furnish the Reservation Commission with water upon the request of the commission.

Mr. Choate — Mr. Green, would you be good enough to state which of these three substitutes you are in favor of? My mind is very much confused.

Mr. Green — I do not wonder your mind is confused. I would not like to say just at this moment. The last amendment offered by the gentleman from New York (Mr. Root), which has but just now been read by the Secretary, I do not quite understand; it is lengthy. I do not know exactly what it is, and if the President will excuse me I should prefer not to say just at this moment. We have two or three pages of amendments proposed here, and a word or two might get by us that would confer or confirm rights that we do not intend to give, so I should wish to have time to examine them carefully, and, therefore, I do not wish to recommend any for the present.

Now, let me repeat what was the object of that amendment, that they tried to get through the Legislature. This company was to furnish the Niagara Reservation Commissioners water and lighting power free upon their request. The minute we requested it, and they furnished it, they would claim that that made a contract that could not be repealed and a confirmation of all their enormous privileges. We were watchful upon that subject, and the other day we proposed to pay them for the water in accordance with our custom. We asked for the bill and they replied they had no charge, thus endeavoring to fix a contract. Now, where is the scheme? Who is the man that has it in charge? I would like to see him. I have seen around the legislative halls the lawyers of these corporations ready to get in everything for their interest. Here are seven or eight companies that have charters from the Legislature. No one can properly say that if they have obtained a charter from the Legislature and expended money that it should be taken away from them without doing them justice. In the original amendment proposed by the committee here the protection of the waters was placed in the hands of the Reservation Commission. The substitute places it in the hands of the State Land Board. I am not particular about that. We are not particularly anxious to have any more work put upon our hands. The land office, I hope, will take care of it, but the Niagara Commission would, however, be quite as likely to be watchful of the Niagara river, and the people may be sure that while the

present commissioners are in office the interests of the State will be protected.

Now, gentlemen, this thing has been introduced by me simply to see if something could not be done to protect this great spectacle. They talk about building up great manufacturing industries. Nobody opposes that if it does not injure the falls; but if these manufacturing industries are going to impair or destroy the greatest spectacle on earth, I believe it should be stopped. As to the pecuniary results that will be derived by the State from the patronage granted to these corporations they do not compare with the value of this magnificent wonder. Thousands and thousands of people come here from all parts of the world, and they patronize the shops in New York city on their way to the falls, they ride on our railways, they live at our hotels and spend more money while here in the State than all those manufacturing companies will yield. The committee have devoted themselves ably and faithfully to solving the difficulty that surrounds this subject. I do not quite agree with some portion of the amendment they propose. I see the lawyers of all these corporations around here kindly helping to perfect amendments, and I hope that this Convention in the interests of the people who come here to see this great spectacle from all over the face of the earth will see that its grandeur is not diminished or destroyed.

Now, they say if we stop their taking water from our side of the river they will to the Canadian side and get the privilege there. We can't help that. This they have to some extent done, but they pay for it there. In the natural flow they have a greater amount of water than we have. This diminution affects us first. The Welland canal takes a large quantity of water from Lake Erie to Lake Ontario. There was recently a law passed by the Legislature of the State of Illinois providing for taking 600,000 cubic feet of water a minute out of the lake and conducting it to the Desplaines river with a view of ultimately connecting it with the Mississippi river, and this enterprise is already under way. This is going on all the time. It is such schemes as that that are going on in Chicago and at Niagara that are affecting the flow in this river. When you take 600,000 cubic feet of water a minute is there not danger that it is going to injure this spectacle? I hope all this thing will be stopped, and all these plans for private gain at the expense of this great natural wonder will be blocked.

Mr. Dean — Mr. President, I move to amend the substitute by striking out all after the word "purpose" in line five so that it shall read as follows:

"The Legislature shall not hereafter grant the right to divert from their natural channel any of the waters of the Niagara river above the Niagara Falls except for sanitary, domestic or fire purposes."

Mr. Chairman, there are some five or six companies which have charters to divert the waters from Niagara river. There is one, which is already diverting it under its riparian rights reaching back to the year 1857. I see no reason why they should take away at this time the right to take back the powers which have been given them, or why the power should be taken from the Legislature to regulate the chartered rights of any company. Those companies which have gained their rights through riparian ownership certainly would not be vested with any right by reason of this proposed amendment, and the Legislature certainly ought not to be deprived of the right to regulate its own creation. To turn them over to any State board, in my judgment, is very radically wrong. There is no doubt in my mind that there is danger of a sufficient diversion of the waters of Niagara river to injure the falls. It is impracticable, from a mechanical standpoint, to take any water below the point where the Niagara Power Company has established its plant. There is already one plant between that and the falls proper, and the distance is so short that I do not believe it is profitable to take any more water there. Above that is where the water passes around Goat Island. There certainly should not be any water taken above that point. I do not see why we should put anything in the Constitution in reference to riparian rights. It seems to me we ought to let the Legislature have control of these companies.

Mr. Barhite — Mr. Chairman, I was not aware until the present time that there was a single delegate in this Convention who either owns any stock or has any interest in any one of those corporations, but after listening to the remarks from the gentleman from Seneca (Mr. Hawley) and the gentleman from Kings (Mr. Jacobs), I am inclined to believe from the arguments which they use that they are the gentlemen. I say this, sir, because the arguments which they present against this amendment are precisely the arguments which every corporation at Niagara Falls has presented to this committee. This amendment has been fought strenuously from the beginning to the end by the corporate interests which may be affected by the possible action of this Convention. They do not want anything done. They have fought the committee persistently, not only in the committee room, but through the newspapers of the western part of the State. They have endeavored to ridicule the action of the committee, and now it seems that upon the floor of this

Convention, they are to pursue precisely the same course. They have cried monopoly. If the gentlemen can suggest any wording in this amendment, or in this substitute, which will more effectually preserve the rights of the State, there is not a member of this committee, there is not a delegate in this Convention who will accept such a suggestion more gladly than I would myself. But, as I said in the remarks which I made before, it is an extremely difficult matter to arrange with regard to corporations which are already upon the ground. There is no question but what there is a certain amount of surplus water in Niagara river which it is perfectly proper for any citizen to use for domestic, manufacturing or any other legitimate purpose. With that water it is not the intention of the committee to do anything at all. The only intention is to prevent any corporation or any person from using so much water as to endanger the scenery at the falls, and the great natural beauty of the falls. They say monopoly. Is that anything that this Convention can prevent? They have come here to the Legislature, year after year, and by ways that are dark, or by ways that are not dark, they have obtained licenses from the State, which they are not entitled to have and which should never have been granted to them. Now, the argument of these gentlemen is that these corporations having obtained these rights, therefore, we should open the door wide and let any other corporation come to the Legislature and get what they want without restraint. I would like to ask the gentleman if a thief breaks into his house and steals his gold watch at night and he cannot get it back, the proper thing to do is to place all the rest of his jewelry on the sidewalk, so that the thief can come back and get it. Is there anything a monopoly which is strictly under the control and supervision of the State? Is there anything a monopoly where the State can step in at any time and say "thus far thou shalt go and no further?" Are they not restrained by this amendment? If there are any objections to the commissioners of the land office, nobody would be more glad than myself if some other body of men were suggested. The only reason of the change from the commissioners of the Niagara Reservation to the Commissioners of the Land Office is this: The present commissioners are men of the highest character. There has not been a word said against them, nor can there be, either by those who are in favor or by those who are opposed to this amendment. We have among our members two of those commissioners. But the difficulty is that they were appointed simply by the Governor. There is a chance that at some future time some Governor who may be interested in these corporations, who may have friends who may be interested in these cor-

porations, may so arrange the commissioners as not to afford any adequate protection to the State. That is where the danger comes in, and it is a matter which did not occur to the committee when the amendment was originally drafted. If we could have a guarantee that the present commissioners would be continued in office for their life, or for a large number of years, then no such danger would occur. But we have no such guarantee and we cannot have any such guarantee. On the other hand the Commissioners of the Land Office are the chief public officers of the State, every one of them elected by and responsible to the people of the State at large, with the exception of the Speaker of the Assembly. They are a body who are looking not only after the interests of the State, but in a political sense may be looking after their political interests and they will be careful to do what they believe to be the wish and the will of the people of the State of New York. No one regrets more than I do that this amendment could not have been printed and placed before us so that every member of this Convention could study it at his leisure. It has been shown to other gentlemen in this Convention. Their advice has been sought. The question has been asked of them whether it was sufficient to adequately protect the interests of the State and not until the committee was convinced, and all of the gentlemen who had seen this amendment have said that in their opinion it would accomplish the object sought, was the amendment recommended. It was thought that it might perhaps be shortened, but we thought it would afford adequate protection to the State and not until they agreed was it presented to this Convention.

Mr. Chairman, I am perfectly willing to have that substitute printed and have it placed upon the desk of every delegate in this Convention, and if any delegate can show any way in which it does not properly protect the interests of the State we are here to represent, I for one would be glad to have it changed in such a way that it will.

Mr. Hawley — Mr. Chairman, I want to say just a word, and that is to suggest that my friend has gone astray in his search for stockholders. He wants to look nearer home. I have made no criticism upon the committee, but I think it is the most polite and complacent committee I have ever seen, for the moment any one offers anything in the way of an amendment they say they are willing to accept it. They are willing to take two or three different things in a way which shows that the committee has no definite idea as to what they want, and for that reason I think we are all at sea upon this subject.

Mr. A. H. Green — Mr. Chairman, I have not heard the committee or any one of them say that they will accept this or that or the other. All they have said is that if any gentleman has any scheme that will tend to afford better protection to the State, they would be glad to consider it.

Mr. Jacobs — Mr. Chairman, if anybody thinks that I have any stock in any of those companies, if they will come to the place where I board I will give it to them. I do not think I will fatten on them any more than I would on the east wind. Now, I have not criticised the committee or its report. The only thing that I object to is the introduction of these two elaborate and involved substitutes and I do not understand them yet.

Mr. Vedder — Mr. Chairman, I did not intend to take any part in this debate, whatever, because I had so little to do with the investigation of the matter and absolutely nothing to do concerning the report which was made, but by reason of some things which were said I want to say something so that the other delegates whom I believe are honorable men and gentlemen may understand the position. The remarks made first by the gentleman from Seneca (Mr. Hawley) I did not hear, and I do not know what they were, except as they have been referred to in the remarks of gentlemen who have spoken since he did. The remarks of the gentleman from Kings (Mr. Jacobs) I did hear. This resolution was introduced by the gentleman from New York (Mr. A. H. Green) without the committee I believe knowing anything about it and it was referred to the committee by the President, upon his own motion and probably without any suggestion from any one. As has been published in the newspapers, which is true and probably every delegate of the Convention knows, that I am connected with a company called the Cataract General Electric Company, and some gentlemen in the Convention, not all, perhaps, but maybe a good many think that the Cataract General Electric Company which has the contract with the Superintendent of Public Works with reference to towing on the canals, may have some connection with some of these companies at Niagara Falls, and that is why the gentleman from Seneca (Mr. Hawley) just said, I believe to the chairman of the sub-committee that if they wanted to find any stockholders, they want to look nearer home. I want the gentleman from Seneca to understand that I never had, I have not now, and I never expect to have any interest whatever in any company which is doing any business at Niagara Falls, or taking any of the water from there. Nor is there a member of a corporation or company to which I

belong that has any more interest in any of these companies at Niagara Falls than the gentleman from Seneca himself, or the gentleman from Kings. Not in the least. I am just as disconnected, and the company with which I am associated are as disconnected from any of those companies at Niagara Falls as the law offices of the gentleman from Seneca or the law offices of the gentleman from Kings. So far as I am concerned, I may vote freely in this Convention, so far as anybody can say that I am interested in these companies. Not in the least. There are fifty-seven distinct propositions which were referred to the Committee on Legislative Powers. By reason of the fact that when ten bills were before that committee, first I divided that committee into sub-committees. We made seventeen sub-committees, commencing with the Republican member, who stood No. 1 on the list, and I made him chairman of a sub-committee, and I went from the top to the bottom and made Democratic chairmen of the sub-committees. I would not take any sub-committee chairmanship myself, and when this came in the committee it went to the sub-committee, of which Mr. Barhite was chairman, in its natural order, and he investigated the matter himself, and I have never, so far as I am concerned, made but one suggestion in regard to his report, and he will bear me out in that statement. I suggested to him that I thought there was a point in Niagara river below which I did not think they should take water, but above that they could. The report was made to the full committee by the sub-committee. The investigation was made entirely by the sub-committee, and we looked to the sub-committee, as we always look to a sub-committee, and followed their lead, and if there have been any suggestions made as to our willingness to accept suggestions, we did not arrogate to ourselves the assumption that the gentleman from Seneca always does, that he is always exactly right, that he uses the exact words. Mr. Barhite has said in the committee, and he has said to gentlemen who did not belong to the committee, but belonged in the Convention, that he was not wedded to any particular words; that he was not in love with that particular language; that the important thought was this: this is the purpose; now use the words that will best fit that thought, and make that thought a feature in the Constitution. Talk about gentlemen being swift to accept suggestions and amendments. Why, there has not been a proposition that has come into the Convention, but the gentleman from Seneca has been swift to offer an amendment; that his language was better, and a great many times his language was accepted without any thought that he was engaged in any stock jobbing; they were accepted simply because

the amendments which he suggested were thought to be better and would improve the amendment. I have heard a suggestion in reference to the gentleman from New York (Mr. Green), something about stock jobbing, and that he might be connected with it. The name of Andrew H. Green will live in the history of the city of New York as one of the honest men of his day and generation. (Applause.) Through all her glory and in all her shame, that name has always stood without any one daring to speak a word against it, and under and in the shadow of that great name, though at an immeasureable distance, the gentleman from Seneca may walk, and walk in honor if he can.

Mr. Root — Mr. Chairman, in the two or three minutes which remain may I be permitted to say that I hope when we come back again on Monday morning we will all be better natured; we will all be less tired and some of us will be less disposed to impute unworthy motives to our fellow delegates? It would be very gratifying, Mr. Chairman, if in this Constitutional Convention we could discuss measures of importance affecting the policy of this great State upon their merits without being swift to impute unworthy motives to committees or to gentlemen upon the floor of this Convention. I hope, sir, that the gentleman who was first so ready to make such imputations is not led into that tendency by the long and intimate association with Mr. John Y. McKane in which he has gloried on the floor of this House. Let me tell him, sir, that the Constitutional Convention of the State of New York is not the Brooklyn board of aldermen and the gentlemen who have been sent here to represent the State are not John Y. McKanes or any of his associates in that elevated body, and that the methods that he has been accustomed to find there do not obtain here. This measure, sir, is a measure originating with a board of gentlemen who have been commissioned by the State to look after the interests of Niagara Falls and introduced by a gentleman whose honor stands high among the highest in this State. It has been examined carefully by a committee upon not one member of which any shadow of suspicion can rest, reported to this Convention and entitled to be considered on its merits without any vulgar aspersions or unworthy detractions to be cast upon the head of any member.

Mr. Choate — Mr. Chairman, I move that the substitutes offered to this Niagara matter and the amendments be printed and laid upon the desks of the members, so that upon this important matter when we meet again on Monday we can be informed what they are.

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

Mr. Marshall — I have another substitute which I would like to have printed with the others.

The Chairman — The Secretary will read the substitute.

The Secretary read the substitute as follows:

"The right to divert the waters of the Niagara river above Niagara Falls pursuant to any grant or license heretofore or hereafter created shall be regulated by and be under the direction and control of the Commissioners of the Land Office. This section shall not be deemed to recognize or affect any privilege or license under which any person or corporation may now claim the right to divert the waters of said river."

Second Vice-President Steele in the chair.

The President *pro tem.*— If there is no objection this substitute will be printed with the others.

The hour of four o'clock having arrived, the Convention stood adjourned until Monday morning at ten o'clock.

Monday Morning, September 3, 1894.

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

President Choate called the Convention to order at 10 A. M.

The Rev. A. Kennedy Duff offered prayer.

On motion of Mr. Acker the reading of the Journal of Saturday, September first, was dispensed with.

The President — Are there any memorials or petitions to be presented? Any notices, motions or resolutions?

Mr. Hill — Mr. President, I wish to withdraw my permission to be absent for this day and I ask to be excused a week from to-day.

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

Mr. Osborn — Mr. President, Mr. Cochran leaves word that he has been suddenly called home and desires to be excused for to-day.

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

Mr. Tucker — Mr. President, I am compelled to be in New York

to-morrow and next day. I, therefore, ask to be excused from Tuesday and Wednesday sessions.

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

Mr. Powell — Mr. President, I ask to be excused from to-morrow's session owing to an important engagement which I have been unable to postpone.

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

The President — The Convention will now resolve itself into Committee of the Whole on the Niagara question, on which Mr. Cady is in the chair. Before the Convention goes into the Committee of the Whole, the Chair would state that owing to some circumstances, whether it is Labor Day, or on account of its being Labor Day, it has been impossible to get the amendments and substitutes to this Niagara amendment, which were offered on Saturday, printed so they will be read from the desk; also, Mr. McMillan's amendment. Perhaps they had better be read from the desk when the Convention goes into the Committee of the Whole.

The Convention resolved itself into Committee of the Whole, on general order No. 63 (printed No. 442), entitled, "Proposed constitutional amendment to amend the Constitution by the addition of a new article relating to the diversion of the waters of the Niagara river," Mr. Cady in the chair.

The Chairman — The Secretary will read the substitutes in their order and also the amendment.

The Secretary read the substitute of Mr. Barhite as follows:

"The Constitution is hereby amended by the addition of the following new article:

ARTICLE —.

"Section —. The Legislature shall not hereafter grant any charter, license or privilege to divert from their natural channel the waters of the Niagara river or any portion thereof above Niagara Falls to any corporation, association, person or persons, except for sanitary, domestic or fire purposes, and such waters shall not be diverted for any other purpose except by the corporations, associations, person or persons who have heretofore been licensed or granted the right to divert the waters of said river or who may be now engaged in the actual diversion or use thereof for manufacturing or business purposes. All corporations, associations,

person or persons who have heretofore been licensed or granted the right to divert the waters of said river, or who may be now engaged in the actual diversion or use thereof for manufacturing or business purposes without express license or grant, and all corporations, associations, person or persons who may hereafter be granted the right to divert the same for sanitary, domestic or fire purposes, shall be under the direction and control of the Commissioners of the Land Office who may from time to time after due notice to the Commissioners of the State Reservation at Niagara and to the said corporations, associations, person or persons having grants or licenses to divert, or now actually engaged in the diversion or use of the said waters, make such orders and regulations and give such directions in regard to the diversion and use of said waters as shall be just and equitable. But this section shall not be so construed as to affirm, enlarge or impair the charter of any such corporation, association or person, or to affirm, enlarge or impair any right, privilege or license under which they or either of them may claim to divert the waters of said river."

The Secretary read Mr. Root's amendment as follows:

"The Legislature shall not hereafter grant the right to divert from their natural channel any of the waters of the Niagara river above the Niagara Falls except for sanitary, domestic or fire purposes; and such waters shall not be diverted for any other purpose except by the corporations, associations or persons who may now be expressly authorized to divert the same, or who were on the 1st day of September, 1894, engaged in the actual diversion thereof, for manufacturing or business purposes. All corporations, associations and persons to whom the right to divert such waters has been heretofore granted, or who were on the first day of September, 1894, engaged in the actual diversion thereof for manufacturing or business purposes, or to whom the right to divert the same for sanitary, domestic or fire purposes may hereafter be granted shall be under the direction and control of the commissioners of the land office who may from time to time after due notice to the commissioners of the State reservation at Niagara and to the parties interested make such orders and give such directions as regards the diversion and use of such waters as may be necessary. This section shall not be construed as to affirm, enlarge or impair the charter of any corporation, association or persons, or to affirm, enlarge or impair any privilege or license under which they or either of them may claim to divert the waters of said river."

The Secretary read Mr. Dean's amendment to Mr. Root's substitute, as follows:

"Strike out all of the proposed substitute after the word 'purposes,' in line 5, so that it shall read:

"The Legislature shall not hereafter grant the right to divert from their natural channels any of the water of Niagara river above Niagara Falls, except for sanitary, domestic or fire purposes."

The Secretary read Mr. Marshall's substitute, as follows:

"The right to divert the waters of the Niagara river above Niagara Falls, pursuant to any grant or license heretofore or hereafter created, shall be regulated by and be under the direction and control of the Commissioners of the Land Office. This section shall not be deemed to recognize or affect any privilege or license under which any person or corporation may now claim the right to divert the waters of said river."

Mr. Goodelle — Mr. President, I would like to inquire of Mr. Root wherein his substitute differs from the proposed amendment?

Mr. Root — The substitute, in my opinion, merely cuts out redundant expressions, and the only one respect in which it differs is that it puts in the 1st day of September, 1894, instead of the word "now," so that it will have reference to the corporations or persons who were taking the water on the 1st of September, 1894, instead of the persons hereafter.

Mr. Goodelle — It does not change the purport of the amendment?

Mr. Root — None whatever. My substitute was drawn after reading the proposed substitute, and it was seen that there should be some change in the phraseology.

Mr. I. S. Johnson — Mr. Chairman, I offer a substitute for the amendment now before the committee. It has one recommendation, and that is, it is brief, and, in my judgment, it entirely protects the interest of the State, of which I may say something hereafter.

The Chairman — The Secretary will read Mr. Johnson's substitute.

The Secretary read Mr. Johnson's substitute as follows:

ARTICLE —.

"Section —. The Legislature shall not grant, sell, lease or otherwise dispose of any right, title or interest in and to the Niagara river, or any of the waters thereof, and the same shall remain and

be the property of the State, and under its control and management, forever."

Mr. Barhite — Mr. Chairman, I desire to take but a few moments of the time of this committee, but as there has been some question raised here as to what rights the State of New York may have in regard to the lands under the water of the Niagara river and the water itself, I desire to call the attention of the few gentlemen present to some decisions upon that subject. It has been passed upon both by the United States Supreme Court and by the Court of Appeals of the State of New York. There are numberless decisions in the courts of other States, all of which tend in the same direction, and which leave no doubt in my mind that the State has perfect control not only of the lands under the water, but also the waters themselves.

In a somewhat famous case in this State known as the Smith case v. The City of Rochester, the court, in speaking of the nature of the rights of property which pertain exclusively to sovereignty, says:

"Among other rights which pertain to sovereignty is that of using, regulating and controlling for special purposes the waters of all navigable lakes or streams, whether fresh or salt, and without regard to the ownership of the soil beneath the water. This right is known as the *jus publici*, and is deemed to be inalienable."

Further in the same case the court says: "The public domain, which is that kind of property which the government holds as mere trustee for the use of the public, such as public highways, navigable rivers, etc., and which are not, of course, alienable."

The Supreme Court of the United States says, in the case of the Illinois Central Railroad v. The People of the State of Illinois (14 U. S.): "The soil under navigable waters being held by the people of the State in trust for the common use and is a portion of their inherent sovereignty, any act of legislation concerning their use, affects the public welfare. It is, therefore, appropriately within the exercise of the police power of the State."

Now, again: "The State can no more abdicate its trust over property in which the whole people are interested, like navigable waters and the soils under them, so as to leave them entirely under the use and control of private parties, except in the instance of parcels mentioned for the improvement of the navigation and the use of the waters, or when parcels can be disposed of without an impairment of the public interest in what remains, than it can abdicate its police powers in the administration of government and the preser-

vation of the peace. In the administration of government the use of such powers may for a limited period be delegated to a municipality or other body, but there always remains with the State the right to revoke those powers and exercise them in a more direct manner and one more comformable to its wishes. So with trusts connected with public property or property of a special character, like lands under navigable waters, they cannot be placed entirely beyond the direction and control of the State."

In the case of Sweet v. City of Syracuse, the Court of Appeals holds that "the grant to the city to use the water of Skaneateles lake does not authorize a sale of such waters to the city. Neither does it lease them to it. Such grant operates merely as a license to the city to take water from the lake and conduct it to the city, under the paramount right of the State to resume it at any time."

Again the Court of Appeals, in another case, says: The court, in speaking of the right of the king under the common law of England to grant rights to soil under tidewater, says: "In every such grant there was an implied reservation of the public right, and so far as it assumes to interfere with it or to confer a right to impede or obstruct navigation, or to make an exclusive appropriation of the use of navigable waters, the grant was void."

And so I might go on almost without limit quoting the decisions of the highest courts of this State, the decisions of the Supreme Court of the United States, and the decisions of the highest courts of the other States. There can be no doubt but that the State of New York has the right not only to prevent the further grants to individuals for the use of the waters of Niagara river, but it also has a perfect right to step in and control, to its own satisfaction, the grants which have already been made.

Now, I do not care, as I stated Saturday, for the language in which this amendment may be couched. I care not whether the language of the gentleman from New York (Mr. Root), the language of the gentleman from Onondaga (Mr. Marshall), or the language of the gentleman from Warsaw (Mr. I. S. Johnson), or my own language, is used. All that I desire to reach is results. I desire to place that river in such a position that private corporations, private interests and private greed cannot do away and interfere with the rights of the State.

The gentleman from Chautauqua (Mr. Dean) offers an amendment here which is satisfactory so far as it goes; but as I understand that amendment, it simply prohibits grants in the future. Now that would have a tendency to make a monopoly of the companies which already exist, for this reason: there are some two or three

companies there who are absolutely unlimited in the amount of water they may use. If any company in the future desires to take water from that river, it being prohibited by the Constitution from obtaining any grant from the Legislature, it has simply to go to one of these companies which is unrestricted, and say: "We cannot get any grant from the Legislature; we will take our water from you." So it might go on *ad infinitum*. So an amendment of that character would not reach the object sought.

All the amendments which were offered here were presented to the committee by the gentlemen who represent these different corporate interests. I desire to call your attention to the men who appeared before the committee in opposition to this proposed amendment, not with the idea of casting any aspersion upon them, not with the idea of objecting because they wished to protect their own private rights, but simply to show to this Convention that they are private interests and private rights which are opposing this amendment.

We first have the honorable Senator of the State of New York, who was the father of the bill last winter to take the waters of the river. He was the gentleman who got the bill through the Legislature. He was one of the men who appeared before the committee for the purpose of objecting to this proposed amendment. We then have the gentleman who ostensibly appeared on behalf of the business interests of Niagara Falls. I do not know and I do not say but that he was authorized to speak in behalf of those business interests, but I happen to know, as a matter of fact, that he is at the same time the private counsel of one of the companies now engaged in taking water from the river. "The voice was the voice of Jacob, but the hand was the hand of Esau." Then we have the secretary of another company engaged in diverting water from Niagara river. We have the gentleman who was the Member of Assembly from that district in 1886, and who introduced the first bill under which one of these companies was incorporated. And then again we have the private counsel of another of the corporations who intend to take water from Niagara river. And then further we have the Member of Assembly who, last winter, was interested in one of these bills which was passed through the Legislature. And so we might go on to the end, showing that they are simply private parties and private interests which are combatting this proposed measure.

In that connection I wish to call attention to a letter which I received in this morning's mail from a citizen of Niagara Falls, a

letter which I am authorized to read, without giving the name of the signer, to this Convention. The letter is as follows:

"NIAGARA FALLS, *Sept.* 1, 1894.

"DEAR SIR.— It would be as much as a man's business was worth to appear in favor of your report. The land agents and innumerable companies, lawyers and barnacles would hound citizens to death if they sustained a proposition looking to judicious care of our great river. Yet it is a fact to-day that the river bed between Goat Island and the first of the Three Sister Islands is dry, and that perceptible diminutions will show more readily as soon as the new mammoth mouth of the hydraulic canal is dredged out, and more especially when the great tunnel under the city commences to carry off the water. There is fear, and with good grounds, for the future of the falls here and adjacent scenery created by water."

Now, Mr. Chairman and gentlemen, this is not a sentimental idea which I am advocating here. It is not the artistic as opposed to the utilitarian — the useful. It is the same idea which leads every man present to beautify and adorn his home. It is the same idea which leads every city of this State to spend hundreds of thousands and millions of dollars to sustain their systems of parks. If this idea is wrong, for the State to protect its falls, then it is wrong for the city of New York to spend over a million dollars a year and employ over seven hundred and seventy men to care for her parks. It is a waste of money for the city of Brooklyn to spend over four hundred and ten thousand dollars a year on its parks, and for the city of Buffalo to spend something like one hundred thousand dollars a year on its system of parks. It is an injudicious use of money for the city of Rochester, in the first instance, to spend three hundred thousand dollars in the purchase of land which is intended to be used for park purposes. The reservation at Niagara is a great natural park. As has been stated before, and is stated in the report of the committee, it has already cost the State of New York nearly two and a half millions of dollars. It is not a park which is intended for the use of the wealthy, but it is a park which is intended for the use of every citizen of the State, and if any delegate of this Convention goes there on any summer day, who does he find throughout the domain of the State? Not the wealthy, not alone the rich, but the people of moderate means, who come from all parts of the State and from a great distance in order to spend a holiday at a slight expense at that place of great scenery and near that great natural yonder.

Now, Mr. Chairman, I thoroughly believe that this amendment is a good one. I have no personal interests in the matter one way or the other, but as a citizen of the State, as a delegate to this Convention, who, either fortunately or unfortunately, has been placed in a position where he has been enabled to know the true facts with reference to the Niagara river, and the dangers which may arise to the State from the acts of private corporations who desire to take the waters from Niagara river, I desire that this amendment, or some amendment which will serve the same purpose, shall become a part of the Constitution of the State of New York.

Mr. I. S. Johnson — Mr. Chairman, I am fully convinced that the substitute offered by myself is the only one which ought to be adopted, and the only one that will fully protect the State from the powerful corporations which have already, and which may hereafter seek to appropriate for their own use the most valuable property now owned by the State; property which for producing revenue is even more valuable than its great waterway now reaching from the lakes to the ocean. The proposition is in almost the exact language of the provisions of the present Constitution, by which the State has retained absolute control over that great system which has made it imperial in the truest sense of the word, and has preserved that other property, the salt springs, which in the past have, as stated by the gentleman from Onondaga, "added millions on millions to the resources of the State, and without which it is doubtful if the Erie canal would have been completed." The substitute provides that this great river which is destined to furnish possibly millions of horse-power shall forever remain the property of the State. If the corporations which have been granted charters have secured vested rights, the use of the water of Niagara will still be under the control and supervision of the State and subordinate to it.

It has been the hope, Mr. Chairman, sometimes thought to be only a visionary dream, that the Niagara might some day be harnessed and its great inherent power be subject to the will of man. That dream is being realized, and at the same time a force discovered which increases its power a thousand fold. Niagara harnessed, with the aid of electricity and a few slender wires, can move the products of a continent from the gateway at the foot of our splendid chain of lakes to the great port of entry where the commerce of the old world seeks a harbor in the new, and the ships of all nations are waiting to receive our surplus products. Electrical experts predict that, without marring the beauty of the falls, power equal to that used to turn every wheel in the State can be produced.

Shall we preserve this great power to the State, that it may

benefit the State and all of its citizens, or shall we turn it over to greedy corporations without souls and without consciences? The action of this Convention may determine that important question. Taken and managed by the State, in my judgment, it will more than defray the expenses of the management, repair and improvement of the canals. If you decide to throw it away, by recognizing these corporations in the Constitution, and making their power perpetual, without control by the State, let me warn you, who are friends of the canals, that the people of the counties who are not benefited but are injured by the canals, will see to it that they are not longer taxed millions of dollars each year for the benefit of the cities whose representatives here and in the Legislature refuse to consider the interests of the whole State. Be not deceived by those who may be acting in the interest of these great corporations, nor those interested in furnishing electricity for the canals and all the cities and villages bordering thereon, which may be obtained from some of the companies who have already received grants from the State. I know that it will be said that the State should not go into business. Sir, the State has been and is in business, and has been the most successful competitor which the great transportation corporations ever had. In that business it has heretofore made millions of dollars and made its cities great. It has been in business, and with its saline waters has added other millions to its wealth. Why should not the State from its own resources, given to us by a bountiful Providence, furnish motive power to propel our own canal boats, and if necessary power to turn the wheels of industry wherever needed? The government of the United States is in business by which it delivers the mail near the door of every one of the citizens. The State is in business in the manner I have indicated. Municipalities of all kinds are in business furnishing water and light, at the lowest possible rate to their inhabitants. Shall we say that New York State shall not use this great source of wealth for the benefit of all its citizens? This provision does not interfere with the rights of riparian owners as those rights are not secured by grant, purchase or lease. Something has been said as to members of this body being stockholders in some of these corporations, and, therefore, interested. Mr. Chairman, you and I and every member of this body are stockholders in a great corporation, "The State," which owns every foot of the Niagara river within the territory of this State. It is a great property; it is an immense property; it is capable of producing an immense amount of good to the State of New York, and as State stockholders of this great corporation, the

State of New York, we desire here and now, and in the fundamental law of the State, to say that the directors shall neither steal nor give it away, as many of these propositions would, by recognizing the corporations now in existence which might be perpetuated by this Constitution. Mr. Chairman, I am in favor of saying in regard to this great river, which belongs to the State, the same as we have said in the past in regard to the great water-ways, the canals of the State, and if the objection is raised that we may go into business with this great water power, I say, "yes." We went into business, sir, years and years ago with the Erie canal, and we made it the greatest competitor that the transportation corporations ever had or ever will, and we made it of use to the State. We went into the salt business and we made it a profitable business, and we made it profitable in the interest of the people of the State, and if we go into business, sir, with this great power, so that no officer however high or however low shall say that the only ones that can propel by electricity the boats on the canals shall be some favorite sons, who have got a contract through the Commissioner of Public Works, I say that we should have the privilege at any time, if we desire, to take into our hands the reins of harnessed Niagara, and that the State shall have that power; that if it sees fit to put down near Niagara Falls a great plant which shall not only propel the canal boats across the State, but shall turn the wheels of industry in every part of the State, that that shall be reserved by this Constitution to the State, and only to the State, and I tell you who pretend to be friends of the canal, if you say that you will take away this right, and still insist upon taxing many parts of the State for the maintenance, for additions to, and for repairs of the canals, which benefit only a few of our cities, and harm in another sense other portions of the State, that you will find, sir, that the people of this State will say to you: "Build your own cities, and maintain your own canals, if you are not willing to do anything for the State at large." No, Mr. Chairman, we should retain this power in the hands of the State. Let Niagara remain, as it ever has been, by the laws which have been enunciated, the property irrevocable of the State of New York. (Applause.)

Mr. Becker — Mr. Chairman, living near this great river for many years, studying its varying features for many years, interested as a citizen of western New York, as I must be more than any one from any other part of the State, in not only the commercial advantages and greatness that may accrue from what has been rather inaptly termed "harnessing Niagara," but interested as well in the preservation of that which has been so aptly termed one of

the seven wonders of the world, in all its beauty and all glory, I feel that I ought to say a few words about the various alterations or amendments and additions to our organic law which have been proposed in reference to this river. Mr. Chairman, I am not one of those who believe or suspect that the chairman of the Committee on Legislative Organization, or the chairman of the sub-committee has been actuated by any other than the most praiseworthy motives in framing the amendment which was brought in here. And it goes without saying, that any matter with which the name of Andrew H. Green is connected, must be synonymous with integrity and good purpose. But there are occasions, Mr. Chairman, when men who desire with the utmost zeal and good purpose to bring about beneficent measures of reform, become so infatuated with their theories and pet schemes of reform, that they are not able to weigh in the balance the equities and rights that exist, the social and commercial conditions that exist; and in their efforts to bring about what they believe to be the best for the State, they may be led around by the nose by others, who strive to bring about only that which is worst for the State. I want to say here at the outset, and I speak to a very considerable extent for the people of western New York, that it would be a calamity of the most far-reaching consequence to the interests of this State as a whole, if a monopoly of the waters of Niagara Falls shall be created by any such proposed amendment as any of those, even that of Mr. I. Sam Johnson, which have yet been brought before this Convention, for every one of these amendments, every one of them from beginning to end, will have the legal effect, and is intended to have the legal effect, of absolutely prohibiting any diversion of the waters of that river (except for sanitary or domestic purposes hereafter), except by those already engaged in the enterprises now being carried on at the falls. I want to take them up very briefly, in order, not trusting to my own memory, for I have the original amendments before me, and read the clauses which bring that about. The first substitute, offered by Mr. Barhite, which represents the final crystallization of the desires and opinions of his sub-committee, says that: "The Legislature shall not hereafter grant any charter, license or privilege to divert from their natural channel the waters of the Niagara river, or any portion thereof, above Niagara Falls, to any corporation, association, person or persons, except for sanitary, domestic or fire purposes; and such waters shall not be diverted for any other purpose, except by the corporations which have heretofore been licensed or granted this right, or who may now be engaged in the actual diversion or use thereof for manufacturing or business pur-

poses." The balance of the amendment places all of these corporations, the present ones or the future ones that may be created for any such purpose, under the jurisdiction of the Commissioners of the Land Office. The substitute offered by my friend, Mr. Dean, strikes out all of the committee's proposed amendment after the word "purposes," and makes it read, that the Legislature shall not hereafter grant the right to divert and so forth. The substitute offered by Mr. Marshall I will reserve for consideration for the last, because it contains new matter. The substitute offered by Mr. Johnson is practically the same as Mr. Dean's. Mr. Dean says: "The Legislature shall not hereafter grant the right to divert from their natural channel any of the waters of the Niagara river above Niagara Falls, except for sanitary, domestic or fire purposes." Mr. I. Sam Johnson's says, in more aptly and fully expressed legal language, the same thing. It says: "The Legislature shall not grant, sell, lease, or otherwise dispose of any right, title or interest in or to the Niagara river, or any of the waters thereof, but the same shall remain the property of the State, and under its management and control forever." The last is surplusage. Of course, the waters of the Niagara river and the Niagara river itself would remain the property of the State and under its management and control, because they belong to the State now and are under its management. So that the effect of all these three amendments is, and the original one, the substitute offered by Mr. Dean, and the substitute offered by Mr. Johnson, and I ought to include the substitute offered by Mr. Root in the same category, for it is equally objectionable, have this effect; they absolutely forbid the diverting of any of the waters of that great stream by any person or corporation, except those now doing so, for any purposes hereafter, except sanitary and domestic purposes. I believe that even those purposes are excepted from the provision of Mr. Johnson's substitute, which would be a very extraordinary thing, and would prevent the populous communities that we hope to have along down the river from drawing water for sanitary or domestic purposes, because they could not do it from State waters without the action of the State.

Mr. I. S. Johnson — May I ask the gentleman a question? Does he suppose that it is necessary to have a grant from the State in order to protect the rights of riparian owners?

Mr. Becker — I do not suppose so, Mr. Chairman, but as I understand the rights of riparian owners, they are all under the maxim, and I will consider that question in a little while, of the common law, which has become part of the system of this State,

"water runs let it run, *aqua currit debet currere*." The legal effect is that when water is drawn from a natural stream it must be returned to it again, except for certain purposes for which it is used, and I do not understand that vast volumes of water can be drawn for the purposes of a great city, or a great community, and not be turned back again into the river without a grant from the State. We had to get authority from the State to put in our water-works in the city of Buffalo. Tonawanda got a right to hers, independent of the general statute, and I think when the gentleman considers it a moment he will find out that the riparian right is to take water from the river, but return it again after its usufruct has been taken from it in the way of milling or anything of that kind, or any kind of manufacturing. Now, let me proceed a few moments to the consideration of Mr. Marshall's amendment. Mr. Marshall provides that the right to divert the water of Niagara river above the Niagara Falls pursuant to any grant or license heretofore or hereafter created shall be regulated by and under the direction and control of the Commissioners of the Land Office. It adds: "This section shall not be deemed to recognize or affect any privilege or license under which any person or corporation may now claim the right to divert the waters of said river." This amendment, in my judgment, comes more nearly to doing what the framers of this bill really intended to do without destroying existing rights, upon which vast sums of money have been expended in developing them, than any of the amendments proposed. The difficulty with it is this. At present, the two American companies, and really, gentlemen, I assure you from knowledge, of what I speak, the only two companies that ever are going to be able to draw any great amount of water from this river, are the Niagara Falls Power Company, and the Niagara Hydraulic Company. I do not speak their names exactly. We may call one the New York Company and the other the Niagara Falls Company, the latter being denominated the Niagara Falls Company. The New York Company has a charter from the State. It has a right to draw water, and that right is limited in the statute granting the right to enough water to create 200,000-horse power, and as to that amount of power, it was stated, as I understand it, by the engineer of the State reservation, and other eminent engineers, and it is a matter about which there cannot possibly be any real dispute, a matter of scientific ascertainment, that it would take about 800,000 or less cubic feet per minute to develop the whole 200,000-horse power. That, therefore, limits it to that extent. The Schoellkopf Company, or what I have said I would denominate as the Falls Company, owns a hydraulic canal

running down from Fort Day. It takes its water under this riparian right that was spoken of. It has no grant from the State. The effect, therefore, of Mr. Marshall's proposed amendment would be this, that the State would have the right to regulate and control, through its Commissioners of the Land Office, the operations of the New York Company, but the right to divert water now owned by the Hydraulic Company, or the Niagara Falls Company, would neither be under the direction or the control of the Commissioners of the Land Office, nor would it be recognized by this amendment, but it would be expressly forbidden, because the language of the amendment is, that the right to divert the waters of the river above Niagara Falls, "pursuant to any grant heretofore or hereafter created," shall be regulated under the direction of, and so forth. Of course, that would leave the Schoellkopf Company entirely without any regulation. But if you regulate one you should regulate the other, and prevent it from using any more water. So that Mr. Marshall's amendment is insufficient in that respect. Otherwise, the amendment does all that it seems to me that the fair, candid, straightforward consideration of the whole merits of this situation indicate ought to be done. And I will now tell you briefly why that is my conclusion.

Let me describe to the members of the Convention who have not been on this committee, and who do not fully understand the location and situation of the Niagara river and of the people in that vicinity, the plans and the plants proposed to be operated by these companies, and which have in part been already operated by them, indicating their purposes for the future. The impression, no doubt, from hearing what has been said here, both the reports of the committee and the arguments that have been made, would be given that this river began and ended at Niagara Falls. Such is not the case. There are, in round figures, something like twenty-five or thirty miles of this great volume of water flowing down there, before it falls over the precipice making what is known as the Niagara Falls. At its mouth at Buffalo this river is about twelve hundred feet wide and fifty feet deep, and the vast volume of Lake Erie, pressing down upon it, of which this river is the only outlet, which lake in turn draws its water from the Detroit river, and so on from the great chain of lakes, forces down through that channel, through that gorge of a thousand feet wide and fifty feet in depth, a vast volume of water which subsequently broadens out on each side of Grand Island and again unites at the foot of Grand Island and flows over the falls, at which point the river is about double the width it is at is mouth. Along that river immediately adjoining, and within

the corporate limits of the city of Buffalo, is a long island known as Squaw Island, which it is proposed to make of commercial advantage by building docks and by building ship canals through it so that the largest vessels which come down the lakes can go in there. Some of those large vessels are like ocean steamers. A vessel came into Buffalo lately bearing as much as a hundred and ten thousand bushels of wheat, which would be equivalent to a hundred and fifty thousand bushels of corn, in her hold. It is proposed to build ship canals so that vessels of this large size can enter them if necessary, and lumber-laden vessels and barges can go in there and unload. To do that it will be necessary to divert some portions of the waters of this river. Plans are now on foot to develop that island and build these canals through it with an immense system of docks, and I say to you that, in my best judgment as a lawyer, if any of these amendments are adopted it would absolutely prohibit the building of any of these tremendous commercial structures of advantage to the whole State, and particularly to the people of western New York, for these amendments all say that no portion of this water shall be diverted. Below the city of Buffalo in the river is a great island, known as Grand Island. At some places it is from four to six miles wide, and it is about twelve miles long, the river widening out and flowing in a vast volume on either side, perhaps from half to three-quarters of a mile wide, and from about eight to sixteen feet in depth. It is proposed also to use this island for commercial purposes, to build canals and docks there, and I assert that under this amendment, if adopted, it would be impossible to do this, because this would be likewise a diversion of the waters, and the State would not have a right to grant, under Mr. Johnson's amendment, the privilege of using the waters for those purposes. Going down on the east bank of the river, for the river flows very nearly north below Buffalo, we come to the great lumber market of Tonawanda, part of which lies in Erie county and part of it in Niagara county. This flourishing town has now about sixteen thousand inhabitants, if I am not mistaken. It is one of the largest lumber markets in the world, I think ranking fourth or fifth now, Chicago and Saginaw, and perhaps one other, being greater. It is absolutely necessary that the waters of this river should be diverted from their natural channel there for the purpose of creating canals and docks and for other purposes of that character, and yet, under this amendment, that would be forbidden. And so you can go down the banks of that river all the way until you come to the works of the Niagara Falls Power Company, all along that river on the American side, which is separated from the

dividing line between the United States and Canada, by Grand Island, the foot of Grand Island being about two miles above the works of the Niagara Falls Power Company, and you find opportunities for the creation of vast commercial interests, bringing into employment thousands of men, bringing into use millions of capital, and yet under this proposed amendment, all those things would be absolutely prohibited, because they are all dependent on some diversion of the waters of the river and some grant from the State. Now, when you come down to the falls proper, the river becomes one great, broad stream nearly two miles in width, or we will say a mile and a half, opposite the place where this Niagara Falls Power Company has built its power station, and where it has its inlet canal and proposes to draw its water. While on the American side the territory is flat, and it is possible to put these canals through, on the Canadian side there is a natural formation, or rise of high bank, on top of which, as many of you know, the Michigan Central runs, lying back from the river, anywhere from a few hundred feet to a quarter of a mile, and between that and the river the Canadian government has vested the control of the property and the water privileges and franchises in the Niagara Falls Reservation Commissioners of Canada, except as that power is reserved to the Canadian Parliament, being the Parliament of the Province of Ontario, and the Parliament of the Dominion of Canada, which sits in Ottawa. A word now as to the history of this enterprise, which is but a new thing. For years and years the people of the whole world have come to visit Niagara Falls, and no man has ever come there who has not gone away with the thought in his mind: "Oh, what great things could be accomplished for humanity and civilization and commerce, if some scheme could be devised for developing and utilizing this tremendous volume of water that runs to waste here." Yet no man solved the problem until within very recent times. Very early in the history of these schemes which now seem about to bring the fruition of these thoughts and hopes, gentlemen who were interested in one of them, and who found that to carry it on they would have to spend millions of dollars, and who, as a matter of fact, have already expended there upwards of between four and five million dollars and have received scarcely one cent of reward, these gentlemen saw that anything that they might do on the American side would be worthless and rendered entirely useless, as you might say, from a commercial standpoint, unless they got control of what was on the Canadian side. So, having a grant of water sufficient to make two hundred thousand horse-power on the American side, they went over

on the Canadian side and procured from the Canadian government an exclusive right to go onto the reservation there, to erect their power-houses on the reservation on the Canadian side, and to draw water to the extent of two hundred and fifty thousand horse-power. So that you have now vested in one company already in existence, already having spent between four and five million dollars on the American side of the river in developing this power, a grant on the Canadian side of two hundred and fifty thousand horse-power, coupled with the addition of right to use the reservation to develop it, and the whole charge and expense which was imposed upon it by the Canadian government, described by my friend, Barhite, in his report as "our thrifty Canadian neighbors," is this: they have been so thrifty that all they ask in return for this grant, this privilege, this right to build on the reservation itself the power-house, and to go on with the development of the power, is the munificent sum of ten cents per horse-power, amounting, if they develop the whole 250,000 horse-power, to the great sum of $25,000 per year. And that is not required of this company because they will draw the water. Canada was only too glad to have them come in there and draw the water and develop this power. But it was asked of them because they came on the reservation, and were taking up a portion of the lands of the reservation for their power-house and their tunnels, and it was right that they should pay something for it, some compensation for that privilege. Why, if the right was granted by the State of New York to this company or any other company, and I have the word of the principal manager of this company to that effect, to go on our reservation and build their power-houses there, to draw the water there, and put their erections there which could all be comprised in an acre of ground, so far as anything to desecrate or interfere with natural beauties of Goat Island or of the reservation is concerned, if that right was granted, I have the word of one of the managers of this company, that not ten cents per horse-power, but ten dollars per horse-power for the privilege would gladly be paid, or $200,000 per year for 200,000 horse-power. The Schoellkopf canal, commencing at Port Day, gets its powers solely by the riparian right of the respective land owners. That canal has the capacity now as shown by the report of the committee, and it is easily verified, of about 8,000 horse-power. If it is developed to its full capacity to seventy feet wide it will develop about 100,000 horse-power. Now, we have a statement, which I think Mr. Green will not deny, because you can figure it out very easily from the report, although I observe that they are very careful to express it in cubic feet per minute, and not in the actual diminution of the flow of the

falls over the precipice there, which is what we all want to know about — which shows that the fact is that if this whole 500,000 horse-power was taken out of that river it would be diminished in its flow a great deal less than two feet; so vast is the volume of water there. Think of it, gentlemen. Here is a volume of water from all the great lakes coming down there. It is inexhaustible, and with this tremendous pressure behind it. Would not the tendency be that as fast as you draw water out from the end of the pipes, or conduits, for more to press in at the mouth of the river? But the fact is, no matter what the argument may be on that subject, as calculated accurately by the State engineers, and forming part of the report of the Reservation Commissioners, referred to in this report, by methods of indirection, that the total amount of horse-power, to wit, 500,000 horse-power, which is allowed to be drawn by these grants from the river, would not diminish the flow, the volume of water there, two feet. Taking the statement of the report, at page 7, it says that the limit prescribed by the Niagara Falls Power Company is 1,032,000 cubic feet per minute, and a total for both companies of 1,494,000 cubic feet per minute, "or a little over nine per cent of the total flow of the river." Now, if the river was ten feet deep, that would only be one foot which it would be diminished. I have stood upon the bank of that river time and time again, and every man who lives in that neighborhood and is accustomed to frequent that river, has done the same thing, and have seen that by the ordinary action of the forces of nature, the blowing of the wind up the lake, the ordinary volume of water may be lowered from one to two feet. Sometimes when the blow continues as it did in 1878, for a period of three days, the water of the lake is pushed down the other way, and it piles up at Buffalo so high that it has run clear above the docks, and clear up to the Hamburg canal, on Main street, four or five feet in height, and there is a corresponding increase in the volume of water going down the river. I am inclined to think that the cause of the matter referred to in the letter, which was read by Mr. Barhite this morning, of the rocks being bare at the falls there, cannot be due to any water now being drawn off, because the diminution would hardly be perceptible from the thirty-one hundred horse-power being used by the New York Company, and eight thousand horse-power by the Schoellkopf Company. I am inclined to think that the trouble was due to something else than the amount of water drawn off for these purposes, for example, the blowing of a wind from east to west.

Mr. Barhite — Will the gentleman allow me a word? This letter does not state that the lack of water in the river between the

Three Sister Islands and Goat Island is caused by the operation of these companies. He simply calls attention to that fact as an argument, in order to show that but a small amount of water need be taken by anybody to make it still worse.

Mr. Becker — I presume that is so. My point is simply that it was undoubtedly occasioned from natural causes over which the State of New York has no control, any more than it has over the other natural situation to which I am now about to call the attention of this Convention. I claim that the Legislature of the State of New York, if it stops the diversion of this water or this Constitutional Convention, if it puts this amendment into the Constitution in any form so as to destroy the commercial utility of the current there at the falls, will simply drive business over to the Canadian side, and the volume of the river's flow will be depreciated by the use of the water on that side, and we will get nothing, and we shall simply stand and snap our fingers in futile anger, because we cannot control it in any way. As the current of water flows there, they can draw water enough in Canada, if such a thing is possible at all, which I deny, to destroy the beauty of our reservation, and we can do nothing about it. Under the Lord Ashburton treaty in 1826, I think I am right in the date, the dividing line between Canada and the United States was fixed as the center line of the lower Niagara river, the center of the channel, until it reached the falls, and then the line is to the west of this island known as Goat Island, the language of the treaty being: "Passing through the center of the Horseshoe Falls, thence proceeding up the channel through the center line of the river to the eastward of Navy Island and the westward of Grand Island," and so on through the center of Lake Erie. That is the boundary between the two nations. Now, the result of that is, that half the water that comes down that river on the west side of Grand Island, and all that is on the west side of Navy Island, and all that is on the west of the center line of the Horseshoe Falls, belongs absolutely to Canada. As you all know, there is, probably, three-fifths of the water going over the falls by the natural course of the river there, the way that the rock is projecting, the way these islands lie, and the natural conformation of the bed of the river being such that it flows over to the Canadian side. In volume, and grandeur, and greatness, the Canadian Falls surpass the American Falls fivefold. The American Falls is beautiful, it is immense; there are large volumes of water flowing over it; but, as compared with the Canadian Falls, it is as one to five. Now, if we drive these people away, prevent competition and prevent the use of this water on the American side, for power purposes, or, if we impose unjust

restrictions on those companies already operating there, what will be the effect? One company has already procured from Canada a grant for two hundred and fifty thousand horse-power. It has the right coupled with it, as I have already stated, to go on the Canadian reservation, conduct its structures there and do its work there. Now, what will be the effect? Why, they will simply go over into Canada; they will say: "We are not going to be obstructed in this way; we are not going to be interfered with; we will go over on the Canadian side and build up our power plant there; we will erect our structures; we will dig our canal and tunnel there; we will develop this power, and then we can sell it either in Canada or the United States, as we please." And I want to say to you right here that, in a direct line from the Canada side, crossing these islands, if you please, to Buffalo, which will naturally be, it is believed, the place where this power in the main will be used for manufacturing and other purposes, although it, undoubtedly, will be used at other places, the distance is only twenty-one miles and a fraction, so that the result will be that all this growth and development that should be on this side of the river will be forced over on the other side of the river, and we will be simply playing into the hands of our Canadian neighbors. Now, I want to say another thing here, which, if you are not familiar with it, will astonish you. There are commercial conditions about the use of this power, and the development of it, existing to-day, which render it entirely impossible that any more than a foot or a foot and a half of water should be used under any circumstances on either side of the river. Are you aware, gentlemen, that in the census of 1890, in which, for the first time, the data on that subject are presented, the total amount of steam and horse-power in use in the whole State of New York is stated to be less than five hundred thousand horse-power? Is it likely that under existing conditions, with the science of electrical transmission yet in its infancy (and some of the greatest minds that have studied this problem believe there are narrow limitations to the distance which the electric current can be transmitted and compete with steam, with coal at its present prices), is it possible that this company or any other company developing to its full amount the two hundred thousand horse-power on this side of the river and the two hundred and fifty thousand allowed on the other side, and the Schoellkopf Company developing one hundred thousand, is it possible that so much power is going to be used? It seems to me that it is not. Perhaps it is not impossible, but it is absolutely improbable. But there are other conditions that exist that will regulate this competition. The

average cost of a horse-power developed by improved steam apparatus, by the operation of steam plants, has been calculated with a reasonable degree of accuracy. Experiments have been going on for a number of years on that subject. The greatest engineers of the world have been working on it, and, while they have not arrived at an absolute conclusion, they have arrived at an approximate one, which is sufficiently accurate for our purposes, and that conclusion is that the cost of steam-power, under favorable conditions, is about fifty-six dollars per horse-power per annum. It may be a little more, it may be a little less, but it will average about that. Now, as soon as it is demonstrated that this company or any other company can transmit electricity on wires a hundred miles or two hundred miles for purposes of power for manufacturing purposes, for use on the canals, or for railroad purposes, if you please, what is going to happen? I am not speaking my own views on the subject, but the consensus of views of some very great engineers and scientists, who have studied this subject. There lies now at the mouth of the coal mines in Pennsylvania millions of tons of loose coal, which are utterly useless, because the cost of transporting them to places where they can be used is so great that they cannot be used commercially, and so they lie there. They are the siftings of the coal taken from the mines, and they lie there in what is called the dump. If any of you have ever been in Pennsylvania traveling along the lines of railroads there, you have seen these millions of tons. I do not know how many millions, but it is calculated to be enough to last the people of New York and Pennsylvania for a hundred years, if they can be used; but they are not commercially useful now. But, suppose it is demonstrated that this worthless coal can be turned into steam at the mines and made to turn the wheels of the dynamo, and that they can thus develop electricity and deliver it a great distance, what then? Just the moment it is shown that this power at the falls can be developed there by water power and turned into electricity and transmitted long distances, one hundred or one hundred and fifty, or two hundred miles, just that moment that *detritus* that now lies there at the coal mines worthless will be turned into steam, and the energy of the steam converted into electricity, and thus there will be a competition, which, for hundreds of years, will prevent these companies, in the judgment of many of the most eminent engineers, who have thought and written on this subject, from monopolizing the power produced and furnished at Niagara, to the exclusion of others. In other words, there will be competition as soon as it is demonstrated that this

power can be transmitted far enough to make it worth while. Now, in Buffalo the total amount of horse-power consumed by the General Electric Company, which lights the whole city, put together with that used by the street car system, which has a road in operation to the extent of one hundred and ten to one hundred and twenty miles or more, the whole amount of power used by those two systems is only about twelve thousand horse-power. I merely speak of that to show you that the probable use of this power in Buffalo would not be very great, for, if you add to the twelve thousand horse-power twenty thousand more, you, probably, will have more than included the amount of horse-power that can be used for a long time to come in the city of Buffalo.

Now, a word about the equities of this matter. The State of New York has expended in round numbers $2,500,000 in making a reservation there. What is that reservation? There are some islands about a mile or so long and a half mile or so wide, and there is a strip of land just below the falls, running back about eight hundred feet from the river, and running up, we will say, a mile. That is the State Reservation. It is a very pretty place. It is a fine place to view the scenery of the falls; no doubt about that, and it ought to be preserved. But I fancy that the notions which these gentlemen have about the damage that is going to occur to it if a foot or two of water shall be taken out of that river, is a very extravagant notion. Supposing fully two feet should be taken from the river, which, according to the figures taken from the report itself, will be sufficient for the development of five hundred thousand horse-power, what harm will it do? That diminution may occur and does occur on an average many times a year, by the action of the wind. I state what I know to be absolutely true, and nobody ever complained of it. The State did not decline to buy or improve this reservation, because such things happen, that the water was lowered a foot or two occasionally by the action of the wind. So I say that on the practical side there is no damage which can possibly result to the State or to the people by allowing this power to be drawn away. On the other hand, under any of these amendments, you create an absolute monopoly, the best you can do, in the companies that exist. Why? They say that the State shall not permit this water to be diverted by any other corporations than those now using it, or who have rights to use it. That certainly leaves them with a monopoly in express terms, does it not? The Johnson amendment does not say anything about those companies, but it leaves it in this position, that here we have companies who have spent, one company about three or four mil-

lions, and another company about a million more. They have grants from the State, or they have implied rights there, which have ripened into moral rights, if not legal rights, because of their spending these vast amounts of money, and attempting to effect this development there. Now, I ask you gentlemen what prospect there ever would be, under those circumstances, of the Legislature or the Land Office interfering with them? Assuming that they would do some injury to the reservation, which I deny, by drawing away water enough to make five hundred thousand horse-power there, would the Legislature ever interfere with these people in any respect? On the other hand, if the effect of passing any of these amendments is to create a monopoly there that is going to affect the canal system, which Mr. Johnson talked about so eloquently, and is going to affect western New York, and is going to affect the State of New York, why, if you put it in the hands of these two companies to draw away this water, and you say that no other company should have it, the result is that you have prevented competition. I do not speak of the Lewiston scheme, and I do not speak of the Lockport scheme, which are talked about here, for the reason that the cost of developing power at Lewiston or Lockport would be so great that it is absolutely impossible to conceive of these schemes as being commercial factors in the consideration of this question. Now, what we, in Buffalo and western New York, and the people of this State want, is to leave this matter right where it is, in the hands of the Legislature. The representatives of the people will take care of this question. The moment there is any diversion of the current sufficient to interfere with the water or the scenery at the falls, you will see the Reservation Commissioners coming down to protect their trust, and their voice will be heard, and the whole people of the State, represented in Senate and Assembly, they are all interested in this matter. It is their money that has been spent, and, if too much water is being drawn away, they will have it regulated. These companies have no contract with the State. In my opinion the contract that was entered into between Superintendent Hannan and the General Electric Company, of Rochester, is absolutely void, and in that opinion many other lawyers, and good lawyers, concur; among them, in Buffalo, the Hon. George Clinton, who knows more about canal law than any other man in this State. These grants to these companies, as Mr. Barhite points out, and as every lawyer in this assembly will agree, are merely grants or licenses that can be revoked at any time. They can be regulated by act of the Legislature at any time. If the Legislature want to create a special

commission to look after this matter, if they want to vest this power to regulate in the hands of the reservation people, if they want to vest it in the Land Office Commissioners, they have the power to do so, but the necessity for that has not yet arisen. It is not demonstrated how much water they are going to draw there, or how it is going to affect the current of this river, except by mathematical and engineering calculations. I hope I have not trespassed too long on the time of this Convention, but it seems to me that this is a very serious matter. We are running two risks, it seems to me, in passing any amendment proposed here. We are running the risk of having the people of this State say that this Convention has done what the Legislature is frequently accused of doing, lending itself to a stock-jobbing scheme, and, on the other hand, we are running the risk of forcing the great commercial development and the expenditure of vast sums of money and the employment of large numbers of men over to the Canadian side of the river, because, under the existing conditions, the Canadians can draw all the water that could be called for by any of these grants that can possibly be used under any of these grants without any prospect of any interference on our part being of the slightest use. I sincerely hope that all these amendments will be defeated and that this whole matter will be left where it belongs, in the hands of the Legislature, which can deal with it as the exigencies of the case hereafter require, and as experience shall demonstrate it should be dealt with, to the best advantage of the whole people of this State.

Mr. Forbes — Mr. Chairman, is another substitute in order?

The Chairman — The Chair will rule that another substitute is in order, and it may be sent to the desk.

Mr. Forbes — I wish to speak upon the substitute.

The Chairman — It will be read by the Secretary.

The Secretary read Mr. Forbes's substitute as follows:

"Section —. The Legislature shall never sell nor dispose of the waters belonging to the State. The right to use such waters may only be granted on payment of compensation therefor to the State, and for limited periods not exceeding forty years. All grants of property rights in the waters of the State may be revoked by the State."

Mr. Forbes — Mr. Chairman, it seems to me that we have spent more time on this matter than the Convention can, at the present condition of its business, afford. We have a number of substitutes and of amendments, which have not yet been printed. We have

heard from the gentlemen this morning that there are various objections to these separate substitutes. It is impossible for the members of the committee to keep in mind the language of these various substitutes; and, further, I would say that I desire to offer a resolution in regard to this whole subject, which has been carefully drawn so as not to be offensive to the committee which is in charge of this particular matter, nor to any other committee of this body, and which, of course, can only be offered in the Convention. For this reason I shall move, in a moment, that the committee rise, report progress and ask leave to sit again. The resolution which I desire to offer and which may make some difference in the votes of members in regard to the committee rising, is as follows:

"Resolved, That a special committee of five be appointed by the President to consider what the State should do with the waters and other natural property belonging to the State, and report thereon, with any proposed amendments to the Constitution they may deem proper, on or before September sixth."

Now, speaking in regard to the substitute, the question which is before the committee, I will say this, that the whole subject should have been gone into early in this Convention, but we still have time to examine into the question of the property of the State, and to make some report upon that subject. We have not only Niagara river, but we have the St. Lawrence river. This Convention has been flooded with papers from a place called Waddington, on the St. Lawrence, where they propose to develop two hundred thousand horse-power. There appeared in the Herald of yesterday a statement of the use of the East river for producing water-power, and through this water-power electric current. We have the forests of the State, with which, as a whole, the Committee on Forestry is not concerned, since they have only reported in regard to the Adirondack or Forest Preserve. We may desire to sell or dispose of the timber in them. It seems to me that it is only necessary to make this general statement to show the necessity of some special committee charged with this particular matter. I, therefore, now make the motion that the committee rise, report progress and ask leave to sit again.

The Chairman put the question on Mr. Forbes's motion, and it was determined in the negative.

Mr. McKinstry — The point on which I wished to speak was so well covered by Mr. Becker's address that I shall occupy only a

moment or two. Up to the time of Mr. Becker's speech I think all the speeches seemed to assume that the State of New York had control of Niagara river. They ignored the fact that we had control of only half of it. Unfortunately, the water in the river has no national allegiance. It has not seemed to recognize allegiance to either nation. Not only the wind bloweth where it listeth, but the water flows to seek its level. Now, if it is drawn on the Canada side, it all flows that way; if it is drawn on our side, it flows our way. It seems to me that it would be very unfortunate to tie our hands and prevent ourselves from taking water on our side of the river, and having no control in regard to its being taken from the other side. I talked with a very intelligent constituent the last time I was home on this amendment, and he said to me: "If you can arrange it so that the water that the Canadians draw should be only from their side of the river, so that they can run the Horseshoe Falls dry and leave the American Falls in full volume, I should say that that was a very good amendment." The fact about the draft of water has been over-estimated, as Mr. Becker said. I talked with Mr. Pool, of Niagara, who has lived there all his life. He says that long before these power companies were established this fact of the rocks becoming dry near the Sister Islands occurred whenever the wind blew for any period up stream. It seems to me that we might feel a sort of aesthetic pride of conscience, if those falls ever became a barren ledge of rocks, and we had drawn no more water, that we, by constitutional amendment, had not been guilty of destroying that beautiful scenery; but to the practical mind, if we should see a large community, with factories on the Canadian side that had taken this water, I think the satisfaction, and what I have called the aesthetic conscience, would not be very great. The people of Chautauqua county are as much interested in preserving that great national wonder as any other county. We are within an hour and a half ride of the falls, and it is a great resort for the people of Chautauqua county. If that water is to be taken, we feel that the American side should have its share. The five thousand Republican majority which Chautauqua county gives indicates that they are in favor of building up American industries in preference to Canadian industries, or the industries of any foreign nations. This is an international matter, sir. If you do not want to leave it to the control of the Legislature, put it in the control of the Commissioners of the Land Office, and, if by any international agreement the power to divert that water can be restricted, there would be some sense in it; but this amendment, as it is now drawn, I cannot vote in favor of.

Mr. Dickey — Mr. Chairman, the people of our locality, in common with the rest of the State, are greatly interested in the preservation of that great wonder of the world, Niagara Falls. It is one of the few things that come up to one's expectation and go beyond. We should, therefore, do whatever we can to guard against anything that will interfere with its majesty and grandeur, and stop, so far as we can, any diverting of its power. I do not like any experiments of taking water to see how close we can go to destroying the falls without doing it. As to the arguments that Canada may reap the benefit of our not allowing the full and free use of the water of the American side, do the gentlemen forget that as soon as the people have a chance to assert themselves at the very first election that comes the doctrine of protection will again so strongly assert itself that they will not be able to start manufactures on the Canadian side?

Mr. Hill — Mr. Chairman, attention has been called to the question of the jurisdiction of the waters of the Niagara river, and it has been stated by the gentleman from Chautauqua (Mr. McKinstry) that at most we have control of one-half only of the waters of that river. I suppose the ultimate jurisdiction over this half of the waters of the Niagara river is vested in the United States government, and in support of this proposition I wish to call attention to the recent case of Shively v. Bowlby (reported in 152 U. S. Reports, page 1). Among the conclusions reached by the Supreme Court in that case are the following: "Lands under tide-waters are incapable of cultivation or improvement in the manner of lands above high-water mark. They are of great value to the public for the purposes of commerce, navigation and fishery. Their improvement by individuals, when permitted, is incidental or subordinate to the public use and right. Therefore, the title and the control of them are vested in the sovereign for the benefit of the whole people. At common law the title and dominion in lands flowed by the tide were in the king for the benefit of the nation. Upon the settlement of the colonies like rights passed to the grantees in the royal charters, in trust for the communities to be established. Upon the American Revolution these rights, charged with a like trust, were vested in the original States, within their respective borders, subject to the rights surrendered by the Constitution of the United States." Accordingly, the United States government have exercised jurisdiction over the Great Lakes and the waters of the Niagara river for the purposes of commerce and navigation, to the exclusion of State sovereignty therein.

Ever since the appearance of Lord Hale's "De Portibus Maris,"

it has been held, both in England and in America, that the jurisdiction over navigable tide-waters is vested in the sovereign, so that, if a question were to arise between the State of New York and the United States, as to the jurisdiction of the waters of the Niagara river, the State of New York would be forced to yield her jurisdiction to the paramount jurisdiction of the United States government. Now, we are asked to limit and prohibit the diversion of the waters of Niagara, and we must admit that the ultimate jurisdiction over those waters is vested in the United States government.

By what authority, then, is the State of New York empowered to prohibit such diversion? Possibly the United States government might not assert her jurisdiction, but suffer the State to exercise its servient jurisdiction over said waters.

However, as soon as the general government were advised of the State's interference with such waters, undoubtedly, it would assert its authority over them. It has already been adverted to by gentlemen, who have spoken on this subject, that the proposed amendment would prohibit the State from using the waters of the Niagara river to feed the Erie canal.

Its language is susceptible of that construction. It would be the height of folly for the State to impose upon itself so useless a restriction. Its commercial prosperity depends, in part, upon the carrying capacity of the Erie canal, which must draw its waters very largely from the Niagara river. Any serious interference with this source of supply would be an irreparable loss to the Erie canal.

Several franchises have already been granted for the use of the waters of the Niagara river for commercial purposes. They appear to be warrantable. Should restrictions now be imposed upon the Legislature, as contemplated by the proposed amendment, it would create a monopoly and give the exclusive use of the waters of the Niagara river to those corporations already in existence. This would be unwise. The people may be entrusted to exercise their rights and protect their interests through their representatives in the Legislature fully as well as can this Constitutional Convention. The proposed amendment is still more objectionable in another aspect, and that is, its probable interference with the industrial development and commercial prosperity of the cities and towns of western New York. The diapason of Niagara is being translated into the hum of industry. The music of nature will continue, while the factories of Buffalo, Rochester and the smaller cities of western New York pulsate in unison with the waters of the great cataract. Shall Niagara remain but the rendezvous of poets and wedding tourists, and its waters be permitted "to flow on unvexed

to the sea," or shall they be utilized for the good of man? The beauties of Niagara will remain the charm of the thousands who visit it, although its potent energies be conserved to contribute to the welfare of humanity. Hitherto Niagara has spent its energies in vain, and now that the time has come, when they may be made to propel the wheels of industry, it is proposed to prohibit the latter by constitutional inhibition. Why not prohibit the use of the waters of the Hudson, the Mohawk, the Susquehanna or the St. Lawrence?

Why not erect a barrier to the use of all the waters of the State? Why not deny to commerce access to Lake Champlain, Lake Erie or the inland lakes of the State? Natural streams of water, ever since the morning of time, have been made to serve the purposes of man, and it is reserved for the New York Constitutional Convention of 1894 to be the first to suggest a prohibition of the use of such waters by the people of the Empire State. Before any such amendment be passed, I ask the delegates to consider whether or not we are not making "progress backward?" Let us not erect a barrier to the progress of civilization. The Legislature may be entrusted to grant only such franchises for the use of the waters of Niagara river as will be for the interests of all the people of the State. (Applause.)

Mr. Durfee — Mr. Chairman, in the consideration of this subject there are two questions that present themselves to me, two branches of the subject. First, the preservation of the natural scenery at Niagara, and, second, the prevention, if possible, of a tremendous monopoly. In respect to the first matter, considerable has already been said, and it is not necessary to say anything more. But I would like the committee to consider what sort of an enterprise a monopoly of the use of the water of Niagara river would be, assuming that the power of the river may be turned into industrial use and so disposed of. The gentleman from Buffalo (Mr. Becker) has stated that it cost fifty-six dollars a year, on the average, to produce one horse-power. Now, if there is an enterprise at Niagara already authorized by the State to appropriate two hundred thousand horse-power from the waters of that river, and, if it could be sold at fifty-six dollars a year, it would produce a revenue of $11,200,000 a year. If it could be sold for thirty dollars per horse-power per year, it would produce a revenue of $6,000,000 a year.

These figures will serve to show the possibility, if not the probability, of the creation of a monopoly under assumed licenses or grants from the State, compared with which the Standard Oil Company, or any railroad company, or any other organization that we

have in the United States that I have ever heard of, would sink into insignificance.

Now, what can be done by this Convention to guard against the destruction of the natural scenery, or the creation or permission of an immense monopoly of this sort, I do not clearly see. And I agree with the gentleman from New York (Mr. Forbes) that this committee, with the various amendments and substitutes that are before it, is not the proper body to deliberately consider that question and to formulate such a proposition, if any can be formulated, that will accomplish the result which, I am sure, we all seek to accomplish. I, therefore, Mr. Chairman, renew his motion that the committee rise, report progress and ask leave to sit again, trusting that when we are in Convention he will make the motion which he has already proposed to make or some equivalent to it. I think we ought to consider this matter with some deliberation. It is an immense subject, and, if anything can be properly done with it, we ought to do it. I, therefore, now move, Mr. Chairman, that the committee rise, report progress and ask leave to sit again.

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

Mr. A. H. Green — Mr. Chairman, I suppose some action should be had to preserve the order of this matter so that it may not go to the foot of the calendar.

Mr. Moore — Mr. Chairman, I rise to a point of order that there is no quorum present.

Mr. Holls — Mr. Chairman, I rise to a point of order that Mr. Moore's point of order is too late, the committee having already risen.

The Chairman — The point of order is well taken, as far as the committee is concerned.

Mr. Moore — I raise that point now.

Mr. McMillan — The motion is equivalent to a motion to adjourn.

The Chairman — That is already decided, and the point of order is sustained.

President Choate resumed the chair.

Mr. Cady — Mr. President, the Committee of the Whole have had under consideration the proposed constitutional amendment (printed No. 442), entitled, to amend the Constitution by the addition of a new article relating to the diversion of the waters of Niagara river; have made some progress in the same, but, not hav-

ing 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 to the report of the Committee of the Whole, and it was determined in the affirmative.

Mr. Durfee — Mr. President, I made a motion in Committee of the Whole, with the expectation that when we got into the Convention a motion would be presented for a reference of this subject to a standing committee of some sort, or special committee.

The President — You can do that now, Mr. Durfee. The fact that the Convention has granted leave to sit again does not lie in the way of a motion to commit to a standing or special committee.

Mr. Barhite — Mr. President, I move you, sir, that this matter be referred back to the committee from which it came, with leave to report at any time, and that the matter reserve or keep its place upon the special order, with all the amendments to be printed. I make this motion so that it may come back again and without the intention of using any further time of the Committee of the Whole, but simply so that this committee can at some time, when there are more members of the Convention here, present an amendment which can be voted upon, and either carried or lost.

The President — Mr. Barhite's motion is to refer the matter before the House to the Committee on Legislative Powers and Duties, retaining its place on the calendar.

Mr. Barhite — With leave to report at any time, Mr. President.

Mr. Forbes — Mr. President, I desire to amend the motion so as to refer this matter to a special committee of five to be appointed by the President, to consider what the State shall do with the waters and other natural property belonging to the State, and report thereon, with any proposed amendments to the Constitution they may deem proper, on or before September sixth, and that this report take the place of the special order now before the House.

Mr. President, the reason I make the motion is this; it has done the sub-committee no good to go to Niagara and look down into a hole that has been dug there for the purpose of carrying some water. We can, in this capitol, decide upon the question of economics just as well as we can at Niagara Falls. There is no need of any time being spent in the matter by visiting places. We have, besides Niagara Falls, the water of the St. Lawrence, and of other streams in the State. We have forests, we have many other subjects of an economic value, which directly appeal to the people of this State. Why should they not be considered, and they can be considered in a day or two, and a proper report can be made. It is not casting

any discredit upon the Committee on Legislative Powers and Duties to have a committee appointed which shall consider the whole question of the property of the State and what this Convention should do in regard to it.

Something has been said here on previous occasions in regard to whether the Constitution, as a whole, would be accepted by the people of the State. I, for one, knowing what the feeling of the farming community is, and, as a farmer, can tell you that that is greatly a question of taxation, greatly a question of what you are going to do for the people of the State in helping them out of their economic difficulties. The farmers of this State are not making money at the present time. I am sorry that this Convention has not more farmers than it has. It would be better for us, I think, if we did not belong, as it were, to one class. I, for one, belong to two classes of the community; I belong to the farming class, and I am proud of it, and I belong to what is called the cultured class. But, as a farmer, I can see the necessity of an examination of the questions raised by the amendment. I hope the Convention will allow this committee to be appointed, and, if it will not allow a committee to be appointed which shall take in Niagara and the rest, that it will allow a committee of this kind to be appointed in regard to the other economic interests of the State.

Mr. Mereness — Mr. President, would it be in order to ask the gentleman which brand of culture he means, whether it is the Boston brand or not?

The President — Perhaps it is hardly necessary. The question is on Mr. Forbes's motion.

Mr. Hottenroth — Mr. President, as a member of the Committee on Legislative Powers and Duties, I might say here that, for one, I would not be offended at the appointment of a special committee. This matter was referred to a sub-committee of the Committee on Powers and Duties of the Legislature. The whole committee was invited about two or three weeks ago to visit the falls. I happened to be visiting the canals in connection with the Canal Committee, and did not attend; but since that time I have seen the falls and inspected them, with a view of determining, if possible, what might be done; but it appears to me that the wrong tack has been taken by the Convention in Committee of the Whole, and also the Committee on Powers and Duties of the Legislature. It seems to me we might prevent the existence or the establishment of a monopoly there, and at the same time preserve the aesthetic beauty of the Falls of Niagara. It is possible, it appears to me, to limit the drawing of water from the Niagara river, and also from Lake Erie, so

far above the falls as to, at least, not materially injure the beauty of the falls. It is impossible for us here to legislate to that extent as would affect the beauty of the falls. We might as well attempt to control the waters of Lake Erie, of Lake Huron, of Lake Michigan or of any of the immense water-sheds that deliver the supply to the falls. It appears to me that it might be possible to consummate the desired end by other means than those that have been attempted by this committee.

The President put the question on the motion of Mr. Forbes, for the appointment of a select committee of five, and it was determined in the negative.

The President — The question is now on recommitting the matter to the Committee on Powers and Duties of the Legislature, with leave to report again, maintaining its place upon the calendar.

Mr. Durfee — Mr. President, I was about to suggest that we have had one or two more substitutes introduced this morning, the printing of which was not ordered by the resolution.

Mr. Barhite — Mr. President, I will include that as part of my motion.

The President — This matter will carry with it, of course, the substitutes offered and under consideration.

The President put the question on the motion of Mr. Barhite to recommit to the Committee on Powers and Duties of the Legislature, and it was determined in the affirmative.

Mr. Forbes — Mr. President, I have another resolution.

R. 197.— Resolved, That a special committee of five be appointed by the President to consider what the State should do with its waters, excluding Niagara river, and its other natural property, and report thereon, with any proposed amendments to the Constitution that they may deem proper, on or before September sixth.

The President — Mr. Forbes will please send his resolution to the desk.

Mr. Forbes — Mr. President, I think I have already explained the matter sufficiently. This is a question that ought to be considered by this Convention. As I said, it is an economic question. The State has considerable property of this kind. What shall we do with it?

Mr. Mereness — Mr. President, I desire to debate the resolution introduced by the gentleman, and I suppose that will send it over until to-morrow.

The President — It was not strictly in order, on that order of

business, and it must go over, Mr. Mereness claiming the right to debate it, until to-morrow. The Secretary will proceed with the call of general orders.

The Secretary called general order No. 77 (printed No. 457), introduced by the Committee on Governor and State Officers, fixing the terms.

The President — That has not been printed on account of its being Labor Day.

Mr. McMillan — Mr. President, I was about to state that the amendment had not been printed, and it was questionable whether the Convention should go into Committee of the Whole until all of the delegates had the report upon their desks. I have been advised by the Secretary that owing to this being Labor Day it has been omitted from the printed papers sent up.

The President put the question on allowing the matter to hold its place upon the calendar, because of the delay in printing, and it was determined in the affirmative.

The Secretary called general order No. 53 (printed No. 430), introduced by the Committee on Canals, to amend article 7, section 3, relative to canals.

Mr. Hottenroth — Mr. President, I notice on the document files that the minority report of the Committee on Canals has not yet been printed. It appears to me important that we should have that before us at the time of the discussion of these proposed amendments, which, I believe, ought to go to the Committee of the Whole together. I, therefore, move that this special order be postponed and retain its place on the calendar until to-morrow, or until such time as this document shall have been printed and on our desks.

The President — You say retaining its place?

Mr. Hottenroth — Yes.

The President — It seems to the Chair that that ought not to be done. We are going to run through the business which was prepared. The Convention has made an order that matters should be taken up as they are reached. Is your minority report a lengthy or an elaborate one?

Mr. Hottenroth — No, sir; it is very short.

The President — Could it not be read from the Secretary's desk so as to satisfy the requirements?

Mr. Hottenroth — I am willing to submit the matter to the Convention, Mr. President.

Mr. McMillan — Mr. President, I hope the suggestion made by the gentleman (Mr. Hottenroth) will be considered by the Convention, for the reason that at this time I deem it unwise for the committee to go into consideration of these two orders relating to the canals of the State, for the reason that some suggestions have come to those specially interested in the canal matters and the Canal Committee, that this matter may be held until some subsequent day, either to-morrow or the day following, retaining its place on special orders.

The President put the question on passing for the day the three orders relating to canals, they holding their place upon the calendar, and it was determined in the affirmative.

Mr. Veeder — Mr. President, may I ask if the proposition is to pass the three general orders, 53, 54 and 58?

The President — If those are the numbers. They are the canal amendments.

The Secretary called general order (printed No. 446), introduced by the Committee on Charities, to amend article 5 of the Constitution.

Mr. Lauterbach — Mr. President, I understood that an arrangement had been made in respect to the calling of the various reports, that it was contemplated that the action on the report of the Charities Committee should succeed the action upon the apportionment report. As there are certain subjects to be considered, which have been suggested by the controversy on the educational report, I should like the matter to take that course, and I move that it be passed, holding its place on the calendar.

The President — There is a little danger of these matters losing their opportunity.

Mr. Lauterbach — Rather than have that occur I should call it up.

Mr. Root — Mr. President, if it is in order, I will exchange No. 64, which was reported by the Judiciary Committee, with Mr. Lauterbach.

The President — The Chair is of the opinion that by a vote of the Convention an exchange could be made, and bring the apportionment matter on now.

Mr. Root — Mr. President, that would hardly be practicable, because that has been made a special order for to-morrow morning. It has been doubly made a special order for to-morrow morning, and gentlemen, doubtless, are not ready for that subject. My sug-

gestion was to exchange No. 64, which is the fourth matter down on the calendar, with 67.

The President — Is Mr. Root ready to bring up the Judiciary Committee's report, No. 64, to amend article 4 relating to the use of money for political purposes?

Mr. Root — I am, Mr. President.

The President — I suppose a proper motion can be made to call that up.

Mr. Root — Mr. President, I move we go into Committee of the Whole on general order No. 64.

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

The President — Mr. McCurdy will please take the chair.

Mr. McCurdy — Mr. President, my legislative experience is so great that I think it would simply create confusion if I should take the chair. I would like to be excused.

The President — Will Mr. McMillan take the chair?

The Convention resolved itself into Committee of the Whole, and Mr. McMillan took the chair.

The Chairman — The Convention is in Committee of the Whole on general order No. 64 (O., I. No. 391, P. No. 443), which the Secretary will read

The Secretary read as follows:

Proposed constitutional amendment to amend article two of the Constitution by adding new sections relating to the use of moneys for political purposes.

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

Article 2 is hereby amended by adding the following sections:

"Sec. 6. The Legislature shall, by general laws, declare the uses which may be lawfully made of money or other valuable things by, or on behalf of, any person, to promote his nomination as a candidate for public office, and by or on behalf of a candidate to promote his election.

"The use or promise of money or other valuable thing to promote the nomination for, or election to, public office of any person otherwise than is expressly authorized by law, is prohibited and the person by whom or for whose benefit, with his consent, connivance or procurement the same is so used or promised, if elected, shall forfeit his office."

Mr. Veeder — Mr. Chairman, I move, for the purpose of having it explained, to strike out section 6 of this article, that being the first section, for the reason that, as I read it, it would be in conflict with section 2 of the article at present in the Constitution.

Mr. Root — Mr. Chairman, I did not understand what section the gentleman thinks this will be in conflict with. I can see no conflict whatever. They seem to be perfectly in consonance with each other. The object of this provision, Mr. Chairman, is to lay down a general principle to which the laws of the State shall conform, which is in accordance with what I believe to be the most enlightened sentiment of the time, and to fix the expression of that sentiment in the Constitution, to require the Legislature in its laws to conform to it, and require the Legislature to say what money may be used to procure the election of a candidate. Until that is done there is absolutely no limit to the corruption, no limit to the purchase of votes, no limit to the improper influence of votes, or of parties, or of party men. And you perceive that putting the two paragraphs in section 6 together there is an entirely different state of affairs produced from that which now exists. By the first paragraph the Legislature is required to declare affirmatively what uses may lawfully be made. That is a very different thing from prohibition. It is required to declare affirmatively, to enumerate the uses which may be made, and by the second paragraph all other uses than those expressly authorized are prohibited, and are made the ground of forfeiture of office. That is a very small step in the direction of the corrupt practices act in force in England, which has worked such admirable results in respect of the election of their members of Parliament. Just so long as you undertake to enumerate your prohibitions upon the use of money, just so long evasions of those prohibitions will always be possible. But, if you enumerate the ways in which money may be used, affirmatively enumerate them, and then confine candidates for office, party committees, party agents, the agents of candidates, confine them to those uses, and as a penalty for any knowing departure from those limitations, forfeit the office, you will have a very different state of affairs in respect to what we, I am sure, will all agree has become one of the great and crying evils of our politics, the enormous use of money in all our elections. The use of money has come to such a pass at the hands of both of the great political parties in this country that we find enormous contributions necessary to maintain party machinery, to conduct party warfare, and the effect is that great moneyed interests, corporate and personal, are exerting yearly more and more undue influence in political affairs.

Great moneyed interests are becoming more and more necessary to the support of political parties, and political parties are every year contracting greater debts to the men who can furnish the money to perform the necessary functions of party warfare. The object of this amendment is by laying down a simple rule to put an end, if possible, to that great crying evil of American politics. It may not accomplish everything, it may not be sufficient to wholly end the evil, but is a step in the right direction and is of a character which it is proper to incorporate in the Constitution.

Mr. Dean — Mr. Chairman, this effort to make people moral by introducing various sections into the Constitution and into the statutory law, in my judgment, is unwise and against sound public policy. We are going at this question wrong end to. If we are going to reorganize society, if we are going to purify our politics, we must proceed upon the theory of individual integrity. Reform must proceed from way back in the caucuses. Honest men have got to discharge their duties in the community. As a result of our political machinery complicated by such vast numbers of people, that it is absolutely impossible for the people to be heard in our nominating conventions, we must go back among the people; we must go back to first principles. As at present constituted our Republican State convention consists of 772 members, a body so large that it is impossible for a delegation from any part of the country to be heard in it. Every man who has attended a State convention since the monumental failure of Warner Miller, in 1883, to reorganize the politics of the State by doubling the number of the State convention, knows that it has been absolutely out of the question for anybody to be heard except those who are close to the machine. Under that system, Mr. Platt has nominated every State ticket in the past ten years, and will probably continue to do so. His nominations have all been made upon the theory that the gentleman who is placed in nomination shall have sufficient money to carry out not the will of the people, but the will of the machine, as evidenced by the vote of the convention. To undertake at this time to say that we are going to establish the different funds, that we are going to make an estimate of the amount of money that will be necessary for Mr. Platt or the other gentlemen who conduct such machines in this State, to carry out elections, is, in my judgment, very foolish and unwise. If this thing must go on, if we must establish a school of prizes, it seems to me that we ought at least in this proposition to limit it so that we should not be obliged to spend more than about four dollars and eighty cents for a justice of the peace, and from that price up. It might be necessary possi-

bly to inculcate into the laws of the State some such methods of procedure, but if it is to be done, let us not dignify it by a provision in the Constitution. Let us let this matter go to the State Legislature. Certainly it has no place in the fundamental law of this State to say that corruption in politics is absolutely essential, and that, therefore, it must be regulated. I do not believe any such thing. I believe it is absolutely within the power of the people, with their energy intelligently directed, to bring the politics of this State up to a standard where even the gentleman who proposes this amendment would feel that he could exercise his privileges and prerogatives as a citizen and discharge his duty in the caucus and convention and at the polls.

Mr. I. S. Johnson — Mr. Chairman, I have been interested in the subject covered by this amendment before this Convention. I have been interested since it was called, and I hope to continue to be interested until some principle is put in the fundamental law of the land and in the statutes of the State which shall make it impossible for men to purchase a nomination or purchase an election. I hope to live to see the day when no corporation and no trust, however great, can control nominations or control elections. While this proposition does not go to the extent that I wish it did, it is a step far forward in the right direction. If this country ever goes to pieces, if its institutions are ever destroyed, they will be destroyed because the people lose confidence in the institutions, and in the persons who control the Legislatures; persons who control nominations and control elections.

Sir, it is well known that in this State, for years and years, the corporations of the State have reached out their hands and said that a person who shall act in the interest of this party or that party shall be nominated or shall be defeated. While I dislike to recall events, which involve the names of men who have been friends of mine, and have been near and dear to me, I have found, sir, that the only way of reaching these matters is to call attention to particular facts; and I ask this Convention for a single moment to go back with me to a time when an investigation took place in the halls opposite here, to ascertain whether a man who had been elected a Senator, should be discharged from that duty, removed from his great office. During that investigation it appeared that a great corporation in this State, which was constantly asking aid from the Legislature, had been sending into the different senatorial districts of the State its money for the purpose of securing the nominations of men who it was said would be friendly to its interests. In that

investigation there was called that man then at the head of the Erie railroad, and he was asked to tell the committee in what manner and how he had used the funds of that great corporation to secure men in his interests in this body and in the body that sat across the hall. After testifying to the manner in which he had conducted himself, he was asked various questions and made various answers; and when you come to act upon this matter I would like to have you understand what those questions were, how that corporation had acted. He was asked the question: "In your interview with Mr. Wood, had there been any transactions between you of any sort? A. There has been one single transaction. Q. When was that? A. Some time in 1870. Q. Can you call to mind the exact date? A. It was in the winter of 1870. Q. Was it during the session? A. I cannot say positively; my impression is that it was." Now comes the question: "Please go on and explain the transaction? A. General Woods's predecessor, Senator Humphrey was a very strong friend of ours." "Ours" was the Erie Railroad, wanting legislation in the Senate and Assembly of the State of New York. "Senator Humphrey was a very strong friend of ours, and when the time came, it has always been my habit where there were any members of either House that had been friendly to us." "To us." Who? A great and powerful corporation demanding legislation at the hands of the Legislature of this State.

Mr. Veeder — Mr. Chairman, I submit the gentleman is not in order. I have made no motion as to any section except section 6. The others are other matters, and I think I would like to be informed whether or not ——

The Chairman — The gentleman from New York is out of order unless the gentleman from Wyoming gives way for the purpose of answering a question.

Mr. Johnson — I do not give way, Mr. Chairman. I was reading from the evidence of Jay Gould, in which he says, speaking of members: "And when they were put up for office, to assist them. Senator Humphrey came to me. He had been a steadfast friend of the road. General Wood had also been a friend. The officers of the company were also very much interested, and the question came up about assisting Humphrey;" about getting what? "About getting his nomination." And it is the point which I want to emphasize I want to emphasize the fact that in this article we are seeking to get something that will prevent corruption in securing a nomination to office.

Mr. C. B. McLaughlin — Mr. Chairman, will the gentleman per-

mit a question? Is there not upon the statute books of the State to-day something that will accomplish this thing?

Mr. Johnson — Mr. Chairman, I answer that in my judgment there is not. "I decided upon assisting him and did assist him as against Mr. Wood to the extent of five thousand dollars." A corporation in this State, Mr. Chairman, assisting a man to secure a nomination by the contribution of five thousand dollars; "from my own funds." Nobody believed him, and the very language that he used all the way through shows that it was in the interest of the great corporation that he was controlling, or, if it was from his own funds, that he might better be enabled to control not only the Legislature but the corporation. "I gave it to Senator Humphrey to use in securing his nomination in the district. However, we lost the nomination, and after General Wood was elected I asked Senator Chapman, who was a director of the road, to introduce me to him, and he introduced the general, and I told the general all about it. I told him what I had done, and the reason, and the general said he was perfectly satisfied so far as he was concerned. He had always been friendly with us, either at that time or subsequently. He said that a friend of his in New York was about going into business, embarking in business connected with the manufacture of liquors, in which there was to be a large prospect of remuneration. He said he didn't want anything personally, but if I could assist this man he would like to have me do it. I inquired of some other party about the business and he explained it to me. I thought the matter over and I told the general I would lend him ten thousand dollars. I did not want to be identified in the transaction with any of these parties, but would lend it to him as a personal matter. I did so and he still owes me. Q. You stated that this happened during the session? A. I can't state positively; the interview with Chapman is vivid in my recollection. I think it was very soon after that, but I know I felt as though having done so much against him we ought to get even." That is a corporation, Mr. Chairman, paying five thousand dollars to secure the nomination of one man to assist it in the halls of the Legislature, and then ten thousand dollars to get even with it. In these times, sir, when the papers are full of the fact that the great trusts of this country are controlling not alone nominations, but the courts, and the highest body in the United States, the Senate, by the use of money, is it not time, sir, that we should put up the bars wherever we can, and that we should not let an opportunity pass without again putting a barrier between the people and the trust? Sir, do you expect the great sugar trust, the

great whiskey trust, have stopped their operations? Do you doubt, sir, that when they go back to the people to elect representatives in Congress, they will hesitate to put in all the money necessary to secure the nominations or the elections? Do you apprehend, sir, that when the Legislatures in the different States of this country have met for the purpose of electing United States Senators, that the whiskey trust and the sugar trust will stop their operations? If you so expect, you will find yourselves grandly mistaken. I want this to go back, clear back to the source, to the original source, the place where the people speak in the matter. I want it to go to the nominations, because without that it is of no use whatever. If, in a district of five, or ten, or fifteen thousand majority upon the one side or the other, you can say that they may use every corrupt means of securing nominations, and you will punish them if they are corrupt in the election, what does it amount to? It amounts to nothing. Why, sir, there is a district in this State in which it is said that in a single small county thirty thousand dollars was used upon the one side, and twenty to twenty-five upon the other. I tell you it is time to stop these things. It is time that the people in Convention assembled should speak against these great wrongs, these great outrages. Why is it, sir, that when the reports are made to the Secretary of State, we find ten thousand dollars used by single candidates in securing their elections? Has it been honestly used? No; no one suspects it for a moment. No one believes it for a moment. It has been corruptly used, but you cannot reach it. When compelled to make a report in detail, they say, "given to the committee," and that ends it. Let us put in it this provision which says the Legislature shall by general laws provide the manner substantially in which this shall be done. That will be a step. I would go further. I would prevent it entirely, except for some small legitimate purpose, such as is intended in the election laws. I would not allow a man to use a cent in securing a nomination which he could not use in securing an election; and that is one of the objects of this proposed amendment.

Mr. C. B. McLaughlin — Mr. Chairman, will the gentleman permit another question? Is there not a statute of this State which prevents the use of money in conducting elections in towns exceeding 5,000 population?

Mr. Johnson — I think, Mr. Chairman, that there is some provision in the Civil Service Law and there is some regulation as to caucuses.

Mr. McLaughlin — I am referring to the election laws of this State, the Penal Code, the Corrupt Practices Act?

Mr. Johnson — If there is any such law, the courts have failed to enforce it. I want to see it put in the fundamental law. I want to see the Legislature required to make the laws so plain that he who runs may read; and when this great Convention has spoken, when the people, in obedience to its requirements, have spoken and said that such a provision shall be enforced, the people will see to it that it is enforced. I hope, sir, that this proposition will be adopted, and then I hope that other provision which is under general orders, that every man when he comes to take the oath of office, shall say that not only has he not spent any money to secure a vote for his election, but that he has not used any money to secure his nomination to office, will be adopted.

Mr. Chairman, I hope and trust that this proposed amendment will be adopted by this Convention, and that the people will put the brand of their approval upon it; even these men, sir, who to-day are asking their two or five dollars to go to the caucuses or to the elections, and there are many of them; even they will hail some proposition that shall stop the use of money, so that our elections shall mean the free and honest expression of citizens in the nomination and election of their offices.

Mr. C. B. McLaughlin — Mr. Chairman, I did not propose to enter into this discussion. I have no feeling in it further than that I desire to have what articles we propose shaped in such a way that they will reflect credit upon this body. There is no one in this body who deprecates more than I do the use of money in primaries or at elections. But simply because I deprecate the use of money in primaries and elections is no reason why we should incorporate it in the fundamental law of the State, the statutes of the State. Incorporating in the statutes of this State a provision against the use of money will not make men honest, any more than a statute will make them honest. We have now upon the statute books what is known as the Corrupt Practices Act, and we have another statute which prohibits the use of money at primaries; and if there is anything in this proposition of the gentleman who has just taken his seat that is not covered by the statutes of this State, I would like to have it pointed out by him or some other member of this body. If that be true, is there not power already lodged in the Legislature in and by which laws can be made to secure the very identical end which is here proposed?

Now, it seems to me that it is not wise on the part of this body to incorporate in the Constitution of the State what is practically a statute. If we cannot enforce the statute as passed by the Legislature we cannot enforce a constitutional provision. I hope this whole proposition will be rejected. The only thing that surprises me is, that it should come from the Judiciary Committee with the request that it be incorporated in the fundamental law of the State. What can be accomplished to-day by a constitutional provision embodying what is practically upon the statute books of the State to-day? Why talk about primary elections? We have a statute as broad and as strong as it can be made, so that in all towns of this State exceeding a population of 5,000, the use of money is prohibited, and that same power which passed that statute can extend into the smallest hamlet in the State. We have this power in the present Constitution.

Mr. Goeller — Mr. Chairman, I rise to advocate the entire amendment as proposed. If there is anything that ought to go into the Constitution, it is a law made as unchanging as possible in condemnation of wrongs done or possible to be done at the ballot-box, a firm constitutional provision against vote-purchasing or anything that gives life to improper influences or practices upon this head. I have no faith in the stability or efficacy of statutory law upon the subject, by reason of the fact that it may not be enduring. It possibly may not endure until the adjournment of a Legislature, meeting at an early or at a late day, and, therefore, I most heartily advocate incorporating this amendment into the Constitution.

Mr. Mereness — Mr. Chairman, the reading of the proposed amendment and the discussion that has occurred upon it have brought to my mind some inconsistencies bearing upon the question, I think. When the proposition came before the Committee of the Whole that the Legislature should not fix a limit upon the amount of damages to be recovered in case of the loss of human life, the main argument was that the limit should be increased, but that the Legislature of the State of New York was so dishonest and corrupt that it could not be intrusted to increase the limit and that, therefore, the proper thing to do was to put it into the Constituion that no limit should ever be fixed, although it was admitted that there should be a limit. In like manner, when the proposition came before the Committee of the Whole in reference to the use of railroad passes, this Convention by an almost unanimous voice protested with horror against the corporations of this State granting gifts whereby people — no delegates to this Convention, I sup-

pose — but other public officers should be carried around the State of New York for nothing. Everybody agreed that it would be a more fitting place for such a proposition as that in the Penal Code, but they said with the members of the Legislature traveling around the country with whole books of passes in their pockets, it would hardly be expected that a dishonest and corrupt Legislature would ever pass a law against the giving of railroad passes. And now, sir, it seems to me remarkable that a proposition should here be introduced conferring upon the Legislature the power to say how much money may be corruptly used in the purchase of an office. Our theory is that no money should be used to buy offices, and, sir, if anything is to be done on the subject, I should greatly prefer to see in the Constitution of the State: "No money or other valuable thing shall be used by any candidate, either for a nomination or an election to a public office in the State of New York."

Mr. Veeder — Mr. Chairman, if I am not occupying the time of some one else, I desire to say simply this: I adhere to the position I took in the beginning on this matter. You propose to leave to the Legislature the power to declare what uses of money in political conventions and at elections shall be lawful. You have a provision in the Constitution at present, article 12, section 1, which is part of the oath that one has to take when elected to office, in which he swears that he has not directly or indirectly paid, offered, or promised to pay, contribute, or promised to contribute, any money for his election. Now, here you propose that anybody else through the Legislature may have the right to corrupt a nominating convention and a right to corrupt an election; and I submit, sir, that if there is good faith in this proposition, why not make it as section 7 is? That says that no corporation shall directly or indirectly use any money. Why not make section 6 read that no person shall use directly or indirectly any money for the corruption of a nomination or an election, and then we will understand it.

The Chairman put the question on the motion of Mr. Veeder to strike out section 6, and it was determined in the negative.

The Secretary read section 7, as follows:

"Sec. 7. No corporation shall directly or indirectly use any of its money or property for, or in aid of, any political party or organization, or for, or in aid of, any candidate for political office or for nomination for such office, or in any manner use any of its money or property for any political purpose whatever, or for the reimbursement or indemnification of any person for moneys or property so used.

"Every domestic corporation which violates this section shall forfeit its charter, and every foreign corporation which violates this section shall forfeit the right to do business in this State.

"Sec. 8. In all civil actions to determine the forfeiture provided in this and the last preceding sections, and in all criminal prosecutions for violations of laws made to enforce this and the last preceding sections, no person shall be excused from testifying as a witness on the ground that his testimony may tend to criminate himself, but his testimony shall not be used in any criminal proceeding against him, except a prosecution for perjury committed in giving such testimony."

Mr. Holls — Mr. Chairman, I offer the following amendment:

The Secretary read the amendment, as follows:

Amend section 7, by inserting in line 3, page 2, after the word "corporation," the following words, "not organized expressly for political purposes."

Mr. Holls — Mr. Chairman, the purpose of that amendment very briefly stated is this: to except from the operation of that section, corporations such as political clubs which are now under a general law permitted to incorporate and to hold real and personal property. They use their property indirectly, if not directly, and no harm can come to the State or to the cause of honest politics from such use within proper limits.

Mr. Peck — Mr. Chairman, may I ask the gentleman a question? Is that intended for the benefit of Tammany Hall?

Mr. Holls — It is for the benefit of any club which can honestly and properly come under its provisions.

Mr. Tekulsky — Mr. Chairman, I offer the following amendment:

The Secretary read the amendment, as follows:

Add after the end of section 7, the following words: "This section shall not be so construed as to prevent the Republican Club of the city of New York, the Union League Club of said city, or the charitable association known as Tammany Hall, from using their property for any political purpose."

Mr. Root — Mr. Chairman, it seems to me that the language of the amendment offered by the gentleman from Westchester (Mr. Holls) accomplishes the benevolent purpose which the gentleman from New York (Mr. Tekulsky) has in mind, and I hope that that amendment will be adopted, excepting from the operation of this section corporations organized expressly for political purposes.

Mr. A. H. Green — Why, is not money contributed by them just as improperly contributed as any other money? I hope it will not be adopted. I think we ought to do away with the use of money of any description by clubs or corporations, for any purposes.

Mr. McDonough — It seems to me that you kill the whole measure if you adopt this amendment. You could organize a club for the very purpose of corrupting. You could organize a club to buy nominations. This has not only reference to the votes at the polls, but it refers to nominations, and prohibits the use of money in reference to nominations. These clubs would be very easy to organize. I think any three persons may organize a political club. All you have to do is to organize two or three of the leaders, and they may use money right and left for any purpose.

Mr. Root — Mr. Chairman, may I make a little explanation, which I have not yet done, of section 7. The object of section 7 is solely to prevent the application of the funds of corporations engaged in business in this State, to political purposes. It is that and nothing else. So far as individuals are concerned, that can be disposed of otherwise. So far as clubs or individuals associating in clubs for political purposes are concerned, that can be disposed of otherwise. I do not know that there is any greater objection to three men or thirty men getting together and contributing their money for a political purpose than there is to an individual contributing his money to a political purpose. The object of the first section, which is now numbered section 6, is to have declared the purposes for which anybody's money can be applied in politics. There are certain proper, necessary purposes for which money must be used in political campaigns. The object of the first section is to confine all use of money by natural persons and by corporate persons to the specific things which are permitted by the Legislature.

Mr. C. B. McLaughlin — Will the gentleman permit me a question? Under section 6, lines 3 to 7, inclusive, would not the Legislature have power to pass an act authorizing the purchase of an office or the purchase of a nomination?

Mr. Root — Certainly not.

Mr. C. B. McLaughlin — Then, what is the meaning of that section: "The Legislature shall, by general laws, declare the uses which may be lawfully made of money, etc., to permit his nomination or to permit his election?"

Mr. Root — The meaning of it is this, that the Legislature instead of enumerating the uses which they say are unlawful, leaving all others to be lawful, shall enumerate the uses which they say are

lawful, leaving all others to be unlawful. And the Legislature cannot enumerate or make lawful a use of money which is inconsistent with the provisions of this Constitution. In two places in the Constitution we treat the very subject to which the gentleman from Essex refers. Nor is it to be contemplated that the Legislature of this State, under the direction of the Constitution to discriminate between lawful and unlawful uses of money, is ever going to say that it shall be lawful to buy an office. If there were danger of that, that danger has been incurred yearly, during every year since the organization of the government of the State.

Mr. McDonough — Mr. Chairman, may I ask the gentleman a question? It is provided, in line 6, that corporations shall not contribute money for nomination to such office. Now, you say a political organization may contribute money for such purpose, if you adopt this amendment.

Mr. Root — No; I beg your pardon.

Mr. McDonough — You do not prohibit a political corporation.

Mr. Root — No corporation shall directly or indirectly use any of its money for, or aid of, any candidate for political office, or for nomination. It is a candidate or a candidate for nomination.

Mr. McDonough — Then a political organization may contribute money to buy nominations, and do it lawfully under this?

Mr. Root — A political corporation is subject to the limitations of section 6.

President Choate here took the chair.

The President — Will Mr. Root continue his remarks at three o'clock, to which time the Convention takes a recess.

AFTERNOON SESSION.

Monday Afternoon, September 3, 1894.

The Constitutional Convention of the State of New York met at the Capitol, Albany, N. Y., at 3 P. M., pursuant to recess.

President Choate called the Convention to order.

The President — Mr. Lester telegraphs me that he is detained by his wife's severe illness, and asks to be excused until that condition of things shall be removed.

The President put the question on excusing Mr. Lester, as requested, and he was so excused.

The President — Mr. Cookinham desires to be excused until the evening session to-day.

The President put the question on excusing Mr. Cookinham, as requested, and he was so excused.

The President — Are there any other applications before we go into Committee of the Whole?

There being no further matters brought before the Convention, it resolved itself into Committee of the Whole in consideration of general order No. 64, and Mr. McMillan took the chair.

Mr. Goodelle — Mr. Chairman, I beg to offer the following:

The Secretary read the following offered by Mr. Goodelle as a substitute: "Strike out all of sections 6, 7 and 8, and in place thereof insert, 'General laws shall be made to prevent bribery and corrupt practices in aiding or securing nominations or elections of public officers.'"

Mr. Goodelle — Mr. Chairman, I desire to say that I am heartily in favor of the principle which is embodied in the amendment which has been proposed by the Judiciary Committee; for I believe that there is no danger that is threatening the welfare, and even the existence, of our government to-day, that is equal to the corruption that is practiced throughout the whole State — and I say this without respect to party — by the use of corrupt means and practices in procuring nominations and in elections to office. In fact, the qualification and availability seem to depend upon whether or not the person who applies for an office being a candidate, whether he is a man of large means or not. It has become so serious that in very many sections of the State there is no one that has any business, I might say, to seek for office, except he be a man of large means; and ofttimes the better element, the better candidate, the more honest man, is cast aside because he has not the means with which to compete with those of a lower grade who have the means. I say it is one of the greatest dangers that threatens our country to-day, and something should be done by this Convention in the direction of restraining, so far as possible, the corrupt practices which are in vogue throughout this State. I believe, furthermore, that the sentiment of the people is demanding of this Convention that some step be taken in the direction which the proposed amendment suggests, and which is suggested by the proposition which I have handed up. But it is said, and said truly, that this is a matter purely of legislation, and I apprehend that objections will come, as they have come, from the members of this Convention upon that ground; and they are objections which cannot be gainsaid. It is purely legislation,

and nothing else; and whereas there are measures of importance which partake of the character of legislation that we must recognize, it seems to me, as far as this question is concerned, that we need not invade the province of the Legislature in this Convention. It has been said, and well said, by the distinguished gentlemen from New York, that in England the Corrupt Practices Act works well. It does work well, and what is there known as the Corrupt Practices Act is much more stringent than anything that is here proposed; but it must be remembered that in England they have no written Constitution, and all their measures are engrafted in the statute, precisely as I think they should be engrafted by our Legislature and not embodied in the Constitution, in this instance. I have said that the sentiment of the people is in favor of something being done toward restraining the great corruption that is endangering our State and its government to-day. That being the case, the Legislature last winter passed an act called the Corrupt Practices Act, which goes quite far in providing that just such acts as have been referred to here should be hereafter prohibited. I call the attention of the Convention to an act which was passed May 19, 1894, which provides that:

"Any person who directly or indirectly, by himself or through any other person:

"1. Pays, lends, or contributes, or offers or promises to pay, lend or contribute any money or other valuable consideration to, or for, any voter, or to, or for, any other person, to induce such voter to vote or refrain from voting at any election or to induce any voter to vote or refrain from voting at such election for any particular person or persons, or for or against any particular proposition submitted to voters, or to induce such voter to come to the polls or remain away from the polls at such election, or to induce such voter to place or caused to be placed, or refrain from placing or causing to be placed, his name upon a registry of voters, or an account of such voter having voted or refrained from voting, or having voted or refrained from voting for or against any particular person or for or against any proposition submitted to voters, or having come to the polls or remained away from the polls at such election, or having placed or caused to be placed or refrained from placing or causing to be placed his name upon the registry of voters; or,

"2. Gives, offers, or promises any office, place or employment, or promises to procure or endeavor to procure any office, place or employment to or for any voter, or to or for any other person, in order to induce such voter to vote or refrain from voting at any election, or to induce any voter to vote or refrain from voting at

such election, for or against any particular person or persons, or for or against any proposition submitted to voters, or to induce any voter to place, or cause to be placed, or refrain from placing or causing to be placed, his name upon a registry of voters; or,

"3. Gives, offers, or promises any office, place, employment or valuable thing as an inducement for any voter or other person to procure or aid in procuring either a large or a small vote, plurality or majority at any election district, or other political division of the State, for a candidate or candidates to be voted for at an election; or to cause a larger or smaller vote, plurality or majority to be cast or given for any candidate or candidates in one such district or political district or political division than in another; or,

"4. Makes any gift, loan, promise, offer, procurement or agreement as aforesaid to, for or with any person to induce such person to procure or endeavor to procure the election of any person or the vote of any voter at any election; or,

"5. Procures or engages, or promises or endeavors to procure, in consequence of any such gift, loan, offer, promise, procurement or agreement, the election of any person, or the vote of any voter at such election; or,

"6. Advances or pays, or causes to be paid, any money or other valuable thing, to or for the use of any other person with the intent that the same, or any part thereof, shall be used in bribery at any election, or knowingly pays or causes to be paid, any money or other valuable thing to any person in discharge or repayment of any money, wholly or in part, expended in bribery at any election, is guilty of an infamous crime, punishable by imprisonment for not less than three months nor more than one year, and in addition, forfeits any office to which he may have been elected at the election with reference to which such offense was committed, and becomes incapable of holding any public office under the Constitution and laws of this State for a period of five years after such conviction."

It seems, therefore, that the attention of the Legislature, by the portion of the act which I have read, was called directly to this question, although, in fact, that act as passed has no reference to primaries, no reference to nominations, but purely to elections. I think the law in that respect is deficient. But the attention of the Legislature having been called to this question, and the sentiment of the people demanding, as it does, that something of this kind should be done, it seems to me that we can very consistently trust the Legislature to make such laws as shall bring about the desired result.

Now, this proposition which I have suggested in place of the one reported by the Judiciary Committee, seems to cover the entire question without intruding at all upon the duties of the Legislature. I will read it again: "General laws shall be made to prevent bribery and corrupt practices in aiding or securing nominations or elections to public offices." In the first place, my proposed substitute reaches not only the question of bribery, but it reaches the question of corrupt practices, and whatever in the wisdom or in the view of the Legislature shall tend to corrupt our elections.

Mr. Veeder — Mr. Chairman, will the gentleman permit a question? What relief have we if the Legislature refuse or decline to act under that provision of the Constitution?

Mr. Goodelle — I had already said that the Legislature has already acted up to the extent of making the law of which I read a part applicable to elections, but it does not extend to the primaries. Now, this substitute which I have suggested not only reaches the person who is seeking the nomination, but it reaches also the person who aids and abets; and not only persons, but it goes to corporations as well, and whatever any corporation or an individual may do, which the Legislature shall say is corrupt and in the nature of a bribe or otherwise, comes within this provision. And not only that. It also reaches the person who is seeking nomination, who may be called under the proposition one who is securing the nomination. It reaches out and puts a restraining hand upon him as well as upon the one who is aiding, or securing, in his nomination. And not only that, but it does not limit, it does not provide what the punishment for the violation of any act shall be, but it is purely within the province of the Legislature to impose such penalties, to prescribe such punishment, as in their judgment they deem best. If it be a corporation that is violating the act it provides, or may provide, that its charter may be forfeited; and I am also quite sure that there is a provision in the law of last winter which provides that corporations who do the very thing that we do not want to have done here, that their charters shall be forfeited. Therefore, it seems to me, without intruding or entrenching upon the province of the Legislature, it is securing precisely what we are trying to secure here, to put a restraint, and as far as possible a stop, upon the corrupt practices which are being perpetrated throughout the State. And, as I said before, if we can accomplish our desired purpose without entering so much into detail that it shall be said by our constituents, as is already being suggested, that we are intruding upon the province of the Legislature, we certainly ought to avoid that. It seems to

me, Mr. Chairman, that the proposition which I have handed up covers the entire ground, unless we are disposed to take the place of the Legislature and provide the details which, it seems to me, in a case of this character, ought to be left to them.

And another suggestion. It seems to me that when the work of this Convention goes before the people we ought not to put it in such specific form, unless there be a demand for it, as shall array the great corporations of the State against the adoption of our work here, but leave it to the Legislature, under the suggestion of this Convention, to carry out its wishes as they are embodied in the proposed amendment.

Mr. Dickey — Mr. Chairman, an eminent statesman once said: "If you want the people to think you are good, say you are good." No one is going to be any better than I am if I can help it. So I am going to support this original bill but I am not going to be so good as to resurrect dead friends and hold them forth as horrid examples. Nor will I follow the bad example of the gentleman, Chautauqua's representative, and attack the honored leaders of the party of which I am, and of which he should be, proud to be a member. But I am too good to endorse the wicked amendment of the gentleman from Westchester, as, in my opinion, it would nullify and make ineffective the whole proposition to except from its provisions political clubs and let them expend money for nominative and elective purposes.

Mr. McKinstry — Mr. Chairman, I would like to offer an amendment to Mr. Holls's amendment.

Mr. Tekulsky — Mr. Chairman, what has become of my amendment? (Laughter.)

The Secretary read the amendment offered by Mr. McKinstry, in the language following: Omit the words suggested by Mr. Holls, and add to section 7: "This section shall not apply to any corporation organized expressly for political purposes with effect to prevent such corporation from using its property for political meetings or for any other political purpose to the extent made lawful in pursuance of section 6 of this article."

Mr. McKinstry — Mr. Chairman, I think that carries out the idea sought to be expressed by Mr. Holls and removes the unpleasant suspicion that his amendment carried to the Convention, and will be likely to carry to the people, that he desired to permit certain corporations organized for political purposes to do acts which it is unlawful for individuals to do. It seems to me it makes his meaning a little clearer and safer. That is all the object of offering it.

Mr. Tekulsky — Mr. Chairman, I move that we rise and report adversely on this amendment.

The Chairman — The motion is not in order. The question is upon Mr. McKinstry's amendment. The Secretary will please read it again.

The Secretary again read the amendment offered by Mr. McKinstry.

Mr. Holls — Mr. Chairman I would suggest to Mr. McKinstry that it would improve the language by striking out "political meetings" and simply saying, "with effect to prevent such corporation from using its money or property for any political purpose made lawful according to section 6." I think it improves the language.

Mr. McKinstry — I will accept the amendment.

Mr. Holls — If the Secretary will make that correction, I will, with the consent of the committee, withdraw my amendment with pleasure and substitute the one of Mr. McKinstry, because, as he rightly says, he only expresses what I intended to express in my amendment. Nothing was further from my mind than to qualify the effect of this section by any amendment which I offered.

The Secretary read Mr. McKinstry's amendment, with the change proposed by Mr. Holls, in the language following:

"This section shall not apply to any corporation organized expressly for political purposes, with effect to prevent such a corporation from using its property for political purposes to the extent made lawful in pursuance of section 6 of this article."

Mr. Root — Mr. Chairman, I like Mr. McKinstry's better than Mr. Holls's original. I think some such qualification would have to be inserted, otherwise the general language of the section would apply to such corporations as those which published newspapers. The New York Tribune, for instance, is published by a corporation, and it uses its property quite frequently for political purposes. The New York World the same; the Sun the same. I think some such qualification should be inserted. The idea of this section, Mr. Chairman, is to prevent the great moneyed corporations of the country from furnishing the money with which to elect members of the Legislature of this State in order that those members of the Legislature may vote to protect the corporations. It is to prevent the great railroad companies, the great insurance companies, the great telephone companies, the great aggregations of wealth, from using their corporate funds, directly or indirectly, to send members

of the Legislature to these halls in order to vote for their protection and the advancement of their interests as against those of the public. It strikes, Mr. Chairman, at a constantly growing evil in our political affairs, which has, in my judgment, done more to shake the confidence of the plain people of small means of this country in our political institutions than any other practice which has ever obtained since the foundation of our government. And I believe that the time has come when something ought to be done to put a check to the giving of $50,000 or $100,000 by a great corporation toward political purposes, upon the understanding that a debt is created from a political party to it, a debt to be recognized and repaid with the votes of representatives in the Legislature and in Congress, or by the action of administrative or executive officers who have been elected in a measure through the use of the money so contributed.

Mr. Bigelow — Mr. Chairman, will the gentleman allow me to ask a question interpreting this clause?

Mr. Root — Certainly.

Mr. Bigelow — I want to know whether a newspaper corporation under this act would be allowed to use its money or property for, or in aid of, any political party or organization, or any candidate for a public office?

Mr. Root — Mr. Chairman, under the amendment now suggested by Mr. McKinstry, and accepted by the gentleman from Westchester (Mr. Holls), a newspaper corporation would be allowed to use its property and money for the purposes which are lawful under the preceding section, section 6.

Mr. Bigelow — If the Legislature makes it lawful?

Mr. Root — Certainly.

Mr. Bigelow — But not until it does; that would be suspended, I suppose until then?

Mr. Root — Not until made lawful by the Legislature.

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

Mr. Root — Certainly.

Mr. Tekulsky — What becomes of that charitable organization known as the Tammany Society, which is not a political society, under this act? The building known as Tammany Hall is owned by the Tammany Society, which has no connection at all with the Tammany political organization. The political organization rents rooms from the society. Now, under this provision here, you could not use that building.

Mr. Root — Mr. Chairman, this would impose no limitation on the renting of any building owned by that great charitable organization. That is not the use of its property for political purposes.

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

The Chairman — Will the gentleman give way for a question from Mr. Dean?

Mr. Root — Certainly.

Mr. Dean — Do you understand that this provision would prevent John D. Rockefeller or any other head of a private corporation from contributing money?

Mr. Root — Mr. Chairman, I understand that this section 7 itself would not prevent any private individual from contributing his money, but it would prevent that private individual from receiving reimbursement out of the funds of the corporation for the money that he has used; and section 6, operating upon the gentleman who has been mentioned, and upon all other persons, natural and artificial, would prevent their using their money, or anybody's money, for any purpose except the enumerated lawful purposes for which money can be used in political matters.

Mr. Dean — This would not prevent the increase of his salary ten to fifty thousand dollars a week, would it?

Mr. Root — It would be a question of fact always, and that is the utmost we can do in framing laws and in framing constitutions. It would be a question of fact whether the increase of the salary was to reimburse him for money which he had applied to political purposes.

Mr. Hottenroth — Mr. Chairman, who does the gentleman consider would prosecute these corporations and nullify these charters? Would that be done *ipso facto* or would it be necessary to commence proceedings; and if so would not the party in power possessing that office have a strong hold upon the corporation whose charter it was desired to annul?

Mr. Root — Mr. Chairman, it is the intention of this provision to leave all that subject to the Legislature. The Legislature is to enact laws. We require them to enact laws; and as to the prosecution of corporations, that rests where the prosecution of corporations for all violations of corporate franchises now rests. I know of no other way to provide for that. We cannot have two Attorneys-General; we cannot have two sets of courts; we cannot say there shall be one Attorney-General elected by the people, and another

whom the people have refused to elect to prosecute members of the prevailing party.

Mr. Bigelow — Mr. Chairman, will the gentleman permit me one more question? I do not often bother the Convention in that way. Will he be able to tell us what evidence he has that the penalties now for the giving and receiving of bribes to influence elections, which are felonies — what evidence he has that they have ever diminished a particle the amount of corruption at elections and in politics? I make the inquiry because twice or three times to-day the eloquent gentleman has spoken of the peculiar depravity of the present day in politics, which we all admit.

Mr. Root — Mr. Chairman, it is precisely because laws aimed directly at the crime of bribery have been so far ineffective that we deem it advisable to provide limitations short of the actual commission of the crime. I apprehend that many political committees and many candidates for office, if not most political committees and most candidates for office, will refuse to sanction a use of money which is prohibited in so solemn a manner, even though the prohibition be not affixed simply to a crime, and that that limitation being upon matters which are not done in the dark, but which are necessarily open and public to a great extent, would be much more easily enforced than the prohibition against the crime of bribery directly. I apprehend that many corporations, which are now called upon before every election to contribute large sums of money to campaign funds, would find in an absolute prohibition, with the penalty of the forfeiture of their charters a reason why they should not make such contributions. I think it will be a protection to corporations and to candidates against demands upon them, and a protection to the people against the payment of consideration for contributions by them, to the injury of the representation of the people. It is, I repeat, because of the difficulty of proving and punishing the crime of buying votes, that some other measures seem to be desirable.

Mr. Becker — Mr. Chairman, in the war times, a colored man was called upon, by the forces engaged in suppressing rebellion, to navigate a steamboat. He had a pistol pointed at his head in the pilot-house, and with his hand on the wheel the question was asked him: "Do you know where the snags are?" The colored man responded that he did not know, and immediately they were about to shoot him when he said: "Hold on, boss, I know where dose snags ain't, and dat's where I'm goin' to navigate dis yere boat." The whole virtue of this amendment, in my judgment, or most of it,

is concentrated in the first section. Under the laws that have hitherto been enacted in this State, there have been proscriptions made about various matters of expenditure. Statements have been required to be filed by candidates, but it has been left open, so that a candidate could do, as I presume many of the gentlemen who sit in this Convention have done, when they come to make their statement in writing, under oath, as to what they have expended, they say that they paid so much for printing ballots, so much for this, that and the other, which are recognized everywhere as legitimate expenses; and they say, "I contributed so much to the county organization of my party." Now, under this amendment, it will become the duty of the Legislature, and if it do not do its duty, you will hear the people cry very loudly for its performance, to prescribe exactly where the snags are. The Legislature will say such and such expenditures may be made, and those are legitimate; and the legal inference will be that all others are not legitimate. The Legislature will probably say that to print tickets is legitimate, to print posters is legitimate, to circulate information amongst the people is legitimate, and so you can go down through the list of matters and things which we all know are essential to the conduct of political campaigns and the information of the citizens during the conduct of those campaigns; and then it will say that all other things are unauthorized and unlawful. And then when a candidate comes to make his statement, or when a political organization, not incorporated, which a county committee is not, or any one is required to make this statement of what occurred, the language must be so exact and precise as to what was spent that if it is found out afterward that anything else has been spent, the candidate can be ousted from office and prosecuted criminally under the terms of this act. That is what this amendment is designed to do; and in that view of it, while when it was first presented to me it did seem, on looking at it, that it was requiring the Legislature, or permitting the Legislature, to authorize expenditures for political purposes, I became convinced that it was a very proper amendment, and that it should be adopted. Put the burden of responsibility on the shoulders of the Legislature to say what is lawful; make all other things unlawful, and every candidate may know when and where he can spend his money, and how he can spend it, and then when his statement comes in the people can judge whether or not he has complied with and has come within the limitation prescribed by the Legislature. As to this matter of corporations, it seems to me that the suggestions made by Mr. Root answer every objection that could be raised against it.

There must be some requirement that these vast aggregations of selfish interests should not be permitted to furnish money *ad libitum* for the purpose of securing the nomination of a candidate, or his election, either one, without putting them in some position where they can be prosecuted. And right in that connection I want to answer the suggestion made by my very acute friend from Essex this morning. The Legislature has not covered this ground. It has said, to be sure, that bribery at primary elections is unlawful, that is the election of the delegates to a convention; but the Legislature has never said anything about buying a convention after it is in session, and that is often where the mischief is done, and quite as often done as it is in buying the delegates themselves. The first purchase may be all right, but the second bidder gets the man. The Legislature has never made any provision against that; and in New York city, and perhaps elsewhere, there are scandals occurring where thousands, tens of thousands, have been spent ——

Mr. Bowers — Where did you say; in New York city?

Mr. Becker — I said in New York city and elsewhere in this State. It is a matter of common rumor — never has been denied — and has been published in the newspapers in New York city, that it costs a judge of the Supreme Court to be elected as high as twenty to thirty thousand dollars.

Mr. Bowers — The gentleman is talking of something he knows nothing about.

Mr. Becker — I only know what has been said and never contradicted. Those are things that can be reached by these amendments; and what we want to do here by this amendment is to put something in the organic law, and when the people have passed on it and have adopted this amendment, as I believe they will, it will be a very hardy Legislature, a very cheeky Legislature, a very courageous Legislature, that will dare in the face of the voice of the people to cut down the limitations that are imposed upon political corruption.

The Secretary again read the amendment proposed by Mr. McKinstry.

The Chairman put the question on the adoption of the amendment, and it was determined in the affirmative by a standing vote, 50 to 10.

Mr. Meyenborg — There is not a quorum voting. I make the point that there is no quorum present.

The Chairman — The Chair announces that there is a quorum in sight of the Chair.

Mr. Meyenborg — I desire a count by the Secretary.

Mr. Holls — I rise to a point of order. The gentleman has no right of that sort. The Chair has decided, and the only method of appealing is by an appeal from the decision of the Chair.

The Chairman — The point of order is well taken.

Mr. Veeder — It cannot be possible that the Chair decides the point of order where a gentleman says his remedy is by an appeal. It must be a good point of order.

The Chairman — The point of order has been decided. It is not in order.

Mr. Bigelow — As the Chair announced the vote from his place, it was not a quorum. Therefore, the amendment cannot be adopted.

The Chairman — Does the gentleman from New York appeal from the decision of the Chair?

Mr. Meyenborg — There was not a quorum voting, and less than a quorum cannot pass upon anything, even though a quorum be present, under the rules.

The Chairman — The Chair has decided the point of order; he has decided that the gentleman is out of order unless an appeal is taken.

Mr. Meyenborg — I appeal from the decision of the Chair.

The Chairman — It is too late. The question is on the adoption of section 7, as amended.

The Chairman put the question on the adoption of section 7.

Mr. Bigelow — There is no quorum here.

The Chair decided the amendment to be carried.

Mr. Bowers — Mr. Chairman, I have no desire, as I have had none for several days, to interrupt the proceedings of this Convention, whether a quorum be present or not. I believe there is a quorum present now, and I now remake the point of order, on account of the somewhat extraordinary position I understand the Chair has taken, that there is no quorum here. Under the rule, I require that that fact be ascertained.

The Chairman directed a count, and announced as a result that there were ninety delegates present.

The Chairman — The Secretary will read the eighth section.

The Secretary read section 8 in the language following:

"Sec. 8. In all civil actions to determine the forfeiture provided

in this and the last preceding sections, and in all criminal prosecutions for violations of laws made to enforce this and the last preceding sections, no person shall be excused from testifying as a witness on the ground that his testimony may tend to criminate himself, but his testimony shall not be used in any criminal proceeding against him, except a prosecution for perjury committed in giving such testimony."

Mr. Hawley — Mr. Chairman, I was about to propose two verbal amendments in section 8. In line 14, strike out the word "last" and insert the word "two;" and in line 15, strike out the word "last" and insert the word "two;" so that it shall read, "in all civil actions to determine the forfeiture provided in this and the two preceding sections," in each case, instead of "the last preceding sections," which might refer back to something ahead of this article itself. I understand that the suggestion is agreeable to the mover of the bill.

Mr. Root — Mr. Chairman, I think that is a just criticism. I think that the amendment should be adopted.

The Chairman put the question on agreeing to the amendment offered by Mr. Hawley, and it was determined in the affirmative.

Mr. Peck — Mr. Chairman, are amendments generally now in order?

The Chairman — Not until we have concluded section 8.

Mr. Peck — Oh, I thought it was concluded.

The Chairman — If there are no further amendments, amendments generally are in order.

The Secretary read the following amendment offered by Mr. Peck:

Add a new section, section 9: "Actions and proceedings for the purpose of determining such forfeitures declared in this article shall be instituted within one year of the election brought in question."

Mr. Peck — I think, Mr. Chairman, that I agree entirely with Mr. Goodelle on this subject, and I shall certainly vote for his substitute; but for the purpose of perfecting this measure I think we should remove from it as far as possible what seems to me the foundation for a terrible onslaught of blackmail; I do not know how corporations could protect themselves from attacks of that kind. Take this instance; suppose that five years ago a corporation had contributed for election purposes, and within the first section of that act; in the meantime, the directors and the stockholders of that corporation had changed, and yet, without some

limitation on the declaration of forfeiture, that corporation's charter might be forfeited. Now, this is too important a matter in so legislative an article as this, to send to the Legislature, with all these legislative provisions, without the further one that they shall limit, within a reasonable time, the actions for the declaration of forfeiture, and the same also with regard to individuals. It would be a very easy matter to wait until testimony had disappeared, and it would be largely a class of testimony that would rapidly disappear, and then charge a man with having obtained his election within section 6; and it seems to me that it is a very dangerous provision to put in a Constitution that cannot be changed from year to year; and I insist that if it is to be passed, it ought not to be without some limitation upon the time within which these forfeitures can be declared.

Several members requested to have the Secretary read the amendment again, and it was so ordered.

Mr. Countryman — I move to amend the amendment by striking out the words " one year " and inserting " three years."

The Chairman — The amendment is out of order.

The Chairman put the question on agreeing with the amendment of Mr. Peck, and a rising vote was called for.

Mr. Gilbert — What are we voting on, Mr. Chairman?

The Chairman —The Secretary has read it twice.

Mr. Gilbert — I am asking now what are we voting on?

The Chairman — On the amendment offered by the gentleman from Rensselaer, Mr. Peck, fixing the limit of time within which the action must be brought to one year.

A rising vote was then taken on agreeing with the amendment, and it was determined in the negative — 16 to 34.

Mr. Goodelle — I now ask, Mr. Chairman, to have the substitute offered by myself read, and I move its adoption.

Mr. I. S. Johnson — Was there not an amendment offered by Mr. Countryman?

The Chairman — It was not in order. The Secretary will read the substitute offered by Mr. Goodelle.

Mr. Root — Before that substitute is offered and put to a vote, I would ask, has the time for general amendments elapsed?

The Chairman — It has not.

Mr. Root — Mr. McKinstry originally drew his proposed amendment to add in the words " or publishing " so that it read, " any

corporation organized expressly for political or publishing purposes;" and I move to amend by inserting the words "or publishing" after "political" and before "purposes," so that there may be no question but that newspapers may be able to go on with their business.

The Chairman put the question on agreeing with the amendment proposed by Mr. Root, and it was determined in the affirmative.

Mr. Dickey — Mr. Chairman, it is entirely impossible to hear the wording of that amendment. I would suggest, if in order, that they be read from the Secretary's desk each time.

The Chairman — The request comes too late.

Mr. Root — I also move, Mr. Chairman, to strike out the word "expressly," if the Clerk will read it with that word out.

The Secretary read: "This section shall not apply to any corporation organized for political or publishing purposes, with effect to prevent such a corporation from using its property for such purposes to the extent made lawful in pursuance of section 6 of this article."

Mr. Tekulsky — That has already been adopted.

Mr. A. H. Green — A corporation may be constituted for publishing purposes, a publishing business, or anything of that kind. That ought not to be.

The Chairman — There is no question before the committee. Does Mr. Goodelle move his substitute?

Mr. Goodelle — I do.

The Secretary again read the substitute offered by Mr. Goodelle as follows: Strike out all of sections 6, 7 and 8, and in place thereof insert "General laws shall be made to prevent bribery and corrupt practices in aiding or securing nominations or elections to public offices."

Mr. Goodelle — Mr. Chairman, I said all that I desire to say upon this question, when I first submitted this proposition. It seems to me that it is decidedly unwise and unsafe to incorporate in our Constitution the amendment which has been proposed by the Judiciary Committee for submission to the people. I was surprised in going to my home on Saturday evening to meet with the most eminent lawyers we there had, who made me the suggestion, "What you are doing down there is pure legislation and nothing else." I had to frankly admit that in many instances such was the case. As I said before, while I am heartily in sympathy with the purpose of the amendment suggested by the Judiciary Committee,

and will go as far as any one toward accomplishing the purpose intended to be brought about; while I realize the great danger that the State is in with the corruption that is being practiced in all our elections by both political parties, yet I believe, in view of the fact that the Legislature of last winter went as far nearly as it is sought to go by this proposed amendment, that they will readily take the next step, and that is, to make it apply to nominations, and to primaries, and to caucuses as well. I believe, therefore, it is entirely unwise and unsafe to incorporate this in the Constitution, and that the whole purpose will be subserved by passing the substitute which I have offered, leaving it for the Legislature to provide for the details instead of having this Convention do so.

Mr. C. B. McLaughlin — Mr. Chairman, I desire to say one word in addition to what I said this morning on this proposition. I hope this substitute will be adopted. It seems to me very unwise that we should go before the people of the State with any such proposition as that contemplated in the article as reported by the Judiciary Committee. I do not construe that exactly as the chairman of the Judiciary Committee does. It seems to me that the proposed amendment, if it authorizes anything, clearly contemplates that there may be a lawful use made of money with which to secure a nomination or to secure an election.

Now, I do not believe in the use of money, either to secure a nomination or to secure an election. This article, as proposed by the Judiciary Committee, as I stated this morning, if the language means anything, means that money can be used for both purposes. The language used by the Judiciary Committee in its proposed amendment is as follows:

"The Legislature shall, by general law, declare the uses which may be lawfully made of money by any person to promote his nomination as a candidate for office, or to promote his election."

Now, I would like to ask the chairman of the Judiciary Committee if the Legislature of this State should pass a statute permitting a person to give one thousand dollars a vote, if it would not be constitutional under the provision?

Now, while I do not stand here to argue that the Legislature of this State ever would do such a thing, I say that the provisions of the Constitution which he proposes would directly authorize it, if the Legislature saw fit to pass such an act.

Now, I do not believe in it. I believe it would be unwise to pass any such amendment. The substitute that is offered by Mr. Goodelle takes the opposite view, which seems to me to be the one which

should be adopted by this body. That provides that a general law shall be made to prevent, not to authorize, but to prevent bribery and corrupt practices in aiding or securing nominations or elections to public office. That clearly recognizes the principle which should be put into the fundamental law of this State, directing the Legislature to pass laws preventing the very thing which we all agree should be prevented. Now, I think that substitute should be adopted, and I should regret exceedingly to see such an article as that proposed by the Judiciary Committee go into the Constitution of this State.

Mr. Root — I will answer the question of the gentleman, if I may be permitted. The gentleman from Essex asks the question whether, under this constitutional provision, if adopted, it would not be competent for the Legislature of the State to enact a law providing that a candidate for office could pay one thousand dollars a vote for his nomination or for his election. I answer that it would be no more competent for the Legislature to outrage the sense of decency of the public then than it is for them to do so now.

Mr. C. B. McLaughlin — Mr. Chairman, will the gentleman permit a question?

The Chairman — Not at the present moment.

Mr. Bowers — I, too, will answer the question of the gentleman from Essex. If you pass your proposed apportionment bill your Legislature can do just what you propose, with safety. Otherwise, they will never dare to do it.

Now, coming down to the merits of this question, let us see where we stand. The motion of the gentleman from Onondaga (Mr. Goodelle) is to destroy and defeat the proposed amendment because he does not choose to go to the voters, or does not wish to go to the voters of the State upon the question, and I do not wonder at it. We listened to a tale of a sad character given us this morning by Mr. Becker, in the Judiciary Committee, at great length. We were told how nominations were secured in the interior of the State, and it was a tale which frightened us, which led us to see that this amendment was correct. We could scarcely believe the stories, and I should not have referred to them had not Mr. Becker told us of them again this morning in the Convention. So you may charge this measure, if you like, to the stories that thus come to us of the great wrongs that are done in the interior of the State; to the great wrongs that are to be done in the election of the new Supreme Court justices whom we are to have under our judiciary article. It is a very proper protection under all the circum-

stances, and I am exceedingly surprised that any of the gentlemen who may be present, who may have in mind the possibility in the future of becoming a candidate for one of these positions, should not desire the passage of this amendment.

But coming down to what it means, let us see whether it should become a law or not. It is right that the Legislature should specify the use that can be made of money by candidates for political office, or by those who have been placed in nomination, that a man can know just how far he can go and just where he shall stop. There are perfectly legitimate uses to be made of money and those uses should be known and should be permitted. And there are illegitimate uses of money, which have been made for twenty years past in this State, which should be specified as wrong by the Legislature in distinct, plain terms, that we may commence to some extent to break up the system now governing the State in presidential years by which in the rural districts, as we are told, the voters are deprived of the power of depositing their votes upon any of the political principles before them. We desire to protect you, gentlemen, against your own surroundings. And so, being told what can be spent to secure a nomination, we will have no more of these horrid tales; for all men now residents of the rural districts, who take upon themselves the management of political campaigns, will most carefully keep within the letter of the law when once passed.

So much, then, for the first section. Let us have no misunderstanding as to what the resolution offered by the gentleman from Onondaga means. It is intended to nullify this good law. A vote against the proposed amendment means that you are satisfied, at least here, to assist in the maintenance of the practice attempted to be governed by this article. The provision as to corporations is a provision which should have long since been upon the statutes of this State, but which has not been put there. Unquestionably one of the greatest evils of the day is the contributions that are being made by corporations to political parties, and I have no doubt from the tales that we have heard both upon the argument concerning this bill in the Judiciary Committee and elsewhere, way back to the old Erie railway investigations, that such contributions are made to the Republicans when in the ascendency, to the Democrats when in the ascendency, and always for the benefit of the corporation making them, and it is quite right that this Convention should stamp out that character of work just so far as lies within its power. It is true that you may do untold evil. It is perfectly true, as has been suggested to me, that some great corporation like the Erie Railway

might make a contribution of a small amount of money in violation of this section, and all its stockholders, perhaps to the number of a thousand, be deprived of their vested rights in its corporate stock. But the remedy is with the stockholders, to elect honorable and upright men, who read the law and obey the law, and we cannot look to direful consequences as being the result likely to be reached; but if reached, then those who have the power to elect proper men to manage affairs are distinctly and plainly chargeable with the forfeiture of their own rights.

And so is the final section a necessity. If you are to have a law of this sort at all, you must have it passed in some form by which you can procure evidence to obtain convictions, and, therefore, it was this clause which was passed. And when I tell you, gentlemen, that the article as finally presented to you is another of those reports pretty generally, if not unanimously, acceded to by the members of the Judiciary Committee, under the guidance of my esteemed friends, Mr. Becker and Mr. Johnson, I am satisfied that with one voice you will rise and defeat this proposed substitute, and assist the committee in the good work attempted in the introduction of this amendment which had its origin in two proposed constitutional amendments brought before us by Mr. Johnson. I have made these statements with the hope that you will defeat the motion to destroy this bill, and that you will pass it as it was originally proposed.

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

The Chairman — Will the gentleman permit a question by Mr. Barhite?

Mr. Barhite — The gentleman from New York has stated that Mr. Becker, of Erie, has opened his heart and told some very harrowing tales of how nominations are secured in the interior of the State. Will the gentleman from New York be equally frank and open his heart and tell us how nominations are secured in the city of New York? All that we know about it in the interior of the State, is that when some judicial nominee files his statement of his election expenses, we find that they are something like $12,000 or $14,000.

Mr. Choate — Mr. Chairman, I object to the substitute offered by the gentleman from Onondaga (Mr. Goodelle) on the ground that it does not go far enough, and, as I understand it, leaves these corporations which have been referred to untouched. I do not find that the present system (shall I call it the system of protection that prevails?) is touched at all by it.

Now, here is a matter, perhaps, of which we cannot speak from personal knowledge, but from general conviction, and, I think, is a subject that this Convention may well deal with. If the amendment that is offered by the Judiciary Committee is not complete, or if it is too rigid, it can be altered. That is no reason for passing a substitute which really says nothing and does nothing on so important a matter as this. I thought, when I called it the system of protection, perhaps, I would attract the ears of the gentlemen upon both sides of the chamber, for I do not refer to that system of protection in which I believe — the reasonable protection of American industries — but I mean the protection of corporations from legislative action, which there is reason to believe is a very well established system.

Now, it does not consist in contributions to political parties. It does not consist in the payment of money or the use of things of value to promote the nomination or election of anybody on any side, and I am not very familiar with the mode of its operation, but I could guess. I could guess that there are unofficial representatives of both parties who are not candidates themselves and probably never expect to be and never desire to be. They are not members of any committee that I know of, but, nevertheless, they stand for the right, as they understand it, on the respective sides.

Now, what is it that the corporations desire? If you asked the active managers, they would tell you that they desire not to be struck at by the Legislature, they looking upon the Legislature as a great striking machine. If you looked a little further you would find that their real object was to be left alone, and not to permit the passage of the laws which might affect their interests, however much those laws might be demanded for the public good, and they want influence, as it is called upon our side, with the Legislature, or, as it called upon the other side, "in-flú-ence," and they must have it.

Now, what is the machinery? I think that my friends on both sides of the chamber will agree that it is a system common in the conduct of both organisms. There are members of the Legislature to be elected, in respect of which they desire its protection. They have nothing to do with these members of the Legislature. They do not wish to contribute money toward their election, and, probably, they know nothing about them. But they want, if they can get it, protection by a power superior to the Legislature, and that is very desirable, and it does not come within the head of bribery or corrupt practices, as heretofore known. There are legitimate modes of influencing legislative action. We, as lawyers, so

many of us, know that it would be entirely legitimate for a corporation to retain one of the members of our profession to appear before a legislative committee and advocate or resist the passage of a pending measure. But it is not of any such system as that that I am now speaking. If there can be a power superior to the Legislature on one side or the other, or on both, it is worth purchasing by these corporations, and it is quite in the line of their necessities, as they look at it, to purchase that influence upon both sides, so that they will have absolute protection, and it may be that that kind of investment is very often made by them.

Now, how is it practically operated? Why, this external, subsidiary, subterranean representative of the party, if you may call him so, on either side, receives these large contributions from these powerful corporations. Well, nothing unlawful, as we now look at it. No law has ever made it unlawful for such contributions to be made, to offer a voluntary contribution, if you please, to such unofficial representatives of party power.

Well, then, there is nothing unlawful, as now understood, in such unofficial representatives of party power using, not that particular money, but money for the promotion of the election of members of the Legislature, and there are various ways in which that can lawfully be done. I know of nothing unlawful, if a friend of mine is nominated in Cattaraugus or Chautauqua for the Legislature, in my sending him five hundred or a thousand dollars to help him pay his legitimate expenses. Now, it may be that these two unofficial representatives of both parties together may contribute in that manner lawfully to the election, in their combined and aggregate capacities, of every member of the Legislature.

Well, now what is the result of that? There is a subtle, an occult, an undiscoverable, an inexpressible sympathy between the candidate and the contributor. Is there not? It could hardly help being so. If I should send a thousand dollars to a gentleman of my party running for the Legislature in Chautauqua, why, it would be the most natural thing in the world that he would listen favorably to my suggestion in respect to public questions that should come before him for his action.

Well, now, the Legislature meets and this lawful machinery of contribution having been gone through with, have not these unofficial representatives of party power in'fluence, as I call it — in-flú-ence, as my friend, Mr. Bowers, calls it — with these members? May they not exercise it to promote legislation or to prevent legislation, and may it not result at the end of the session that this large investment, so wisely planted by a given corporation with both

of these representatives of political power, may come out unsinged and untouched?

Now, there is the lawful operation of political tactics down to this time. Is it not worth while to try an experiment which no Legislature elected under the present system, if such a system exists, will ever try? Is it not worth while to try an experiment in the Constitution which shall prohibit corporations from devoting their money for such purposes and objects as I have indicated? If it is, then the amendment offered by the gentleman from Onondaga is of no good, because it leaves that all out. Either his amendment must be made much more far-reaching and much more effective, or we must adopt what has been offered for this very obviously righteous purpose by the Judiciary Committee, and I hope, for one, that the amendment offered by Mr. Goodelle will be voted down.

Mr. Dean — Mr. Chairman, the effort to legislate in behalf of morality has made men more subtle, not more just. Being but human, subject to all the failings and mistakes of man, I am not willing to assume the responsibility of taking care of the conscience of the future. We have already made two exceptions in section 7 of this proposed amendment coming from the Judiciary Committee, a committee which ought to have known all the principles underlying fundamental law, and we ought to know, but we do not have anything that is reliable and that will meet the exigencies of the occasion.

Corporations are of a dual character. Matters that are inhibited to the corporation as such may be performed by any member of the corporation without violating this section in the slightest degree, and any expenditures made by an individual may be returned to him in the way of increased salary or special dividends, or any number of methods by which statutory obligations are avoided. In this matter we are aiming entirely at effects and ignoring causes. If we have been, in the State of New York, building up a series of private corporations which menace the integrity of our elective system, it is time that we seriously consider whether we can afford to maintain those corporations in this State. I recognize the fact that these corporations are performing a useful service to the community, that they are absolutely essential to the development of the resources of our common country; but if it has reached a point where it applies to go into the Constitution to inhibit them from contributing money to campaign expenses, watching the public conscience in the legislative bodies of the State, it is time we seriously consider this thing now, to legislate against the cause rather than legislate against the effect.

Mr. Goodelle — Mr. Chairman, I desire to say a single word in addition to what I said before. Our distinguished President characterizes this substitute as meaning nothing. I suppose he means by that that the Legislature would not be or could not be induced to pass laws restricting corporations from influencing or tending to influence elections. I said when on my feet before, that there was a law passed last winter in relation to corporations, which I was at that moment unable to find. I desire to call the attention of the Convention to a law that was passed in 1894 by our Legislature, not referring to this special subject, but bearing closely upon it. It would seem that the Legislature of last year had at least the courage to pass a provision which may be criticised as extremely strict and rigorous against corporations: What I desire is to say, if the Legislature went so far, it seems to me that the fears of the gentleman that the Legislature will not put in force the substitute offered is entirely unfounded. The law passed May 19, 1894, provides:

"Any person or corporation who directly or indirectly:

"1. Uses or threatens to use any force, violence or restraint, or inflicts or threatens to inflict any injury, damage, harm or loss, or in any other manner practices intimidation upon or against any person in order to induce or compel such person to vote or refrain from voting at any election, or to vote or refrain from voting for or against any particular person or persons or for or against any proposition submitted to voters at such elections, or to place or cause to be placed or refrain from placing or causing to be placed his name upon a registry of voters, or on account of such person having voted or refrained from voting at such election, or having voted or refrained from voting for or against any particular person or persons, or for or against any proposition submitted to voters at such election, or having registered or refrained from registering as a voter; or

"2. By abduction, duress, or any forcible or fraudulent device or contrivance whatever impedes, prevents or otherwise interferes with the free exercise of the elective franchise by any voter, or compels, induces or prevails upon any voter to give or refrain from giving his vote for or against any particular person at any election; or

"3. Being an employer pays his employe the salary or wages due in 'pay envelopes' upon which there is written or printed any political motto, device or argument containing threats, express or implied, intended or calculated to influence the political opinions or actions of such employe, or within ninety days of a general election puts or otherwise exhibits in the establishment or place where his

employes are engaged in labor, any hand-bill or any placard containing any threat, notice or information that if any particular ticket or candidate is elected or defeated, work in his establishment will cease, in whole or in part, his establishment be closed up, or the wages of his employes reduced, or other threats, expressed or implied, intended or calculated to influence the political opinions or actions of his employes, is guilty of a misdemeanor, and if a corporation, shall in addition forfeit its charter."

Now, it seems if the Legislature saw fit to pass a law so strict against corporations that if they should put on a pay envelope a political motto which is intended to influence voters, that thereby they forfeit their charter, we should have confidence enough in our Legislature that they will put in force, by the enactment of laws, the proposition which is in the form of this substitute.

Mr. Augustus Frank — Mr. Chairman, I have thought many times since I have sat in this Convention that it is unfortunate it has been constituted in just the manner it has. More than three-fourths of the members of this body belong to one profession — lawyers. I do not wish to say one word against this, as I have no feeling that it is wrong in any way. But certainly with a great State, extending from Chautauqua to Long Island, with thousands of large manufacturing establishments, with men of great wealth, learning and business ability among the manufacturers who carry on the large establishments, many of them employing thousands of men, it is unfortunate we have so few of them here to speak for themselves or for their corporations.

Now, I am not connected personally to any extent with manufacturing interests, but I know they have men of great ability among their number, and we ought, sitting here, as we do, to do them justice and be fair with them in everything that comes before us. As to this amendment, as far as it applies to individuals, we are all of one opinion. I think we all feel that money should not be used improperly for elections or for nominations. I shall vote for the whole amendment as it is, although I think it ought to be carefully examined and made right for those that are to be affected by it.

Section 7 says "no corporation shall, directly or indirectly, use any of the money or property for, or in aid of, any political party," etc. I would like to ask Mr. Root, if he is present, or any member of that committee, what the words "shall directly or indirectly" mean, as used in section 7? Of course, we all understand the meaning of the words as usually applied, but I would like to ask how they are to be applied in this section? If there is no reply, let me

illustrate. A corporation, either a manufacturing company, or a railroad company, or any other, has large numbers of employes. The secretary, or the treasurer, or some other person sends a thousand dollars, or two thousand dollars, or five thousand dollars, according to the magnitude of the business, for what might be decided as political purposes. The gentleman from Rensselaer (Mr. Peck) introduced an amendment to this amendment, that companies might have one year for their protection against unnecessary suits, but it was rejected, and, without any warning, suits could be commenced. By section 7 of this amendment they would have no protection whatever, but immediately upon proof being made that money had been used the charter can be taken from, say, a railway company, the stockholders lose their property, except as possibly courts might relieve them in other ways. Widows, orphans, men in Europe, or men over our entire country lose their property, because some official of their company has used a thousand dollars, or one hundred dollars, or whatever the sum may be, for political purposes, without their knowledge or consent.

Now, this can be remedied in several ways. I leave it with the Judiciary Committee to do it. I do not say what I think should be done, but it seems to me injurious and harsh that we should take these matters up in such manner, with scarcely any one to speak for the manufacturing companies. In this whole Convention of 170 members, not a man, as far as I know, connected with these large railways or manufacturing establishments that we are legislating about, or, rather, are making a Constitution regarding their affairs here from day to day, is in the Convention. We ought, I say, to be just, fair and honorable with all these men and do nothing to injure their property; neither do anything that when our work finally comes before the people for adoption they will see that injustice has been done them, and we be very apt to suffer from their influence being used against us in preventing the adoption of our Constitution.

Mr. Storm — Mr. Chairman, I feel at this time that I will have to speak. The gentleman mentions that there are no manufacturers here, or very few, and he mentions Long Island in particular. Now, I come from the county of Queens, which has sent three delegates, of which two are manufacturers. As far as Long Island is concerned, we are all right. Now, again, I belong to a large corporation, and I have said nothing, for the reason that I have nothing to say. We do not contribute any money for any

such purpose, and for that reason I have been silent. We do not care how stringent you make the laws in that respect. As far as our corporation is concerned, which is a large one, we do not mind. I stated here at the time the woman suffragists had their question up that we sacrificed a hundred voters for one non-voter; in other words, sacrificed a hundred men who left where the question arose and kept one woman who was not a voter. As far as our corporation is concerned, it is an incorporated corporation. I do believe that the corporations are largely misjudged. There may be a few extraordinary corporations that practice these unlawful methods. Now, I simply got up in defense of my own corporation. I trust, if there are any others here that are connected with corporations, they will defend themselves.

Mr. Veeder — Mr. Chairman, in addition to what the Hon. Mr. Frank has said, I would like to call the attention of the Convention to the fact that I believe that these dishonest practices or corrupt practices on the part of the officers of a corporation will bring about the forfeiture of their charters and the effect upon trust companies, and banks, and individuals who own the bonds or stocks of those corporations, or who may have loaned money upon them as collateral security, will be disastrous.

The Chairman then put the question on agreeing to the substitute offered by Mr. Goodelle, and it was determined in the negative.

Mr. Durfee — Mr. Chairman, I do not know but the stage of amendments has passed, but it occurs to me there is one amendment that ought to be made to this proposition. As it stands now, I do not see what possibility there could be from holding that that section would prohibit a municipal corporation from defraying the expenses of an election. The holding of an election must certainly be considered a political act, and the use of money for the holding of an election, or for defraying the expenses of an election, would be a contribution for a political purpose. All the towns and municipal bodies that pay the expenses of holding an election would come within the inhibition of this section as it now stands. I think it ought to be amended by adding a provision that this section shall not apply to municipal corporations.

Mr. O'Brien — Mr. Chairman, as to Mr. Durfee's amendment, it strikes me that an election is a governmental function rather than a political purpose. It seems to me it could hardly be interpreted in that way by any possibility.

Mr. Root — Mr. Chairman, if providing the funds for an election is within the scope of any municipal corporation, and if that is a

political purpose, then that corporation is organized for a political purpose and comes within Mr. McKinstry's amendment. It is not affected by the seventh clause.

Mr. Vedder — Mr. Chairman, I simply want to ask a question of Mr. Root, to see what effect a certain condition might have under this proposition. Section 7, Mr. Chairman, says no corporation shall directly or indirectly use any of its money or property for or in aid of any political party or organization. My attention has been called to this, that in the city of Jamestown there is a corporation that owns some land in the heart of the city, at a very convenient place, upon which the Republicans have built a wigwam, and have used it as such for years, the use of the ground being contributed for that purpose by the directors and every stockholder of the corporation, who are Republicans. Now, would the use of that land, if this proposition should be adopted, for the purpose for which it has heretofore been used, be a violation of this Constitution, so as to void the charter of such corporation?

Mr. Root — Mr. Chairman, I think it would. I think this is one of the slight inconveniences which are inseparable from any general provision aimed at a great evil. I think it would be much better for the directors of that corporation, instead of contributing the use of the corporate property for the cause with which I sympathize so much as I do with that of Republicanism in Jamestown, to contribute out of their own pockets a sufficient sum to hire the ground, and let it to be used as it is now. That would be much better than to leave the law in such a condition that other corporations may make great contributions which have so injurious an effect upon our political life and conduct as the contributions that we all know are being made from year to year now.

Mr. Vedder — Now, Mr. Chairman, on the same question, if then, that corporation should, for the use of this ground for the purpose indicated, demand a compensation, would a mere nominal compensation satisfy the law? If it would, why, then, what avail would this amendment be, if you could ask a mere nominal consideration in such a case as that? Six cents, some one says. I ask that question, as a leading question, whether, if they should ask the consideration of six cents, they would then come within this provision and would satisfy the law by doing that? What do you say to that, Mr. Root?

Mr. Root — Mr. Chairman, I do not know what the rental values of real estate in Jamestown might be. I should think six cents

would be rather insufficient. I should think there should be a substantial rent paid.

Mr. Vedder — Then, Mr. Chairman, as I understand it, in such a case as that, the question could be tried whether or not a sufficient consideration had been asked, and the charter of every corporation put in jeopardy, and it could be left with twelve men to say whether or not enough had been asked as a consideration for the land. So that would be a question, would it not, that would go to a jury, whether or not they had asked enough, and if it were worth twenty-five dollars and they had received only twenty dollars for it, and the jury should say it should be twenty-five dollars, the charter could be taken from them simply because they had not asked what twelve men thought they ought to have asked? Is that the condition in which we are to be put by this amendment?

Now I am in favor of the principle involved if it can be embalmed in words which will prevent questions like those I have suggested from being raised. The question whether the great corporations, which in a great degree have made this State the imperial State of the Union, should forfeit their charters or not, should not be permitted to hinge upon the judgment of a petit jury, as to the value of rent reserved in a lease of property for political purposes. We must get a little closer to principle than does this proposition, and be a little more careful of property and franchise rights.

Mr. Goodelle — Mr. Chairman, may I ask the gentleman a question? In the city from which I come we are in the habit of using the city hall in which to hold our conventions. This section says, no corporation shall, directly or indirectly, use any of its property in aid of any political party.

Mr. Root — What is the question?

The Chairman — There is no question before the House.

Mr. Mereness — It seems to me, Mr. Chairman, this question has been debated long enough, and, therefore, I move that the committee rise and recommend that this proposed amendment be reported.

The Chairman — The motion is not in order.

Mr. Root — Mr. Chairman, I move that the committee do now rise and recommend to the Convention the adoption of the proposed amendment.

The Chairman put the question on the motion of Mr. Root, and it was determined in the affirmative by a rising vote of 59 to 32.

President Choate resumed the chair.

Mr. McMillan — Mr. President, the Committee of the Whole have had under consideration the proposed constitutional amendment (printed No. 443), entitled, "To amend article 2 of the Constitution, by adding a new section relating to the use of money for political purposes," and they have gone through with the same and have instructed the chairman of the committee to report the same to the Convention and recommend its passage.

The President put the question.

Mr. Veeder — Mr. President, I demand the ayes and noes on that.

The call for the ayes and noes was sustained.

The President again put the question on agreeing to the report of the Committee of the Whole, and the Secretary proceeded to call the roll.

Mr. Dean — Mr. President, as I am not willing to prostitute my judgment to popular clamor, I vote no.

Mr. Augustus Frank — Mr. President, this amendment has so much I approve and that I do not want to lose, that I shall vote for it. But I think it very unwise to present such an amendment to the people that will array them against the Constitution, if we succeed in getting it before them. It seems to me that many corporations in the State and manufacturing establishments will be against us, still, for the sake of saving what is good in it, I vote aye, trusting it may yet be amended in a satisfactory manner.

Mr. Goodelle — Mr. President, while in favor of the principle involved in this article, anything which would tend to purify our elections, I still believe that this is so crudely drawn and it is so purely a matter of legislation that it will operate much against the adoption of our work when we go before the people; therefore, I am obliged to vote no upon this proposition.

Mr. Hottenroth — Mr. President, I believe in the general sentiment that pervades this provision and I think that if it can be carried, without the difficulties that Mr. Frank suggests, the possibility of a confiscation of property rights of corporations which might result and the loss that might be entailed to individuals who took no part in the bribery, if that could be consummated I would believe in voting for this proposition. But I think that under those circumstances it would contravene the provisions of the Constitution of the United States, which prevent the taking of property without due process of law and without compensation. I believe that an amendment can be drafted that will meet this difficulty, but I do not consider that the amendment under consideration fully carries out the desire of the committee. I, therefore, vote no.

Mr. C. B. McLaughlin — Mr. President, I desire to be excused from voting. I am in full sympathy with the spirit and sentiment obtaining in this proposition. I believe entirely, however, it is a matter for the Legislature. Under the present Constitution, the Legislature has ample power to deal with the subject by the statutes already upon our statute books. For that reason I withdraw my request to be excused from voting and vote no.

Mr. Mereness — Mr. President, I do not think my vote in the negative on the present proposition needs any excuse, and I, therefore, vote no.

Mr. W. H. Steele — Mr. President, fifteen years ago I should have voted against this proposition as, at that time in my experience, there was but little occasion for the insertion of anything of this kind in the Constitution. But I came to this Convention with the fixed determination that in matters of which I had but little knowledge and in which I thought the committee were much more capable of expressing the opinion of the people of this State than I myself, I would stand by the committee, and believing, from their arguments and confessions, that this committee knows more about the corrupt practices of political parties than the ordinary members of the Convention, I withdraw my excuse and vote aye. (Laughter.)

Mr. T. A. Sullivan — Mr. President, I am heartily in accord with the principles of this amendment. However, one of the greatest dangers that the Constitution which we will submit to the people will have to contend with this fall is that we have gone into matters of legislation. As I believe this to be a matter solely and entirely within the province of the Legislature, I now wish my vote recorded in the negative.

The Secretary then completed the call of the roll, which resulted in the following vote:

Ayes — Messrs. Acker, Baker, Banks, Barhite, Becker, Bowers, Brown, E. R., Cady, Campbell, Chipp, Jr., Church, Clark, G. W., Clark, H. A., Cornwell, Countryman, Danforth, Davenport, Davies, Davis, Dickey, Durfee, Emmet, Floyd, Forbes, Frank, Andrew, Fuller, C. A., Galinger, Gilleran, Goeller, Green, A. H., Hawley, Hill, Holls, Hotchkiss, Johnson, I. Sam, Johnson, J., Kinkel, Kurth, Manley, Mantanye, Marks, Marshall, McDonough, McKinstry, McMillan, Meyenborg, Moore, Morton, Nichols, Nicoll, O'Brien, Osborn, Parker, Pashley, Phipps, Platzek, Powell, Putnam, Roche, Root, Spencer, Steele, W. H., Storm, Sullivan, Tekulsky, Truax, C. H., Tucker, Veeder, Whitmyer, Williams, President — 72.

Noes — Messrs. Bigelow, Brown, E. A., Dean, Goodelle, Hedges,

Hottenroth, Kellogg, Kimmey, Lauterbach, Lewis, C. H., Maybee, McArthur, McCurdy, McLaughlin, C. B., McLaughlin, J. W., Mereness, Parmenter, Peck, Porter, Sullivan, T. A., Tibbetts — 21.

The President — The amendment goes on the order of third reading and to the Committee on Revision.

The Secretary read a notice of a meeting of the Committee on Charities to-morrow, September 4, 1894, at nine o'clock in the morning in Assembly room 5.

The Chairman — The Committee on Rules are requested to meet immediately after adjournment.

The Secretary announced a call for a meeting of the Judiciary Committee immediately on adjournment this afternoon.

The hour of five o'clock having arrived, the President held the Convention in recess until 8 o'clock P. M.

EVENING SESSION.

Monday Evening, September 3, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber at the Capitol, Albany, N. Y., Monday evening, September 3, 1894.

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

The President — Unless there is some special motion to be made the general calendar is in order. This would be an excellent opportunity for anybody having a favorite measure to bring it up.

Mr. Tekulsky — Mr. President, I desire to be excused for to-morrow. I have some very important business to attend to.

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

The President — The Secretary will call the general calendar, and gentlemen will remember the rule that anything called and not moved will lose its place on the calendar and go to the foot.

Mr. Augustus Frank — Mr. President, No. 57 on the calendar, introduced by Mr. Marshall, to amend article 8, section 7, relative to the liability of stockholders of banking corporations, I think will not occupy more than five minutes of the time of the Convention, and if it could be taken up and disposed of, it will be out of the way.

The President — By unanimous consent that can be taken up out of its order.

Mr. C. B. McLaughlin — I object.

The President — It can be taken up out of its order by a vote of the Convention.

Mr. Root — Before that vote is put, may I ask a question as to whether there has been any call of the general orders?

The President — There has been no call. The Chair reminded the House that anything called and not moved will lose its place and go to the foot of the calendar; thereupon Mr. Augustus Frank called up general order No. 57, which he states will not take but a few minutes to dispose of.

Mr. McLaughlin — I object.

Mr. Root — We have established a regular order. I hope, Mr. President, we will take up the next measure which is in order.

The President — The next measure in order is the apportionment article which is a special order for to-morrow morning.

Mr. Root — Mr. President, I am prepared to make a report from the Committee on Rules to the effect that one-half hour is sufficient for general order No. 32, prescribing the period of citizenship as a prerequisite to the right to vote.

Mr. Bowers — Is that the next general order to be called?

Mr. Root — Yes, sir; it has been agreed to unanimously by two committees of seventeen each.

Mr. Veeder — Has the general orders been called? Are we proceeding in order?

The President — We are.

Mr. Veeder — How does the report of the Committee on Rules come in?

The President — The Committee on Rules can report at any time.

Mr. Veeder — I do not see Mr. Roche, the introducer of that amendment, present. Cannot the matter be withheld?

The President — If it is not moved it goes to the foot of the calendar.

Mr. Goodelle — Mr. President, Mr. Roche stated this afternoon that he was not feeling well and he did not wish to have it moved to-day, and I ask that it hold its place on the calendar.

Mr. Root — Mr. President, I hope that will be done. I am interested in that measure and a great many others are interested. I think the time has come where these matters, simple, single matters, should not be postponed. If the gentlemen don't come to the Convention and move their measures, then other gentlemen who are

interested in them should take them up and act upon them. I understand there is no substantial objection to the proposition. The Committee on Suffrage reported unanimously upon it and the Judiciary Committee passed unanimously upon it. There is no difference as to parties and no difference as to views of individuals. I ask, Mr. President, that the question be taken upon the report of the Committee on Rules as to the time limit upon this measure.

Mr. Goodelle — Mr. President, I do not know the need of any such excitement on the part of the chairman of the Judiciary Committee. Out of courtesy to Mr. Roche, who is much interested in this measure, I think its consideration should be postponed. He appeared before the committee on two occasions. It is his measure. He called attention to it this morning and he said he was unwell and did not know as he would be able to go on with the discussion of it. He will doubtless be here in the morning. As the next amendment is to be moved by Mr. Nichols, I think the courtesy should be granted to Mr. Roche and that the same course be taken with this bill as was taken with one this morning.

The President — There is a motion before the House that the report of the Committee on Rules be adopted, allowing thirty minutes' time on this amendment.

The President put the question on the report of the Committee on Rules to limit the time to one-half hour on general order No. 32, and it was determined in the affirmative.

Mr. Bowers — Mr. President, I call for the complete report of the Committee on Rules of all they did this afternoon.

Mr. Acker — Here is Mr. Roche now.

The President — Do you move your amendment, Mr. Roche, as to the period of citizenship as a prerequisite to the right to vote?

Mr. Bowers — Mr. President, I rise to a point of order. I think my request for a report from the Committee on Rules should come ahead of that.

Mr. Root — I am ready to make that report, Mr. President.

The President — In the meantime, will Mr. Roche consider whether he is going to move No. 32.

Mr. Roche — Yes, sir; I move it.

Mr. Root — Mr. President, the Committee on Rules recommend that the debate upon the report of the Committee on Governor and State Officers be limited to one-half hour; that the debate upon the three measures relating to the canals, No. 53, No. 54 and No. 58, be limited to one session; that the debate on the apportionment

article be so limited that the vote thereon be taken on Thursday at three o'clock, unless the debate be sooner concluded.

Mr. Bowers — Mr. President, I move the separation of those three reports.

The President — The question must be taken separately on the three subjects. The first is the amendment reported from the Committee on Governor and State Officers as to change of terms of such officers, for which the Committee on Rules report one-half hour.

The President put the question on the adoption of this part of the report, and it was determined in the affirmative.

The President — The question next will be on the report of the Committee on Rules limiting the time on the canal amendment to one session.

Mr. Nichols — Mr. President, I would like to inquire of the chairman of the Committee on Rules what session that refers to. It is to be observed that we have one session of three hours and two of two hours each. It seems to me that a session of two hours would not be sufficient to fully consider that question. I suggest and move to amend that the session be one of three hours.

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

The President then put the question on the adoption of the recommendation of the Committee on Rules as amended by Mr. Nichols, and it was determined in the affirmative.

The President — Now the question is on the recommendation of the Committee on Rules proposing that the vote shall be taken on the apportionment article on Thursday at 3 P. M., and the time shall be divided equally between the two sides.

Mr. Bowers — Mr. President, I submit a minority report.

The President — Mr. Bowers submits a minority report. The Secretary will read.

The Secretary read the minority report as follows:

The minority of the Committee on Rules recommend that the time for the debate upon the proposed amendment as to apportionment be five days.

Mr. Bowers — Mr. President, I move to substitute the minority report for the majority report, and on that I desire to be heard.

The President — That is, you desire to substitute five days.

Mr. Bowers — Yes, sir. I do not believe that any one in this Convention knows what Thursday, 3 P. M., means. That sets the

time for a vote, but not for debate. We may be taking up other matters to-morrow. It is perfectly well known that we are to finish the debate and take the vote on the educational article to-morrow. Now I do not think that the unreasonable limit of time proposed here is fair or just. I submit that the proposition that I have here is a reasonable one. This amendment which it is proposed now to consider in two days or less is an amendment of the gravest importance of any that has been proposed in this Convention. It is one to affect for good or evil the State for years to come. It is one on which there should be the fullest and freest expression, if we assume that it has not been determined in advance, "predestined or preordained," as my friend would say — the passage of this amendment. We have had four and a half days on the judiciary article and three days on the cities article, and neither of them compare in importance with this article. Each of those articles were considered in their respective committees for months before they were presented to the Convention. This particular measure never was considered in committee. The entire division of the twelve districts in the city of New York came in to the committee at half-past six o'clock and into this Convention at eight o'clock the same day. There was no opportunity afforded in committee to consider this proposed amendment as there was in the case of the cities article and the judiciary article, and we are to come into this Convention and debate it as best we may, without our members on this committee having all the figures and all the maps and all the facts upon which this report was finally made. It seems to me, Mr. President, that the sense of this Convention will be to grant a full and reasonable time for the consideration of this question. There has been no time in this session that the minority has not helped you to proceed with business. We have made no technical objection except upon one occasion when the previous question was, in my judgment, improperly moved. We have helped you all along and all we ask is a reasonable time for debate, and that we ask for now and are entitled to at the hands of the majority of this Convention on the assumption that you are willing to debate this important article. To limit the time so that the vote shall be taken on Thursday afternoon may mean but seven hours on each side. This proposed amendment changes every principle upon which there has been an apportionment in this State for Senators and Assemblymen for almost a century. It changes the proportion of four to one which has existed since 1801, and we should be given some reason for such a change. It makes important rules for the division of Senate and Assembly districts in the future which have never been

heard of in the past. It proceeds to do or rather fails to do what it requires that the Legislature shall in the future do. It is full of errors and full of faults which it may be well for the majority to have pointed out before they press it to final passage, and it seems to me, Mr. President, throwing aside for the moment all considerations of partisanship and bearing in mind that we are here as a deliberate body striving to do justice to the people of the State, that if we are to have an apportionment at all we should have an apportionment that will be satisfactory to all. If we are still here in that position, there should be granted for the consideration of that measure which has not been considered as other measures have in committee, at least two and a half days to the minority to present whatever views they may have on this question. Perhaps we will bring forward sufficient facts to lead the majority to the belief that it ought to be corrected instead of destroying the entire work of the Convention by its passage as reported. I think, sir, that a majority of the delegates in this Convention will join with me in my protest against the Committee on Rules and will give to the minority at least the reasonable opportunity they ask of two days and a half in which to express their views on this proposed amendment.

Mr. Platzek — Mr. President, I read from page three of the debates.

The President — Is it anything personal?

Mr. Platzek — No, sir; very complimentary (reading), "and yet, gentlemen, there are certain great questions which we are to consider, which stare us in face at the very outset of the proceedings and will continue to employ our minds until the day of our final adjournment. There is the great and important question of a reapportionment of the districts of the State. I am innocent enough (that was the first day) to believe that even upon that question, which might naturally agitate and arouse party feeling, this Convention will be courageous and virtuous enough to unite upon an apportionment which shall be at once honest, fair and just to all the districts and all the people of the State."

Mr. Dickey — Mr. President, may I ask the gentleman a question?

The President — Do you give away, Mr. Platzek, to enable Mr. Dickey to ask you a question?

Mr. Platzek — I will give away, Mr. President, anything but my honor.

Mr. Dickey — Do you think the gentleman you are reading from is good authority? (Laughter.)

Mr. Platzek — I was about to state that. Now, Mr. President, I, too, am even at this late day, as verdant upon this great question as you were innocent on the day you gave utterance to these very noble and patriotic sentiments ——

The President — Are you of the same opinion yet?

Mr. Platzek — I am, sir.

The President — I suppose the minority agrees with you? (Laughter.)

Mr. Platzek — I think that the people of this State will not be satisfied unless there is a fair and just apportionment, and in order to avoid the cry of gerrymander, in order to avoid the complaint of the masses, I appeal to this Convention (I mean the majority, because we have been served with notice practically that we are to be respectful and silent lookerson, even with that I am content provided I can discharge my duty conscientiously, even by being quiet), not to allow the vote to be taken upon this question until after mature consideration and proper discussion. I submit that upon this great question the few hours allotted are entirely insufficient. A new principle is brought before the people of the State. Heretofore, as Mr. Bowers has properly stated, the proportion has been four Assemblymen to one Senator. Now we are to have only three Assemblymen to one Senator, and both are to be increased. We are to have 150 Assemblymen and 50 Senators, adding to the taxes of the people, and I believe that we were sent here not to waste the people's money but to save it. I think we should be watchful of the people's interest. We have spent hour after hour and day after day (not we of the minority, but you of the majority), in discussing the questions which were of slight importance compared with this great question which does agitate the public mind and which is calculated to create a good deal of feeling. Therefore, I say that having sat here for three months with the majority, assisting by our attendance to keep up a quorum, assisting with whatever ability we have in the work of the Convention, it is unfair, it is unjust when we are about to adjourn, to force upon the minority a rule that we shall have but a few hours to debate this important question. I say if we must do it, we will. We are here at the mercy of the majority, and if legislation is to be forced upon us and upon the people of the State without time to think about it, then I say, let the majority take the responsibility. All we can do here is to stand up and make an honest appeal to you, a respectful protest, and then we have discharged our duties to ourselves and to the people of the State.

The President — Your time is up. Under the rule only five minutes are allowed.

Mr. Peck — Mr. President, I cannot believe there is any disposition on the part of anybody in this House to treat this question improperly. It is, as has been said, probably the most important question having relation to the ultimate result of our work of any which shall be presented to us. Now I move, as an amendment to the motion to agree to the report of the Committee on Rules, that the report be withdrawn. I would ask that the report be withdrawn and that the Committee on Rules report at the beginning of the afternoon session on Thursday.

The President — The Chair is of the opinion that the committee has no right to withdraw the report. It is before the House.

Mr. Peck — Then I move it be recommitted and that they be instructed to report at three o'clock on Thursday afternoon. At that time the committee will have an opportunity to note the progress of the debate and we can trust them to give us further time if necessary, and then if it is not necessary they will be able to judge of it in such a way as to meet, I have no doubt, the approval of the large majority of this Convention. It seems to me that it is a way out of the trouble which is entirely consistent with the dignity of the House.

The President — The motion to recommit is not a privileged motion. The question is on Mr. Bowers's motion to amend.

Mr. Root — Mr. President, in regard to Mr. Bowers's motion to amend, of course it will be entirely within the powers of the House to extend the time, if it is deemed necessary. Mr. Bowers has suggested that reasons may be offered in the course of the debate to satisfy those who are now in favor of the adoption of this proposed constitutional amendment in the form in which it has come to the committee, that it ought to be altered in some respect. It certainly will be possible in the course of one whole day to make suggestions to that effect, and if in the course of the whole day and nearly a half or a third of another day no such suggestion can be made, it certainly cannot in five days or in a week. The long and short of this matter, Mr. President, is this: that we have determined now whether we will allot time for the debate upon the merits of this measure; and if the gentlemen who choose to call themselves the minority cannot state their objections to this bill in the course of a day and a third of a day or a half, they have no objections which can go to the merits; or whether we can set aside a week or thereabout to enjoy ourselves in a sort of base-ball game of

political declamation. In my opinion we have come to a time in this Convention when we should debate questions on their merits, and every gentleman who has spoken in favor of the amendment has enough of concentration of mind and purpose to state his objection to this bill in the proportionate time which his associates may allot to him.

Mr. Bowers — Will the gentleman permit a question?

Mr. Root — Certainly.

Mr. Bowers — The judiciary report was practically unanimous

Mr. Root — Yes.

Mr. Bowers — And yet after being carefully considered in committee two or three months, it required three days to debate it.

Mr. Root — I will say that the article would have been disposed of in a much shorter time if a limit had been put upon the debate.

Mr. Bowers — We had not yet begun to report time limits.

Mr. Root — We have been reporting time limits and there has been no objection to them.

Mr. Bowers — Why could it not be put ahead with other measures?

Mr. Osborn — Mr. President, a consideration of the merits of this bill and its demerits and the consideration of the report of the Committee on Rules might perhaps occupy the time of Mr. Bowers, but in the attitude taken by Mr. Root we may be led to infer that the majority proposes to sit here and listen to the minority. He has not mentioned the possibility that some suggestion may be made by the minority which may touch some member on that side of the House.

The President — The question is on the amendment of Mr. Bowers that five days be allotted to the consideration of the apportionment article.

Mr. Roche — Mr. President, I move as an amendment that the vote on this question be taken on Friday at three o'clock.

The President — Friday at three o'clock?

Mr. Roche — Yes, sir. It is now proposed to take the vote on Thursday at three, is it not?

The President — Oh, I beg your pardon. You mean a vote on this question, the apportionment article?

Mr. Hotchkiss — Mr. President, a question of information? I would like to inquire when the debate is to begin.

The President — To-morrow morning.

Mr. Hotchkiss — With the morning session?

The President — Yes, sir; the first thing.

Mr. Roche — I believe we are to take a vote on the educational matter to-morrow morning.

The President — Yes, but there is no debate on that?

Mr. Roche — Mr. President, now I think that this matter which is probably the cost important matter that will come before the Convention should receive such time for its consideration, that all members, without regard to political affiliations, will feel that ample justice has been done to them; that the people of the State will feel that both parties were heard, fully heard upon all aspects of this very important proposition. It is proposed here by this amendment to increase the membership of the Legislature and thus add largely to the public expense. It is proposed to apportion the State in such a manner that it is likely that it will remain so apportioned for the election of the Legislature for many years to come. Now, gentlemen who are desirous of having this Constitution adopted by the people (and I must repeat what I have said two or three times before, that I am one of them, but I hope nothing will occur to change my feelings in regard to the matter), should take into account that it is highly important that not only the minority here (and they have been compelled to call themselves the minority; there was nothing else for them to do) should be satisfied that they have been given ample time for the consideration and discussion of this question, and that the great constituency throughout the State whom they represent and for whom they speak are satisfied that you will treat it fairly and impartially; that this important measure has received full and deliberate action at the hands of this Convention; and that they will not be compelled to go to the polls in November with a feeling of hostility, not only to this article, but to the whole Constitution that we will submit as the result of our labors, and with resentment at the manner in which their representatives in this Convention were treated. I submit, therefore, Mr. President, that this amendment which is considered of great importance, and in order that we may go to the people feeling that every party and every interest had ample time for the consideration of its views, that the time of debate will be extended another day and that the vote upon it will not be taken before Friday afternoon.

Mr. Storm — Mr. President, it is just such proceedings as this that waste our time and place us in the predicament in which we find ourselves, short of time. It has often been said that we have in this Convention too many lawyers and there is not enough business

in them. Every one of them are good fellows and I like them all, but we want a little more business. Now, we are to vote upon the proposition that we shall devote three days ——

The President — The question now before the House is the amendment of Mr. Bowers, that five days be the time allotted.

Mr. Storm — Very well. I want to call the attention of the Convention to the fact that we are wasting time. Here we have wasted three-quarters of an hour. One amendment is voted down and another one comes up and consumes more time. I hope the Convention will get down to business principles at last. An hour will be consumed discussing this question of fixing the time of debate. I move the previous question.

Mr. Maybee — Mr. President, the member should bear in mind that this question is somewhat different from any other question that has come before us. While other questions only have a general interest, in which, of course, every delegate has a part, this question has a separate and individual interest for every member of the Convention. The proposed apportionment article divides the State into fifty Senatorial districts and one hundred and fifty Assembly districts and every member of the Convention is a citizen of a particular Senate district and Assembly district. So the apportionment article has a separate and individual interest for every member of the Convention. This being the case it is fair to assume that nearly every member of this Convention will desire to express his views on the merits of this article as to the particular district set off. The debate it seems to me will be participated in by many more members than have participated in any other proposition that has yet come before the Convention. With that in view, it would seem that the time fixed by Mr. Roche's amendment is a fair one.

Mr. William Sullivan — Mr. President, I protest against any unreasonable limit of time being fixed upon this question, one of the most important that is to be passed upon by this Convention and submitted to the people of this State. Sir, more than one-third of the time of this Convention has been wasted and the majority party is responsible for it in discussing subjects that serve no purpose, in my opinion, other than to put the air in motion in this chamber. As a member of the Committee on Legislative Organization I never failed to attend any of its meetings and some of the members upon this floor of the majority of that committee, who are now endeavoring to gag the minority, did not attend those meetings of that committee. A member of the committee (I will

not mention any name), who differs from me in political faith, remarked to me a couple of months ago that the majority of that committee were not acting in good faith. Were they acting in good faith they would have proposed an apportionment two months ago. As it is this amendment was called to our attention on the ninth of August, nearly three months after we first assembled here, and now we are asked to spend but a few days, a few hours comparatively, in the discussion of this important question. Sir, what are the great questions which the people expect to have this Convention put before them? Are not they such questions as become patriots and scholars, as become philosophers (if I may use that term in this presence)? We have been fooling our time away on questions of trifling importance, so that I believe every respectable and honest man in this Convention is ashamed of being a member of it. Mr. President, it is time that the earnest, honest men in this Convention should speak out in no uncertain words and make plain that a Convention composed of mere practicing attorneys and professional politicians never will have the confidence of the people of this State. What are the important questions before this Convention? Why, they are the charitable article, the educational article, the apportionment article, and the canal article. How much of the time of this Convention has been devoted to a discussion of those great questions? I ask the majority members of this Convention. Now, at the eleventh hour those important questions (I will not say unintentionally) have been withheld from this body and the Committee of the Whole ——

The President — Your time has expired.

Mr. Sullivan — Mr. President, I hope the majority members of this Convention will be wiser than they have seemed to be in the past and not limit the time on this question, but that we will have an earnest and honest discussion of the only questions that affect the people at large and not the corrupt and selfish interests. This is not a Convention of log-rolling politicians ——

The President— Mr. Sullivan's time is up.

The Chair recognized Mr. Gilbert.

Mr. Gilbert — Mr. President, I am in favor of giving everybody ample, reasonable time for full and fair discussion of this very important matter. I am in favor of giving such time as that every fair-minded man to whatever party he belongs shall say and say to his constituents, "we have had a fair fight and a fair field for ample discussion and fair conclusions." Now, Mr. President, I want to enter right here, though I am a Republican, an ardent

Republican, I want to enter what I conceive to be a reasonable protest, to what I think seems to be a disposition to cut off debate somewhat. I do not think a half hour is ample time to give to the discussion of the subject of Governor and State officers. But to come down to this proposition, I move to amend Mr. Bowers's proposition by providing that the vote shall be taken on Friday at twelve o'clock.

The President — Mr. Gilbert there is already the motion of Mr. Roche to amend that it be Friday at three o'clock.

Mr. Gilbert — Yes, sir. Will you accept that, Mr. Roche?

Mr. Roche — I will accept it, in so far as I have authority to do so.

Mr. Gilbert — Friday, at twelve o'clock. Now, Mr. President, if we get through the discussion before that time, well and good. I believe the gentlemen upon the floor of this Convention are not disposed to filibuster. I said at the beginning of the session that I proposed to give every man on the floor of this Convention credit for an honest intention to do his duty thoroughly, and I have not withdrawn it yet. I am not willing that the majority of this Convention should propose an apportionment that is not fair and reasonable and found to be so after ample discussion. I do not think that Friday at twelve o'clock is too early an hour upon which to take the vote.

The President — Mr. Roche having accepted Mr. Gilbert's amendment, the question is on Mr. Roche's amendment.

Mr. Gilbert — Mr. President, just one word more which has been suggested to me by Mr. Durfee. We may get through earlier and we can take the vote. But I appeal to the sense of justice of everybody on the floor of this Convention to give ample time for discussion and that the vote be taken on Friday at twelve o'clock, unless the debate is sooner concluded.

Mr. Becker — Mr. President, the amendment that is before this House has contained from the time of its introduction a full statement of the principle involved in the proposed apportionment as made and as hereafter to be regulated. It has been introduced since the ninth day of August. It was more fully discussed in the committee than the gentlemen have stated, but as to that matter I do not consider it dignified or important to enter into any controversy with them. I will say personally, however, that I consider in many ways that the majority are indebted to the minority for very many suggestions concerning it. Now, the question is (this measure having been placed upon the files a week ago to-day, and made a special order for to-morrow), how long a time shall be spent in discussing

it? I am inclined somewhat to agree with the position taken by Mr. Gilbert with reference to it, while I very much like to agree with a report from the Committee on Rules. I have always maintained in reference to this matter that the minority should be consulted, and inasmuch as they seemed to have set their hearts upon taking up as much time as they possibly can, although it may not be required if we grant their demands, it will obviate the necessity of their going into the columns of the public press and without any reference to the merits of the amendment, simply because they have not had all the time granted to them they asked for, say they have been gagged. I am perfectly willing, so far as I am concerned, that they have all the time they have asked for, consistent with the time left at our disposal after the consideration of the other business of this Convention.

Mr. I. S. Johnson — Mr. President, in order to save some time to this Convention, I move the previous question.

The President put the question: Shall the main question now be put? And it was determined in the affirmative.

The President then put the question on the motion of Mr. Roche as amended by Mr. Gilbert, that the vote on the apportionment article be taken at twelve o'clock on Friday, and it was determined in the affirmative by a rising vote of 55 ayes and 42 noes.

The President then put the question on the report of the Committee on Rules as amended, that the vote on the apportionment question be taken on Friday at twelve o'clock, unless the debate be sooner exhausted, and it was determined in the affirmative.

Mr. Bowers — Mr. President, I move that the debate commence to-morrow morning immediately after the vote upon the educational article, and that it continue without interruption and that each side proceed with alternate two hours; that is, one side take two hours and then the other side take two hours.

The President — How about gentlemen who are in doubt?

Mr. Root — That whole subject is covered by the special order already made and by the provisions of rule 56.

The President — As the Chair understands, it has already been ordered that the debate begin to-morrow immediately after the vote is taken on the educational amendment as to which there is to be no debate. It is to continue until Friday until twelve o'clock, the time to be divided equally between those opposed to the report and those in favor of it.

Mr. Veeder — Mr. President, may I inquire whether it is pro-

posed that one side shall commence the debate and exhaust themselves before the other side begins?

The President — I think not. I should think that could be arranged by the chairman of the Committee on Apportionment and Mr. Bowers, or some gentleman representing the other side who is opposed to the proposed apportionment.

Mr. Schumaker — Mr. President, I am on this Committee of Apportionment, but it don't seem really as if I was. I would like to know who is to divide this time? What is to become of the time? I see gentlemen circulating around here who are not on the committee, talking about time, and I would like to know about it.

The President — The Chair would suggest that it be arranged between Mr. Becker, chairman of the Committee on Legislative Organization and Mr. Bowers, representing the opposition to the report, how the time shall be arranged, it being understood that each side have half the time.

Mr. Barhite — Mr. President, I would suggest that a rule be established requiring each gentleman who talks upon this subject to announce at the beginning of his speech upon which side he desires to talk. (Laughter.)

Mr. Root — Mr. President, I move that we go into Committee of the Whole on general order No. 32.

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

The President — Will Mr. Tekulsky be so good as to take the chair?

The Convention resolved itself into Committee of the Whole. Mr. Tekulsky in the chair.

The Chairman — We are now in Committee of the Whole on (O., I. No. 100, P. No. 400) general order No. 32, introduced by Mr. Roche.

The Secretary will read the amendment.

The Secretary read the amendment as follows:

Proposed constitutional amendment to amend section 1 of article 2, prescribing the period of citizenship as a prerequisite to the right to vote.

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

Section 1 of article two of the Constitution is hereby amended as follows:

Section 1. Every male citizen of the age of twenty-one years who shall have been a citizen for sixty 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 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 elective by the people, and upon all questions which may be submitted to the vote of the people; provided, that in time of war no elector in the actual military service of the State, or of the United States, in the army or navy thereof, shall be deprived of his vote by reason of his absence from such election district; and the Legislature shall have power to provide the manner in which and the time and place at which such absent electors may vote, and for the return and canvass of their votes in the election districts in which they respectively reside.

Mr. Roche — Mr. Chairman, in my opinion, one of the important duties resting upon this Convention is to incorporate into the Constitution suitable provisions to elevate the citizenship of the State, to secure the honest expression of the people's will, and the faithful execution of the people's choice through the machinery of elections. It is because the amendment which I have suggested is one step in these directions, that I advocate its passage. A similar proposition was presented in the Convention of 1846, and was supported by so able and representative a Democrat as ex-Governor Bouck. A like proposal was before the Convention of 1867, but it was defeated, though supported by a very large minority, and the ten days' clause was retained in the Constitution.

Now, many things have occurred since that time which make a change desirable, and they are so familiar to all the delegates here that it is not necessary for me to enter into any recital of them. It is sufficient to say that it is the popular belief that our elections are, to a greater or less extent, accompanied by tricks, dishonesty and corruption, practiced by active men in the great political organizations, and that nothing is permitted to stand in the way of success and of the patronage and the advantages that go with it,— a belief that has been amply justified by many occurrences in connection with our elections since 1868. I say, these things have justly alarmed the people, and have set thoughtful men to devising new methods and improving old ones to secure the purity of our elections. We cannot over-estimate the importance, under our form of government, of having the people feel and believe that no man is permitted to vote who is not entitled to do so under the laws of the

State; that every man's vote is cast as it is counted; that the ballot is the unintimidated, unpurchased expression of the voter's will, and, so far as possible, that the ballot represents to some appreciable extent, thought, discrimination and intelligence. Under our present Constitution, ten days' citizenship is a prerequisite to the exercise of the elective franchise. How this has worked in practice and the scandals and abuses that have grown up in connection with it are familiar to all. The work of naturalizing foreign-born persons has been crowded into the few weeks immediately preceding an election. As election day approaches, men naturally become more active in support of their party principles and candidates. From the middle of October the bands are playing, the torch-light processions are moving and from every hall in the State, and from the tail-end of carts in the public streets, orators are declaiming about the superiority of their party principles and candidates and the inferiority and vices of their opponents. Men get worked up to fever heat, and business is almost brought to a standstill. At such time, every effort is made to get out every vote, and the importance of every vote is appreciated by campaign managers. The presidential election of 1884 was carried for the Democratic party by less than one-tenth of one per cent of the total vote in this State. A Governor of Massachusetts, some years ago, was elected by a majority of one. The majorities in our State Legislatures are oftentimes made up of men who have been elected by less than fifty majority.

Now, with these facts thoroughly understood and appreciated, the work of making voters is proceeded with at unceasing speed. Every highway and by-way is sought out, with the hope of finding some one who has not yet assumed the responsibilities or acquired the privileges of American citizenship. These men are hustled into the courts, the fees are paid by the naturalization committees or bureaus of the political parties, the requisite proof is obtained, in a short time they come out full-fledged citizens, and before they have their lungs well filled with the air of citizenship they are ready to vote in determining the most momentous questions.

The work that is done in this manner is a hardship to the courts, it is a fruitful source of perjury, is degrading to our citizenship and belittling to our institutions. It is utterly impossible, in spite of the good intentions of the many worthy men who fill our judicial positions, that it should be otherwise. I find in a recent address of Judge Freedman of the Superior Court before the Judiciary Committee of this Convention the statement that from 1872 to 1893, inclusive, twenty-two years, 90,011 persons were naturalized in that

court alone, or at the rate of upwards of 4,000 a year, and upwards of eleven per day for every day of the year, Sundays and holidays included. Now, the fact is that the most of this work is done in the middle of October in each year. In a recent magazine article I find that out of a total number of 76,537 persons naturalized in one court in twenty years, 55,061 were naturalized in the twenty months of October, leaving 21,476 persons for the remaining two hundred and twenty months. The average for the eleven months each year was ninety-seven per month, while for each October it was 2,753, in that court alone. It has been claimed that in many localities men stand around the corridors of the court-house offering to be witnesses for a small amount, to swear that they have known the applicant to be a resident of the country for five years, and in the words of the statute of the United States, that "he is a man of good moral character; that he is attached to the principles of the Constitution of the United States, and well disposed toward the good order and happiness of the same."

Now, this cannot be characterized otherwise than as a disgraceful and discreditable performance. A few years ago I was counsel in a contested case before the Senate here, and it came out in undisputed proof that the county judge of that county, a rural county to the north of us, did, ten or eleven days prior to the election, without giving any notice whatever of intention to hold such court, transfer his court to a place where it was not customary to hold it, at the request of certain men active in one of the political organzations of that county, for the purpose of admitting persons to citizenship. The matter was done secretly, and in the most informal manner. No opportunity whatever was given for examination or these persons, and the sole purpose of admitting them to citizenship was to make votes and not to make citizens.

It is utterly impossible that in so short a period the work of naturalization should be done in a proper mannar. I believe that the investing of the foreigner with the great privileges of our citizenship should be a solemn function, and just as public as would be the trial of a civil case in the courts. The initiative should come, not from persons who are desirous merely of making voters, and not of making citizens, but from the foreigner himself, actuated by a sincere desire to acquire the rights of citizenship of a free country, and determined to take his share of the responsibilities.

The extension of the time proposed is not in hostility to the foreigner who desires to become an American citizen. On the contrary, I am in favor of facilitating in all ways consistent with publicity, with respect for our laws and the importance of the act itself,

the investiture of foreigners with the mantle of citizenship. I believe that we should aim at the accomplishment of that object rather than seek to make the matter a difficult one. The interests of our country are to be promoted by having all of its inhabitants feel that their first allegiance is to the Constitution of these United States, and the sentiments that the stars and stripes represent. I shall, therefore, strenuously oppose the proposition that was broached here which would prohibit the courts from admitting any person to citizenship for a period of four months prior to an election, as an unnecessary, unwise and illiberal proposition. Under the existing law, a person born in Massachusetts or New Jersey, who has lived there all his life, who perhaps does business in the State of New York, and who, from reading the daily papers, is well acquainted with our public men and our State policies, would, if he moved into this State, be compelled to reside here an entire year before he could cast his ballot. It would not seem, therefore, unreasonable to require that a foreigner should not only reside in the State for the same period, but that he should be a citizen of the country for at least thirty days. The thirty days' clause is intended to remove the work of naturalization from the heat of political campaigns, to make the proceeding more deliberative and orderly, and to give the newly-made citizen a short time, at least, to consider his responsibility and the manner in which he will exercise it. It may be said that the work which is now done ten days before the election would then be done thirty days before; but we have reason for believing that this would not be so; that it would not be characterized by the same haste, and would not be accompanied by the same objectionable elements, certainly not to the extent which now prevails. I am opposed to making the requirement sixty days, because it is unnecessary to secure the object sought, and for the further reason that the courts in our large cities are practically closed during the months of July and August. The effect would be to obstruct foreigners, no matter how well disposed, or how intelligent, from being naturalized. It would be adding to the five years' residence which the United States statutes now require practically another year before the person could exercise the franchise. This is not fair, and is not demanded by public opinion or necessity. We may improve our methods of naturalization. We have already adopted strict registration laws. It is not necessary that we should go further and unduly suspend the exercise of the elective franchise by the well-intentioned foreigner who has become an American citizen. Upon this subject it would be well for the Convention to consider

the report which was made by Horace Greeley and his associates in the Convention of 1867. That report contained these words:

"Our present Constitution requires that naturalization should precede voting by at least ten days; a memorial referred to us asks that this interval be extended to sixty days. We have fixed on thirty days as the proper time. We should stop the hunting out and dragging up before courts of indifferent and often reluctant immigrants in order to crowd them into citizenship, in order to affect by their votes the result of a pending election. This is the object of the pending requirement of ten days' interval, and it will be far more completely accomplished by extending the prescribed term to thirty days. It is well, moreover, that the terms of citizenship and residence in the election districts should be identical so as to avoid complexity and possible misapprehension. Should we extend the interval between naturalization and voting to sixty days, the change would be inveighed against as impelled by a spirit of hostility to adopted citizens, or by a desire to impede naturalization. We trust the Convention will assent to our proposition."

It seems to me, Mr. Chairman, that these words are as applicable to the condition of affairs now as they were then, and that with the improved methods that we have of registration, all that is necessary to accomplish in this respect can be fully managed by making this requirement thirty days instead of sixty; and in that event there will be an absence of any spirit of hostility which it would otherwise be thought to bear against our adopted citizens, or those desiring to become American citizens. Let us keep the work of making citizens as far removed as possible from the heat and excitement and differences of great political campaigns. This thirty-day requirement, I believe, will fully accomplish that result. It seems to me that no more is demanded and that no more should be required.

Mr. Storm — Mr. Chairman, I understood in the outset that half an hour would be allowed for this debate.

I, for one, Mr. Chairman, am opposed to altering this original amendment as it comes from the report. I understood in the beginning that every one was in favor of voting for the amendment as it stood, and I presume that it is so judging from the attention the Convention paid to the remarks that Mr. Roche has made. I trust that the amendment of thirty days will not prevail, and I have come to that conclusion from the very remarks that Mr. Roche makes in favor of it. There is no good reason why anybody should wait until the last moment to become naturalized. He has got a whole year to do it in, and those citizens that wait until the

last moment are not desirable at any rate. I do not wish to take up all the time there is left, and I am opposed to this amendment.

Mr. Porter — Mr. Chairman, I offer an amendment to the amendment.

The Secretary read the amendment, as follows:

Amend by striking out the word "thirty," in line 6, on page 1, and substitute the word "sixty."

Mr. Holls — Mr. Chairman, I rise to a point of order. It is thirty days in the election district. This is another thirty.

Mr. Root — Mr. Chairman, I rise to a point of order, that the amendment offered by Mr. Porter is not to the same subject matter as the amendment of Mr. Roche, which is now under consideration, and, therefore, cannot be entertained.

The Chairman — The point of order is well taken.

Mr. Goodelle — Mr. Chairman, I am opposed to the amendment proposed by Mr. Roche. This matter is before the Committee on Suffrage, with perhaps half a dozen other propositions, ranging anywhere from thirty days to six months; I think one bill is nine months; and after a very careful consideration, and harmonizing the opinions of all parties, and even the gentleman himself, who appeared before the committee and proposed the amendment ——

Mr. Roche — Mr. Chairman, I wish to state that I never appeared before the committee.

Mr. Goodelle — I stand corrected, Mr. Chairman; but I think it is fair to state that the gentleman who has spoken and opposed this amendment declared that sixty days would be entirely satisfactory to him, and the bill was so amended; that is, the propositions which were proposed before the Suffrage Committee were united in the amendment of Mr. Roche, with a sixty days' provision thereunder. I may say the Committee on Suffrage reported this measure unanimously, and I understand, furthermore, that the same question was before the Judiciary Committee, and they agreed upon a time similar to the one mentioned here; I think that to be exactly correct they had agreed upon four months, but that I appeared before that committee as the chairman of the Committee on Suffrage and reported to that committee what we had done, and asked them, in case they saw fit, to report that they would make their report correspond to that of the Suffrage Committee, and not have two reports upon this question. They were in favor of four months. Now, after this amendment was accepted and agreed to by the Committee on Suffrage, as I said,

who were a unit on this question, then was proposed and disposed of No. 34, which was on the basis of this amendment, which requires that registration shall be completed four weeks before the election. Now, if this amendment should be changed, it would require the change of No. 34, that of Mr. Nichols, for registration, which will follow upon this. I have not seen or heard any reason suggested why the unanimous report of this committee, supported by the Judiciary Committee, should not be accepted. The question of the merits of extending the time has been well argued by Mr. Roche, and I do not propose to enter into a discussion of that question; but all of the reasons that can be urged, it seems to me, indicate that it should be sixty days before election. I would say, further, that if the views of the majority of the Suffrage Committee had been carried out, it would have been four months instead of sixty days; but out of deference to the difference of opinion in the committee, we all agreed upon this proposition, and so reported it to the Convention.

I hope this amendment will not prevail, but that the proposition as reported will prevail.

Mr. Lauterbach — Mr. Chairman, it seems hardly necessary for me to take the floor after the statement of our chairman. There seemed to be a general concession throughout the Convention, and certainly a unanimous opinion in the Committee on Suffrage, that there was no hardship in fixing a time that should elapse between the time citizenship should be conferred upon the foreigner and the time when citizenship should be given the privilege of actual voting. Every one conceded that the former limit of ten days was ridiculously short. A number of amendments were introduced. I had, on the twenty-third of May, introduced a proposition that the citizenship should extend to a period of three months before the right to vote should be availed of. Mr. Roche subsequently, and on the twenty-ninth, introduced a proposition in which he fixed sixty days as the time.

Mr. Roche — Mr. Chairman, my original proposition was thirty days.

Mr. Lauterbach — I think you will find it in the amendment sixty days, unless it was amended in the committee.

Mr. Roche — It was changed by the committee.

Mr. Lauterbach — As has been suggested, the matter of registration and other matters connected with the suffrage were made dependent upon the time fixed by general assent before the committee at sixty days. A derangement of that arrangement will

result in confusion throughout the whole method in the result intended to be accomplished by the amendment of the suffrage clause, and under all the circumstances there is nothing to be added in the way of argument for the prolongation of the period. Under all the circumstances, no one will say that a minimum of time to elapse between the interval when naturalization shall have resulted in citizenship, which requires a period of five years, and the period when the right of voting shall supervene, is too long if it is sixty days. The general opinion throughout the State, if taken, would probably result in the determination that a year would be little enough in which to determine the precise status of the man who had emerged from the condition of applying for citizenship into that of becoming a full-fledged citizen before he could vote at all. But surely the minimum has been fixed at sixty days, and an effort again to reduce it ought not to meet with success.

The Chairman put the question on Mr. Roche's amendment to substitute "thirty" for "sixty" in line 4, and it was determined in the negative.

Mr. Goodelle — Mr. Chairman, I move that the committee do now rise and report the proposition favorably to the Convention and recommend its adoption.

The Chairman put the question on Mr. Goodelle's motion, and it was determined in the affirmative. Whereupon the committee arose and Mr. Choate resumed the chair.

Mr. Tekulsky — Mr. President, the Committee of the Whole have had under consideration proposed constitutional amendment (printed No. 400), entitled to amend section 1, article 2, prescribing the period of citizenship as a prerequisite to the right to vote; 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.

The President — The amendment is put upon the order of third reading, and goes to the Committee on Revision and will be printed. The Secretary will proceed with the call of the calendar.

The Secretary called general order No. 34 (printed No. 42, introductory No. 353), introduced by Mr. Nichols, relating to the registration of voters.

Mr. Nichols — Mr. President, I move that we go into Committee of the Whole on general order No. 34.

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

The Chair — The amendment to be considered in Committee of the Whole is general order No. 34, introduced by Mr. Nichols. The Secretary will read the amendment.

Mr. Goodelle — Mr. Chairman, may I ask how time is allotted for this matter?

The Chairman — There is no limited time, as I understand it. I know of none.

The Secretary read the proposed amendment as follows:

Proposed constitutional amendment to amend section 4 of article 2 of the Constitution, relating to registration of voters.

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

Section 4 of article 2 of the Constitution is hereby amended so as to read as follows:

" Sec. 4. Laws shall be made for ascertaining, by proper proofs, the citizens who shall be entitled to the right of suffrage hereby established, and for the registration of voters, which registration shall be completed at least four weeks before election. In cities and in villages having 5,000 inhabitants, or more, according to the last preceding State enumeration of inhabitants, no voter shall be registered except upon personal application; but personal registration shall not be required at the first meeting of the inspectors of election for the registry of voters, except in such cities and villages."

Mr. Veeder — Mr. Chairman, for the purpose of discussion, I move to strike out all of the new matter in this section, the matter in italics, commencing at the word " established " in line 5, to strike out all the new matter.

Mr. Nichols — Mr. Chairman, I suppose that one of the duties of this Convention is not only to confer power upon the Legislature, but also to limit the exercise of that power. Within that proposition, this proposed amendment very naturally falls; it confers a power upon the Legislature, and in the same manner limits the exercise of that power.

It will be observed that the first proposition confers upon the Legislature the power to enact laws regarding the registration of voters, and limits the time previous to election within which

that registration must be complete. The next clause relates to the cities and villages of the State, requiring that personal registration within such villages and cities as may have 5,000 inhabitants and upward shall be personal. The last clause of the act provides that, in cities and villages of less than 5,000 inhabitants, personal registration shall not be required. We have, then, a requirement of personal registration, the designation of the cities and villages in which it shall be required, and the limitation that as to the rural districts there shall never be, no matter what the change is or the conditions may be, a requirement that citizens shall appear personally before boards of registration on the first day of registration in order to be recognized on the day of election.

I do not propose, Mr. Chairman, to delay this committee in the consideration of questions touching the propriety of a personal registration in the great centers of population of the State. Many years ago the propriety and necessity of personal registration were established. In the Convention of 1867, day after day was spent in consideration of the proposition, resulting in a declaration by a proposed amendment, that thereafter and for all time the registration of voters in the State of New York should be required. Since that time the people have grown to the firm conviction that a mere registration was not sufficient to meet the demand for purer elections and to thwart the purposes of designing politicians, and we have, therefore, upon our statute books, regulations requiring the personal registration of all voters in the cities of this State.

I do not intend, Mr. Chairman, to address myself particularly to the first sections of this measure. Though it is credited to me, I had the honor of presenting in this Convention the latter clause and in reference to that I desire to engage the committee's attention.

It does not seem to me to be the province of the Constitutional Convention, or of the Legislature of the State, to impose upon its citizens unnecessary burdens, and here I draw the line between the cities and rural districts of the State. The people of the country districts believe in the purity of elections. The people of the country districts have ever contributed by their voices and their votes and their efforts to the protection of the ballot-box and its purity in all its branches. No gentleman on this floor will be heard to assert the contrary. No gentleman on this floor, I believe, will be heard to say that in the rural districts of this State there has ever been a systematic corruption of voters at the polls. No one will be heard to say that in the rural districts of the State the ballot-boxes have been stuffed. No person will be heard to say that in the rural dis-

tricts of the State there has been repeating on the part of the electors. Now, if that be so, will you tell me why, under any circumstances, it is necessary to put upon the people of the rural districts the burden of a personal registration? I affirm, sir, that this principle, as applied to the rural districts, is unnecessary, and must become burdensome. Why unnecessary? It is a current fact that every man in every country village and town knows his neighbor. He knows his voice, his name, his age, his family, his religious association, his political affiliation. If a stranger comes into their midst, he is at once recognized, and when the registration lists are made, our committees go through them and select here and there names that are strangers to them; perhaps there may be ten or twelve in a town containing three or four thousand people. A simple inquiry follows, and you are in a situation to purge that list if necessary, and you invariably find upon inquiry that it is a mere error in the entry of the name. I have never known of an instance in any of the central portions of the State where the question of registration was taken advantage of by either party, or under any circumstances, for the purpose of debauching the ballot-box. I affirm, therefore, that personal registration is unnecessary in country districts. I say that to require personal registration would be burdensome. And why? I took occasion the other day to go among the members of this body and inquire of them casually what the effect of the requirement of personal registration in their immediate neighborhood would be, and I learned some very startling facts. I desire you gentlemen who reside in cities, and who do not appreciate the immediate surroundings of country voters, to take these facts into consideration. In Delaware county, I am told, that personal registration would require citizens of that county to travel at least fifteen miles to register their names; in Oswego county, from seven to ten miles; in Hamilton county, seven to eight miles; in St. Lawrence county, twenty-five miles; in Allegany county, seven miles; in Cattaraugus county, ten miles; in Chautauqua county, twelve miles; in Wyoming county, seven miles; in Chenango county, six to seven miles; in Jefferson county, ten to twelve miles; in Franklin county, eight to twelve miles; in Herkimer county, forty miles; in Livingston county, five miles; in Saratoga county, seven miles; in Madison county, five miles; in Steuben county, eight miles, and in Suffolk county, fifteen to sixteen miles.

I appeal to the gentlemen on this floor who live in country districts to verify what I say in reference to that question, as applied to their own individual cases. Now, it can be said that no matter what the wishes of a party may be, unless you find an absolute

necessity to protect and purify the ballot, unless that be necessary, that under any circumstances a Legislature would not be justified in imposing upon the people of the State residing in the rural districts, the trouble, expense, the great burden amounting almost to disfranchisement, of requiring those people to go in person to obtain a registration. I say, sir, that it would be a crying wrong, a wrong that the people of the State would answer at the proper time, but a wrong under which they must suffer until redress shall come.

But, Mr. Chairman, it is asserted, and there may be gentlemen upon this floor who think that no political party would ever have the hardihood to enter upon so unjust a course as to seek to force that condition upon our people. But, if you will recollect, this proposition took shape in an effort to make it a legislative enactment in 1892. A bill to that effect was introduced into the Assembly. There were that year sixty-seven Democrats and sixty-one Republicans upon the roll. Upon the vote, forty-nine Democrats voted in favor of personal registration for the country and sixty-one Republicans voted against it. It came up again the next year under what is known as the Remsen bill. That year there were in the Assembly seventy-four Democrats and fifty-four Republicans. The bill passed the House, seventy-three Democrats voting in favor of the measure, all but one of that body, and fifty-two Republicans voting against it, all but two. It went to the Senate, and only by the act of Providence was its enactment prevented. One of the Senators was sick, and so close was the vote that by reason of that fact the measure failed of enactment.

I appeal to you who are personally interested in this proposition, irrespective of the question of party relations. Are you content to leave this matter to legislation, to remit to a body resting under a danger solely and purely partisan, having for its sole purpose the advancement of party irrespective of the rights of the people? Are you willing to give them the opportunity to fasten upon the voters of this State a hardship so great and an expense so burdensome, a condition so unnecessary and so humiliating? Gentlemen of the Convention, I do not believe you are ready to pass or permit the passage of a proposition of that sort. But, gentlemen, on the other side will urge that there should be uniformity in the matter of registration. The Convention of 1867 debated that proposition, and gentlemen now on the floor of this Convention took active part in that argument.

It was there urged that if you have registration of one kind for cities, you should have it alike for the country. But I ask you, are

the conditions the same? Is there not a mighty divergence between the conditions you find in the cities and those you find in the country? You gentlemen who live in the cities spend a few moments in walking to your voting place to register your names, or you get into a carriage, or take other means of conveyance, and the work is done. Has there ever been a time when twenty-four hours was necessary for you to register, or five hours or even less? And if this proposition does not prevail, and the Democratic party or any other political organization shall conceive the idea and have the hardihood to give it force and effect, the time may come when the people of the rural districts will be compelled to submit to a burden unnecessary, most expensive and destructive of their rights.

Now, Mr. Chairman, I hope that this proposition may receive favor at the hands of this body. It is a protective measure. It does not injure my Democratic friends. It does not injure the Republican party. It is not a question of party issues. It is a mere question of protection of the rights of citizenship. It may be urged that it is legislation; but will you tell me who shall draw the line of demarcation between constitutional enactment and legislative provision? It seems to me that every proposition furnishes its own rules, and that it cannot be said that this or that proposition should be condemned, simply because the Legislature of the State has the power to enact it.

Therefore, Mr. Chairman, without detaining this committee at greater length, I beg to submit the proposition which I urge here, and that is that this Constitutional Convention shall stretch out its hand and exercise its power to prevent the people of the State being put to unnecessary expense, trouble and burden, to exercise their sacred right of franchise.

Mr. Veeder — Mr. Chairman, I did not hear the gentleman in discussing this proposition refer at all to the other matter contained in this proposed amendment. He has told you about the difficulty of people in the country getting to the polls where the election is to be held, for the purpose of registration, but he has not at all enlightened us on the subject of requiring the voter to be registered four weeks before the election. I cannot understand the necessity for a single line of this proposed amendment. Ample power is conferred upon the Legislature by the present provision of the Constitution, which is the subject of this article down to where the words in italics begin. The law to-day upon the statute books is precisely as this constitutional amendment is.

I understood the gentleman to say that corruption at elections in the country did not exist, that no one knew of it. I am

sorry to say that my experience in the country warrants me in saying that there is more corruption to the square inch in the country than was ever heard of in the city. It is a common occurrence in the country for the leaders of the organization to stand under a shed with money in their hands to buy the voters, and any man who is familiar with country elections knows about it. Nothing of that kind is ever seen in the city. These gentlemen consider it a hardship to go and register, and give the people an opportunity to know if the election is an honest one or not. Does any one suppose that if the law for personal registration had been in existence and been applicable to the town of Gravesend last year that that horrible disgrace would have occurred? Not at all.

Mr. Nichols — Mr. Chairman, may I ask the gentleman a question? I would like to ask if he thinks personal registration would have prevented corruption at the polls in Gravesend in 1892?

Mr. Veeder — Decidedly, I do. I am sure of it. But I do not see any reason why registration should occur four weeks before election. There are many instances in the city where people give up their apartments in the spring and do not return until fall. That class of people would be disfranchised by this proposition.

Mr. Barhite — Mr. Chairman, I offer an amendment.

The Secretary read the amendment as follows:

Strike out the words "four weeks," in line 6, and insert in place thereof the words "fourteen days."

Mr. Bowers — Is the gentleman willing to make that eight days?

Mr. Barhite — Hardly, Mr. Chairman. I am in favor of this proposed amendment as a whole, but I can see no reason why the time at which the registration must be completed should be placed at four weeks before election. There is no question that there should be sufficient time to allow those electors who may desire it an opportunity to look over the registration list, and to apply to courts for any relief which they may seek. But it does seem to me that fourteen days would be sufficient time to accomplish that object. Under the present Constitution, and under the proposed amendment as it has been passed upon favorably, a residence of only thirty days before election in any election district is required. If this provision of four weeks is allowed to stand, there might be only two days in which a man could register after he had moved into any one election district, and that certainly would work a hardship; for instance, in case of farmers who are obliged to go a

number of miles to register. With that exception, Mr. Chairman, I think the proposed amendment is a good one.

Mr. J. Johnson — Mr. Chairman, I think the provision that the books shall close, of those who are to vote at an election, four weeks before the election, would be a prodigious mistake if it were adopted. Our purpose is, to get the fullest and fairest expression from the great body of electors. The experience we have in Brooklyn is this, and it is an experience to which, so far as I know, there are no exceptions, that there is a large body of citizens, a very large body of thoughtful voters that will not come out and register until the issue is made up and they know who the candidates are. It is only after the nominations are made, after the active work of the campaign is begun, after the public meetings have been held, after the volunteers in the wards and the districts who take charge of this business have commenced their labors, and feel the actual pressure and stimulus of the candidates, that the best work of getting out voters is complete. I think, sir, that four weeks would be a very grave mistake. I think ten days is better than fourteen. I think better than all to leave it to the Ligeslature where it has been left, and with perfect safety and without any cause of complaint since the registration law was enacted. We should not legislate except when the Legislature has failed, and they have made no failure in this regard. The election laws are full and complete. I stand for Mr. Barhite's amendment as against the four weeks, and if another amendment is made, striking out the time limitation altogether from the Constitution, I should vote for that.

Mr. Putnam — Mr. Chairman, I offer an amendment.

Mr. Barhite — Mr. Chairman, if I may be permitted, I will modify my amendment by inserting "ten" in the place of "fourteen."

The Chairman — If there is no objection, it will be so modified.

Mr. Barhite — That is the law as it stands at the present time.

Mr. Roche — Mr. Chairman, I have a substitute.

The Chairman — Substitutes are not in order until amendments have been disposed of.

Mr. Roche — May it be read so that it may be considered in connection with the amendment?

The Chairman — It may be so read.

The Secretary read the substitute of Mr. Roche as follows:

"Sec. 4. Laws shall be made for the registration of voters and for ascertaining by proper proof, the citizens who shall be entitled to the right of suffrage hereby established."

Mr. Nichols — Mr. Chairman, I have one word to say in regard to the amendment of the gentleman from Monroe. So far, I think, as the country districts are concerned, it is a matter of very little moment whether the time intervening between the close of registration and election day be ten, or fifteen or twenty days. I am entirely content with that proposition if it meets with the approval of gentlemen representing the cities in the Convention.

Mr. Putnam — Mr. Chairman, I ask that my amendment be read.

The Secretary read the amendment as follows:

Strike out all after the word "voters," in line 5, and all of line 6, to and including the word "election."

The Chairman — The amendment is not now in order. Mr. Barhite's amendment is now in order, unless Mr. Barhite accepts the amendment of Mr. Putnam.

Mr. Barhite — I hardly think I would be willing to accept that amendment, Mr. Chairman.

Mr. Kellogg — Is another amendment in order?

The Chairman — Yes.

Mr. Kellogg — I move to amend by making it fourteen days.

Mr. Veeder — Mr. Chairman, is not Mr. Roche's amendment now in order?

The Chairman — Amendments are still in order, and Mr. Putnam's amendment is now in order.

Mr. Veeder — Mr. Chairman, I do not want to take the time of the committee again, but that leaves all this subject of legislation, personal registration, or no personal registration, in the article, which is purely and simply a matter of legislation.

Mr. Putnam — Mr. Chairman, I have nothing to say in support of the amendment which I offered. I simply desire to present it and allow the committee to take such action as they see fit upon it.

The Chairman put the question on the adoption of Mr. Putnam's amendment, and it was determined in the negative by a rising vote.

Mr. Morton — Mr. Chairman, I am surprised to hear it reiterated here that an amendment to the Constitution upon this subject of registration is not called for at the hands of this Convention.

The Chairman — Will the gentleman pardon me for a moment? There are only three minutes remaining for the discussion of this subject. If it be desired to complete it to-night, as it seems to be a simple matter and nearly approaching conclusion.

Mr. Cookinham — It cannot be completed to-night.

Mr. Bowers — I don't think it a very simple matter, Mr. Chairman; I think it is a very important matter, and I think we ought to have more time. I move that we rise and report progress, and ask leave to sit again.

The Chairman — Mr. Morton has the floor.

Mr. Morton — I am willing to give way for the adjournment, if the time has arrived. Understanding that I may take the floor upon the committee's sitting again, I shall yield to the adjournment.

The Chairman — The question is on the motion to rise, report progress and ask leave to sit again.

Mr. C. B. McLaughlin — Mr. Chairman, I move that the committee now rise, and recommend this proposition favorably to the Convention.

Mr. Bowers — Mr. Chairman, I make the point of order that a motion to rise and report progress takes precedence.

The Chairman put the question on the motion to rise and report progress, and ask leave to sit again, and it was determined in the negative.

Mr. McLaughlin — Mr. Chairman, I renew my motion that we rise and recommend this proposition to the Convention.

Mr. Morton — Mr. Chairman, I decline to have the floor taken from me in any such way.

The Chairman — Mr. Morton has the floor.

Mr. Veeder — Mr. Chairman, I raise the point of order that the hour of ten o'clock has arrived.

The Convention adjourned until to-morrow morning at ten o'clock.

Tuesday Morning, September 4, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, at the Capitol, Albany, N. Y., Tuesday, September 4, 1894, at 10 A. M.

President Choate called the Convention to order.

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

Mr. McDonough — Mr. President, I move that the privileges of the floor be extended to ex-Congressman John Randolph Tucker, of Virginia.

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

Mr. Kellogg — I notice Mr. President, that Mr. Crosby was not here yesterday, nor is he here this morning. I know that he was ill last week, and I think there must be some good reason why he is not present. Therefore, I ask that he be excused.

The President put the question on excusing Mr. Crosby for yesterday and to-day, and he was so excused.

Mr. W. H. Steele — Mr. President, in behalf of Mr. McIntyre, of St. Lawrence, I ask that the leave of absence granted to Mr. Abbott, who is confined to his bed by illness, be extended until he is able to return.

The President put the question on the motion of Mr. Steele, on extending the leave of absence hitherto granted to Mr. Abbott, and it was determined in the affirmative.

Mr. Wiggins — Mr. President, I ask to be excused from attendance on Wednesday and Thursday of this week.

The President put the question on excusing Mr. Wiggins, as requested, and he was so excused.

Mr. Chipp — Mr. President, I ask to be excused for Wednesday and Thursday.

The President put the question on excusing Mr. Chipp, as requested, and he was so excused.

Mr. Williams — Mr. President, I ask that Mr. Holcomb be excused for to-day.

The President put the question on excusing Mr. Holcomb, as requested, and he was so excused.

Mr. C. S. Truax — Mr. President, on account of my physical condition, I ask for a leave of absence for the balance of this week, and, if necessary, next week, without compensation.

The President put the question on excusing Mr. Truax, as requested, and he was so excused.

Mr. Goeller — Delegate Sandford is a very sick man. I saw him last Sunday in bed. The Convention kindly excused him for Saturday and Monday. He now requests me to apply to the Convention for leave of absence for this day, Wednesday and Thursday. He will try to be here on Friday.

The President put the question on excusing Mr. Sandford, as requested, and he was so excused.

Mr. Barhite — Mr. President, Mr. E. A. Brown has been suddenly

called home on important business. He wants to be excused for to-day.

The President put the question on excusing Mr. E. A. Brown, as requested, and he was so excused.

Mr. M. E. Lewis — Mr. President, I desire leave of absence for this afternoon and evening sessions, and possibly to-morrow.

The President put the question on excusing Mr. Lewis, as requested, and he was so excused.

Mr. Maybee — Mr. President, I desire to be excused for Saturday afternoon and Monday forenoon.

The President put the question on excusing Mr. Maybee, as requested, and he was so excused.

Mr. H. A. Clark — Mr. President, I desire to be excused from attendance on Thursday and Friday of this week on account of business which calls me away.

The President put the question on excusing Mr. Clark, as requested, and he was so excused.

Mr. A. B. Steele — Mr. President, on account of a special engagement for Saturday of this week, which cannot be postponed, I ask to be excused for that day.

The President put the question on excusing Mr. Steele, as requested, and he was so excused.

Mr. Forbes — Mr. President, I ask unanimous consent to change the resolution which I offered yesterday in regard to the waters of the State, from a resolution to appoint a special committee, to a resolution referring the whole matter to the Committee on Legislative Powers, I believe it is, who now have the matter of the Niagara Reservation under consideration. I desire to say, in support of the resolution, that this committee has studied one part of the question relating to the waters of the State, that in regard to the Niagara river, and they can easily take up the question of the St. Lawrence river, the question of the disposition of the woods growing on the forest lands of the State, and can certainly report by the time which I proposed for the special committee, September sixth.

The President put the question on the adoption of the resolution offered by Mr. Forbes, and it was determined in the affirmative.

Mr. I. S. Johnson — Mr. President, I offer a resolution. I do not ask to have this resolution considered now, but desire simply to state that I present it in what I think to be the interest of this

Convention and the progress of its work. The constant applications from members for excuses on account of sickness show that there is ——

Mr. Bowers — I rise to a point of order. We are entitled to have the resolution read.

The President — The resolution must be read before it is spoken to.

The Secretary read:

R. 198.—"Resolved, That hereafter there shall be only two sessions of the Convention each day, one commencing at nine and holding until one o'clock, and one commencing at half-past two and ending at six o'clock."

The President — Does any gentleman wish to debate this resolution?

Mr. Cookinham — I wish to debate it.

The President — It is laid over until to-morrow.

Mr. Powell — Mr. President, I asked yesterday to be excused for the day on account of business engagements in court. I received word very shortly after I obtained my excuse that the matter had been adjourned until to-morrow. I shall be present at to-day's sessions, and ask to be excused for to-morrow.

The President put the question on excusing Mr. Powell, as requested, and he was so excused.

The President — The Committee on Rules will report on the subject of Mr. Veeder's resolution.

The Secretary read:

The Committee on Rules report favorably on Mr. Vedder's resolution as amended by them: R. 192.—"Resolved, That whenever a vote is about to be taken upon any question in the Convention, or in a Committee of the Whole, tellers shall be appointed, if a count is demanded and required by twenty-five members."

Mr. Bowers — There is a minority report that tellers shall be appointed on the demand of one-fifth of a quorum.

The President — Is this expressed as the committee intended? It reads that "tellers shall be appointed if a count is demanded and required by twenty-five members."

Mr. Root — The words "if a count is" should go out. "Tellers shall be appointed if demanded." That is, if the tellers are demanded.

The President — Will the Secretary read the resolution as it stands?

The Secretary read:

"Resolved, That whenever a vote is about to be taken upon any question in the Convention, or in a Committee of the Whole, tellers shall be appointed if demanded and required by twenty-five members."

Mr. Veeder — I desire to debate that report, Mr. President, and I ask that it lie over until to-morrow.

The President — It does not need to lie over. If you wish to debate it, it is in order now. It has been reported by the Committee on Rules.

Mr. Veeder — It only seems to me very strange that they should change the right to demand tellers. It is a very simple proceeding. The tellers simply step to the desk, the Chairman puts the question, and the tellers count in connection with the Secretary of the Convention. It need not necessarily be passed upon by the tellers, unless there is a challenge of the count, or any dispute. In all legislative bodies, and particularly in Congress, the rules require tellers to be appointed, and it is always in order for the Chairman or the President to appoint tellers without any demand, if he desires, that there may be no question. The whole purpose of this is, not to have any delay, but that no one shall have an opportunity to say that there has been anything done unfairly. I do not, for one, desire to have anything occur here that will disgrace us. I wish to have everything done fairly and squarely; and if you gentlemen of the majority take control of this Convention and do as you please, it is all right as long as it is done fairly. In no legislative body is the demand for tellers required to be supported by more than one-fifth of a quorum; and I submit that the amendment should provide as well, that the President, if he chooses, can appoint tellers in advance of any demand by any member or by one-fifth of a quorum. Technically speaking, the word "count" should remain in the resolution, because it is on a demand for a count that the President appoints the tellers; but I do not care anything about that.

Mr. McMillan — Mr. President, it seems hardly necessary that the time of the Convention should be taken, when there is a demand for tellers, to ascertain whether or not one-fifth of a quorum is present. The object in reporting this rule, on the part of the Committee on Rules, was that whenever there was a demand for it by a reasonable number, that was fixed at twenty-five, tellers should be appointed by the Chair. Much time would necessarily be occu-

pied, first, in determining as to the quorum, and next, the number that supported the call.

Mr. Veeder — That is wholly unnecessary. We all know that eighty-five makes a quorum, and one-fifth of eighty-five is what would be required to support the demand. No time need be spent to ascertain the presence of a quorum. We can assume that there is a quorum always. If there is no quorum, certainly we cannot do any business. We would be worse off then than we would be to go on assuming a quorum.

The President put the question on the adoption of the report of the Committee on Rules, and it was determined in the affirmative.

The House then resolved itself into Committee of the Whole, in consideration of general order No. 61, and Mr. C. H. Truax resumed the chair.

President Choate — Gentlemen will understand that this going into Committee of the Whole is ordered by a previous vote, merely for the purpose of taking a vote on the subject of this general order.

Chairman Truax — The Convention now is in Committee of the Whole on general order No. 61 (O., I. No. 388; P. No. 439). There are some amendments before the Committee of the Whole. The first amendment to be voted upon is the amendment of Mr. Forbes. The Secretary will read it.

The Secretary read the amendment offered by Mr. Forbes in the language following:

Add at the end of section 4 the following words: "This section shall not apply to corporations organized under general laws applicable to all orphan asylums or institutions for the care and maintenance of dependent persons under sixteen years of age committed thereto under the provisions contained in said general law. Such general laws may be repealed or amended."

The Chairman put the question on agreeing to the amendment offered by Mr. Forbes, and it was determined in the negative.

The Chairman — The next amendment is the amendment of Mr. Marshall. Mr. Lauterbach offered an amendment, which was amended by Mr. Marshall, and that amendment Mr. Lauterbach accepted. The Secretary will read the amendment of Mr. Marshall.

The Secretary read:

At the end of section 4, add the following words: "This section shall not prohibit the appropriation of money for securing secular

instruction to the inmates of any orphan asylum or of any institution to which children may be committed by judicial process, in which education is incidental only."

The Chairman put the question on agreeing to the amendment of Mr. Marshall.

A rising vote was ordered, and Messrs. Burr and Wiggins were appointed as tellers.

The question was determined in the negative — 55 to 51.

Mr. Peck — Mr. Chairman, the amendments now having been voted upon, another amendment is in order, I believe, and I offer this.

The Chairman — The amendments have not been voted upon.

Mr. Peck — I thought they had been.

The Chairman — Those amendments have. There now remains Mr. Cassidy's substitute, which will be read by the Secretary.

Mr. Peck — Mr. Chairman, my amendment is to the fourth section, so that it would come before the substitute. I do not ask for any debate.

The Chairman — The Chair puts the substitute first.

The Secretary read the substitute offered by Mr. Cassidy, for section 4, in the language following:

" Neither the State nor any subdivision thereof shall use its property or credit, or any public money, or authorize or permit either to be used, directly or indirectly, in aid or maintenance, other than for examination or inspection, of any school or institution of learning, not wholly owned or controlled by the State, or a subdivision thereof."

The Chairman put the question on agreeing with the substitute of Mr. Cassidy, and it was determined in the affirmative by a rising vote — 61 to 56.

The Chairman — There is now an amendment offered by Mr. Carter. Mr. Carter's amendment is to section 1.

The Secretary read the amendment offered by Mr. Carter in the language following.

Add at the end of section 1: " Such schools shall be under the supervision of a Superintendent of Education, who shall be elected by the electors of the State. His term of office shall be four years, and he shall have such powers and duties as are now possessed by the Superintendent of Public Instruction, subject to change or modification by the Legislature."

The Chairman — This amends the first section so that it will read as follows.

The Secretary then read section 1, as reported by the committee, with the amendment of Mr. Carter added thereto.

The Chairman put the question on agreeing to the amendment offered by Mr. Carter, and it was determined in the negative.

Mr. Holls — I move that the committee report this article to the Convention for consideration.

Mr. Cassidy — And recommend its passage.

Mr. Holls — I withdraw that now, Mr. Chairman. I move that the committee now rise, report progress, and ask leave to sit again.

Mr. Cassidy — I move to amend, that the committee do now rise, report this bill favorably, and recommend its passage.

The Chairman — The motion of the gentleman from Westchester (Mr. Holls) is, I think, out of order.

Mr. Holls — I rise to a point of order. The motion to rise, report progress, and ask leave to sit again is not debatable. That was my motion, and no amendment to it is in order, and it is not debatable.

The Chairman — The Chair is of the opinion that the motion of the gentleman from Westchester is not in order. The limit of time has expired ——

Mr. Cassidy — I move that the committee now rise, report this amendment favorably, and recommend its passage.

Mr. Peck — If Mr. Cassidy will give way for a moment. It was the understanding, when we adjourned to this time, I should have a vote upon my amendment. It is not to be debated, but simply voted upon.

The Chairman — The rule reads that when the limit of time has expired the amendment to be voted upon shall be voted upon then.

Mr. Peck — Yes. Now, after the amendments that were in the way were voted upon, I offered this.

The Chairman — The Chair rules that it cannot be received. The question is upon the motion of Mr. Cassidy, that the committee now rise and report this proposed constitutional amendment favorably.

Mr. Choate — Mr. Chairman, before that vote is put, may I ask that as amended it now be read, so that gentlemen can understand exactly what they are voting on?

The Secretary read article 9, as amended.

Mr. Gilbert — Mr. Chairman, I rise to a point of order. I understood Mr. Holls to move that the committee rise and report progress. I understand that that motion takes precedence of all other motions. It is equivalent to a motion to adjourn in the Convention; and with great respect for the Chair, I submit whether or not the motion of Mr. Holls was not entirely in order, to rise and report progress. I certainly think it is. I simply ask the Chair to consider whether that is not the correct rule.

The Chairman — The Chair had before him when he decided the question the following sentence in rule 27: "When the limit of time has expired, the amendments which have been proposed and not previously acted upon shall be voted upon in their order, without further debate. The proposed constitutional amendment as amended shall then be voted upon without debate, and the committee shall then rise and report in accordance with the action which it has taken." The Chair is still of the opinion that it was right.

Mr. McMillan — The attention of the Chair is called to rule 26, which reads: "A motion to 'rise and report progress' shall be in order at any stage, and shall be decided without debate." That motion may be put at any time. It could have been put when the committee convened this morning.

The Chairman — There is but one way of correcting an error by the Chair, and that is by appeal.

The Chairman put the question on agreeing to the substitute of Mr. Cassidy.

Mr. Powell — Mr. Chairman, in this the motion to report favorably the article as read?

The Chairman — This is the motion to report favorably.

A rising vote was then taken, and the substitute was agreed to — 68 to 59.

President Choate resumed the chair.

Chairman Truax — Mr. President, the Committee of the Whole have had under consideration proposed constitutional amendment (printed No. 439), entitled "To amend article 9, relating to free common schools," have gone through with the same, have made some amendments thereto and instructed the chairman to report the same to the Convention and recommend its passage.

The President put the question on agreeing with the report of the Committee of the Whole.

Mr. Root — I move to amend, that the Convention disagree with the report of the Committee of the Whole and recommit to the

Committee on Education, with instructions to report forthwith as follows. And on that I call for the ayes and noes, Mr. President.

Mr. McDonough — May we have the report read that he requires? I understand he proposes a report to be returned by the committee.

The President — It shall be read.

The call for the ayes and noes was sustained.

Mr. Veeder — I rise to a point of order ——

The President — The point of order is not well taken.

Mr. Veeder — I have not stated it yet. I never knew but one man to decide a question in advance, and he made an awful mistake. My point of order is, as I understood the President to put the motion, that it is referred back to the committee, with instructions to make a further report, but without instructions how to report, and I submit that such a motion is out of order.

Mr. Root — Mr. President, that was not the motion.

Mr. Veeder — That is the motion the President stated; that is all I know about it.

Mr. Root — Mr. President, the motion was, distinctly, to disagree with the report of the Committee of the Whole, to recommit to the Committee on Education, with instructions to report as follows — and the Secretary has in his hands what follows.

Mr. Veeder — We have not heard that before. I ask to have that read, Mr. President.

The President — The Secretary will read it.

The Secretary read:

"Section 1. The Legislature shall provide for the maintenance and support of a system of free common schools."

Mr. Veeder — I do not ask to have it all read; simply the difference — wherein it varies.

The President — It will all be read.

The Secretary (resuming) — "wherein all the children of this State may be educated.

"Section 2. The corporation created in seventeen hundred and eighty-four, under the name of the Regents of the University of the State of New York, is hereby continued under the name of the University of the State of New York. It shall be governed and its corporate powers, which may be increased, modified or diminished by the Legislature, shall be exercised by not less than nine regents.

"Section 3. The common school fund, the capital of the literature fund, and the capital of the United States deposit fund, shall be respectively preserved inviolate. The revenue of the said common school fund shall be applied to the support of common schools; the revenue of the said literature fund shall be applied to the support of academies, and the sum of twenty-five thousand dollars of the revenues of the United States deposit fund shall, each year, be appropriated to, and made part of, the capital of the said common school fund.

"Section 4. Neither the State nor any subdivision thereof shall use its property or credit or any public money, or authorize or permit either to be used, directly or indirectly, in aid or maintenance, other than for examination or inspection, of any school or institution of learning, wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine is taught."

The President — Gentlemen will understand that the question is on Mr. Root's motion to disagree with the report of the committee, to recommit this amendment to the Committee on Education, with instructions to report as the Secretary has just read.

Mr. Cochran — Mr. President, I rise to a point of order, and my point of order is that this is an equivalent motion. We have already disposed of the very amendment which is now proposed by Mr. Root and, in fact, it is the amendment as printed in general order No. 61.

The President — The point of order is not well taken. The Convention has done nothing about this yet.

Mr. Cassidy — Mr. President, do I understand that Mr. Root's amendment is that we recommit the very proposition which we have just defeated in the Committee of the Whole?

The President — That is the effect of it.

Mr. Cassidy — Mr. President, I am opposed to it. I believe we have no right to do that. The time limit for debate has been exhausted on this matter, and we have taken a vote; and, now, to recommit this to the Committee on Education, is to extend the time and disregard the very rule that we have adopted here.

The President — The point of order is not well taken.

The President put the question on the adoption of the motion of Mr. Root, to disagree to the report of the Committee of the Whole, to recommit the amendment to the Committee on Education, with instructions to report the amendment as last read by the Secretary.

The Secretary proceeded to call the roll.

Mr. E. R. Brown — Mr. President, I desire to explain my vote. I shall not vote to support this motion. I am not in favor of taking action here to-day, in the name of the separation of church and State, which is a reversal of the policy of the State of New York for the last hundred years in relation to academic education. I am not in favor in our new advocacy of this doctrine, already fortified by more than a hundred years of absolute security, of taking a step here which is likely to do wrong to the wards of the State. Mr. Chairman, I regret exceedingly that we cannot arrive at an agreement on this subject. I vote no.

Mr. Cassidy — Mr. President, I hope that the amendment reported by the Committee on Education will not prevail. As I was coming from my home yesterday I met the professor of political economy from Colgate University, and he said if such an amendment as that was adopted, we had better burn the capitol, put on our red paint and return to our nativity. It is going back on all we have ever won for religious liberty, and, Mr. Chairman, when we shall vote to make this State a hound to run with the dogs that are after religious prey, we might as well bid good-bye to all our republican institutions and go back where we have been coming from for the last two thousand years. I vote no.

Mr. Cornwell — Mr. President, I desire to be excused from voting, and will briefly state my reasons. The Committee on Education, of which I have the honor to be an humble member, and to which the petitions to the Convention in such large numbers from different portions of the State with reference to sectarian appropriation were referred, had the whole subject under consideration for several consecutive weeks.

The question of State and municipal aid for sectarian schools is not new, but has agitated the public mind for many years; indeed, it shared the attention of the framers of the first organic law of the State. Among those opposed to the principle will be found patriotic, unselfish and thoughtful citizens of all political and religious faiths, who understand the teachings of history, and who see in it the seeds of decay and demoralization of free institutions. The proposition uttered by the committee, and the amendment proposed, is intended to secure constitutional safeguards for the protection of our free common schools and to promote and foster public instruction in harmony with such institutions, and to prevent all sectarian or denominational appropriations of public funds. The amendment

becoming a part of the organic law of the State cannot fail to be salutary in its provisions and for the common good. The history of civilization proves that whenever the State undertakes to control in religious matters and thereby mingles its power and influence with the church, it does so at the expense of free government.

I am most heartily in favor of this amendment, and especially that part of it relating to non-appropriation of the public funds to sectarian schools. I see in such appropriations danger to our free common school system, in that it is sought, through special aid from the State, to build up and strengthen denominational and church interests at the expense of popular education. According to the theory of our government, the State must not discriminate in religious matters, by conferring special financial benefits upon the teaching of any religious denomination or institution. To my mind the time has come for action in this matter, and that action should be to put an end once and forever, while it can be done, to making it possible to obtain public moneys for the purpose of encouraging or maintaining any support of sectarian schools or institutions. I withdraw my excuse from voting, and vote aye.

Mr. Durfee — I ask to be excused from voting. The proposition of the gentleman from Schuyler (Mr. Cassidy), which was adopted by the Committee of the Whole at the last moment, puts it in the power of any religious denomination that can control a school board in any locality, under the guise of turning over school property to the control of the public school boards, to maintain and support their peculiar religious services, and instruction in the teaching of their faith in the school building. Now, if the gentlemen of this Convention wish to put themselves on record as favoring that proposition, they will vote no upon this motion. For my own part, Mr. Chairman, my position in this matter is already defined. I am for a declaration from this Convention which shall have no uncertain sound, but which shall draw the line sharply and distinctly in favor of the entire separation of our common school system from the teaching of any religious tenet. This proposition upon which we are now voting, to restore the amendment to the situation in which it was before the adoption of the amendment proposed by Mr. Cassidy, does not in the slightest degree — the gentleman from Jefferson to the contrary notwithstanding — interfere with the instruction of the inmates of orphan asylums or institutions for the reformation of juvenile delinquents. But if it did, Mr. Chairman, that matter can be, and will be, disposed of when we come to consider the report of the Committee on Charities. It has no place here, and I appeal to the gentlemen of this Convention who desire

forever to lay the specter of religious dissension in this State, I appeal to each gentleman here present, as patriots and lovers of their country and its institutions, whether they be Republicans or Democrats, to sustain the pending motion. I vote aye.

Mr. Foote — Mr. President, I desire to explain my vote. I believe that the public money should be used only for the support of the public schools. I believe that Mr. Cassidy's amendment will accomplish this result. But I would be glad to vote for a still further amendment prohibiting the teaching in any of those schools of any religious tenet. I vote no.

Mr. Francis — Mr. President, I desire to explain my vote. In any form it may appear, in every phase of possible or plausible presentation, I desire here and now to avow my deliberate judgment, based upon firmly established convictions, against any and all attempts to secure pecuniary aid of the State for the support of schools of sectarian institutions, under the guise of inspection or other subterfuge. It would be an assault upon the principles and policy of our Republican government, an assault all the more dangerous from the subtlety of its conception and the concealed force-power of the blow against our State and national traditions. It would lead to religious contentions and intensify sectarian antagonism. It would inaugurate a war of sects in the drawing, each one on its own account the most possible for itself from the State — each jealous of the others concerning the amount awarded, and all considering it so much help for their particular form of religion. Finally it would be the entering-wedge, driven by the State power, for the pestilent and dangerous union of church and State. It is an insidious attack, whether so intended or not, upon the integrity of our State school system. The idea that secular schools, upon the broad basis of our non-sectarian State institutions of learning, our free schools, can be run in connection with, or be made a part of, sectarian charitable organizations, without partaking of the particular religious flavor of the latter, without, in fact, being made a vital part of it, seems to me a very transparent absurdity, and so I say, if any such heresy be injected into the proposed Constitution, to be submitted to the people, from inspirations of patriotism I would oppose it to the utmost of my power before the people and vote to condemn it at the polls to a burial that shall leave no hope behind for future resurrection. I vote aye.

Mr. C. A. Fuller — Mr. President, I desire to explain my vote, inasmuch as under what may be a misapprehension, I voted to sustain the report of the Committee of the Whole. I supposed that

under Mr. Cassidy's amendment the doctrine of a more complete separation of sectarian schools from public moneys would be secured. Those in whom I have confidence assure me that under the protection of his amendment it wonld be possible to increase the efforts that I would prevent, and in certain circumstances it might be that the public school money might be used to further schools that were in effect under sectarian control, and officered and taught by those who are promulgating some particular religious belief. Therefore, if that be true, I desire another opportunity to consider this matter, and, if so, revise my action. I, therefore, vote aye.

Mr. Galinger — Mr. President, I am in favor of the biill, but I am paired with my friend, Mr. Holcomb.

Mr. Gilbert — Mr. President, if there is any subject which should be approached soberly and temperately and frankly, it is the one involving religious instruction. I wish to state two propositions which are of such vital importance to the State that they ought to be under constitutional guarantees. I ask the attention of the Convention to them. The first is, that there should be absolute and equal freedom of religious worship and belief. That is in the Constitution now. Second, it is equally important to the State that it should separate itself from everything that is peculiar to any denomination, sect or church; that none of its moneys should be expended for the promotion of any religious tenet that is peculiar to any church or denomination. The second proposition should also be incorporated into the Constitution. It should be done explicitly and in such a way as to avoid the temptation to evasion. That is the word I want to emphasize now. We want to put it in such form as to remove temptation to invasion and infraction of that principle of separation of church and State. I believe that the measure as it passed the Committee of the Whole invites invasion and evasion. I am against it. I am in favor of the proposition as it came from the committee, as amended by the proposition introduced by the President of the Convention. I most thoroughly and earnestly hope, therefore, that the motion will prevail; that there may be no further dissension as to whether or not this principle can be evaded in this way or that way. Let us put it squarely, as it is in that proposition. Mr. President, I vote aye.

Mr. Hamlin — I desire, sir, as I shall vote aye upon this motion at this time, to explain my vote. I will go to any length with any gentleman in this Convention to protect the school funds of this State against sectarian invasion. But, sir, I do not fully vote in accord with this proposed amendment. I believe, sir, that we should

take into consideration the fact that there may circumstances arise which will justify certain exceptions to this rule, and I do not believe that this State of New York should be bound, but should be enabled to give its aid to some great educational institution like Cornell, or something which may be nominally under sectarian control to a slight degree. But, beyond that, sir, I want to see this question of charities decided before I commit myself absolutely to this question. I believe in the present system of indirect aid by the State to these private charities, by which they have been built up through this State and have done great and good work, and, therefore, I shall object to voting on the final passage of any bill or any amendment which may interfere with the proper disposition of that question. If, when the charities report comes in, it shall appear that that is duly protected, then I shall be in favor of this proposition, and I, therefore, vote, but conditionally, aye.

Mr. Jesse Johnson — Mr. President, I deem it the highest patriotic duty that we should co-operate together, that the lines of division in this great and composite Americanism should be softened rather than strengthened; that the lines which are occasioned by lineage, by early training, by tradition or religion, should not be strengthened, but that we should all co-operate together; that all good citizenship can continue, regardless of these divisions toward that which is best, toward that which is highest, toward that which is most productive for the State. Mr. President, I have understood that there was one question which threatened to be a burning issue, on which agreement had been had, and that it was agreed by all that the schools of this country should be taken out, altogether out, of the domain of the battle that has been waged along the line of religious or denominational differences. That, I understand, is still conceded. But, now, which will best accomplish that proposition, which best effect it? I had not the benefit of Saturday's debate, sir, but, in the light that I gather this morning, it seems to me that the report of the committee as originally presented, as printed, as presented once more by the motion of Mr. Root, fairly and fully measures up to that standard, of releasing citizenship and Americanism from the old contest about race or creed, and best and fairest makes our public schools free, and makes a platform on which we all can stand. I vote aye.

Mr. Lauterbach — Mr. President, if the proposition suggested by the Committee on Education was an honest, fair, upright proposition and meant what it purported to say on its face, then every member voting with the Education Committee should vote against the resolution of the gentleman from New York (Mr. Root) and in favor

of the adoption of the report of the Committee of the Whole. You have affected to say that you desire to separate church from State absolutely. It was alleged that you desired to separate the State from one church, or two churches, and not from the other sects and denominations of the State; and an orator on Saturday arose upon this floor and said that the application of this amendment, as he construed it, was that there was only one denomination, and that all other Christian sects were undenominational. In other words, he meant that the inside view, the inner view, the hidden purpose of the amendment of the Committee on Education was, not to separate church and State, but to separate the State from one church, and one church only. I believe that he was mistaken. When the assertion had been made again and again, I believed it to be mistaken, but, when Mr. Cassidy comes forward with an amendment that leaves no doubt of the intent of an actual and an absolute separation, and introduces a motion that is carried, which says, in plain, distinct terms, the moneys of the State shall be devoted, so far as education is concerned, only to the schools of the State, to its common schools and its public schools, and there shall be a complete divorce, that a man who votes against that proposition and yet affects to believe that he is honest in the statement that he means to accomplish just that purpose and no other, he is not consistent with his profession; and I say that every man who stands up for it, for absolute divorce, and does not mean to differentiate against one sect or denomination as against another, must vote in opposition to the resolution of Mr. Root. If this is honest, fair, frank, if the suggestions made by the gentleman from Troy, with whom I heartily agree, are really to be carried out to their full purpose, then any man who remembers his oath and who knows what honest English means, cannot vote otherwise than to sustain the action of the Committee of the Whole. Do you desire to divorce church from State?

The President — Mr. Lauterbach's time has expired.

Mr. Lauterbach — I vote no.

Mr. Lincoln — Mr. President, I regret that I did not have the benefit of the debate on this important proposition, because I have not been here during its entire pendency in this Convention. It is a subject which has interested me somewhat, and I am free to confess, Mr. President, that I do not quite like either of these propositions — either that of Mr. Cassidy's or the report from the committee; but of the two, I believe I prefer the report of the committee. For that reason I vote aye.

Mr. Mantanye — Mr. President, if I could believe that this amend-

ment, which has been tacked to this provision in the Committee of the Whole, and referred to here as the Cassidy amendment, were honest, and meant what it is now claimed that it means, I should vote no, and against recommitting it for correction. But as that amendment comes from those who are the enemies of the whole provision, who have stood up here and said that all schools, and even sectarian schools, were public, and for the interest of the public, I believe that it is not an honest provision; and when I read in this amendment that by all its provisions the money, and the property and the credit of this State shall not be used in any school in which denominational tenets or doctrines are taught, and we have only held out to us the provision that the money may go to all schools only under the control or owned by the State, I feel that we are laboring under a misapprehension, and I regret to find gentlemen here who are opposed to the moneys of the State and the property of the State being used for sectarian schools voting in favor of this proposition. It is sending but a shadow of that principle to the people. When that is stricken out and it is provided, as it is here, that all schools which are owned by or are under the control of the State may have money, all of these sectarian schools, or a large number of the sectarian schools, will be at once put under the control of the State, or some subdivision of it, either conveyed to it or put under its control in some other way, so as to evade that provision, and then the money can be used. There will be tacked to it simply a condition that the sectarian instruction may be continued, which will not interfere with the title or the control by the State of the school itself, and, therefore, the whole object of the provision is defeated, and we are sending to the people, as I say, only a mere shadow, a mere trick. I, therefore, vote aye.

Mr. Maybee — Mr. President, not having spoken upon this amendment when it was before the Committee of the Whole, I desire briefly to state my views in explanation of my vote. I am thoroughly opposed to any diversion of State funds for the purpose of sectarian education. I do not believe that it is any part of the duty of the State to furnish religious instruction to any of its children. I do not believe that it is the duty of the State to furnish to any of its citizens knowledge, or theory, or conjecture as to the things which are unseen and eternal. At the same time, I do believe that it is the duty of the State to furnish to every child within its borders, instruction in elementary secular education, and I believe that it is peculiarly the duty of the State to furnish such education to those children who, by reason of poverty, are not able to furnish it for themselves. That view particularly applies to children within our orphan

institutions. I believe that it is the duty of the State to furnish to every child within an orphan institution or a charitable institution, elementary secular education, and that they ought not to be required to attend the ordinary public schools where they will be subject to the jeers of the other children attending those schools because they are charity children. These institutions can be kept under the close supervision of the Commissioners of Charities, whose duty it will be to see that nothing but secular education is imparted. These being my views in regard to the duty of the State, I vote no upon the pending proposition.

Mr. McDonough — Mr. President, I desire to explain my vote, and in doing so, I know that no words that I can say will have much weight here with my friends on this side. I, therefore, desire to call their attention to the fact that in striking this blow at religion we are violating the faith and the traditions and the history of the fathers; and I want to call your attention to an extract from the farewell address of Washington:

" Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. In vain would that man claim the tribute of patriotism who should labor to subvert these great pillars of human happiness — these firmest props of the duties of men and citizens.

" The mere politician, equally with the pious man, ought to respect and to cherish them. A volume could not trace all their connections with private and public felicity.

" Let it simply be asked, where is the security for property, for reputation, for life, if the sense of religious obligation desert the oaths which are the instruments of investigation in courts of justice? And let us with caution indulge the supposition that morality can be maintained without religion. Whatever may be conceded to the influence of refined education and minds of peculiar structure, reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principles."

Mr. McIntyre — I have heard it rumored lately in my immediate vicinity that any Republican voting for this must be a Democrat. Now, that is the first time that I was ever accused of being a Democrat, and I suppose I might be pardoned if I should vote for it at this time. But I am actuated by a principle in this matter. I have been opposed from the beginning to having a contest aroused that would give rise to religious contention in this State of New York. I was opposed to it in the committee. I do not believe in it. It is unfortunate, unhappy, and its results will be that way. I think it is late in this nineteenth century to com-

mence any such advocacy, and I, for one, do not want in every school in this State to have the question raised whether it is sectarian or whether it is not sectarian. I do not want to have the religious question brought up in every school. It is surprising to me that people possessed of common intelligence should wish to advocate any such thing. I am opposed to having any amendment to the Constitution in this line, and if I could have my way I would strike out Mr. Cassidy's amendment. I favor it to the other, because it is square and honest, and if you do not want to pay money to any school unless it is a public school, say so. I maintain it is the right principle. No public aid for any private institution of any kind. It wipes the slate clean; and if you want to take that medicine, take it, you academies; take it, you asylums; take it, correctional institutions. That is the correct basis and the correct principle, and you cannot bandy words in any other way; and when you vote aye in this matter, you bring back this whole sectarian article that was reported by the Educational Committee, which is reeking with bigotry from beginning to end. I tell you they come up from that great city of New York with their agitation, and it is all bigotry. Here in the State of New York we want it not at all. In the rural districts we are not afraid of religion; we want religion, and the more we get of it the better we feel. (Applause.) I tell you, you want to have your wits about you, and if you vote for anything, vote for Mr. Cassidy's, and then vote to strike it out, and leave the Constitution as it is. (Applause.) I vote no.

Mr. McKinstry — Mr. President, I favor Mr. Cassidy's amendment because I am in favor of public money being devoted exclusively to State public schools. The report of the Committee on Education brought this unhappy distinction to my mind. All these old academies must then come under an inquisition to find out whether they are religious or not. If they were founded by some religious man or were under the control of some religious people, they would be tabooed. If they were founded by Bob Ingersoll or some anarchist, they would be welcome. I shall never vote for that state of things. These old academies should all come in under the union school system. Then they could be drawing their public moneys. We had half a dozen of these academies in Chautauqua county, and they did excellent work in their day, graduating some of the most eminent men of the nation; but to-day every one of them is an academic department of a union school, under control of the Board of Regents, and free to every child; and every child that lives in a town in Chautauqua, where there is one of these academic departments, can fit for college without paying one cent for tuition.

That is why I am in favor of Mr. Cassidy's amendment, which tends to bring about that state of things. I am no more in favor of teaching religion in the schools than any other member here. I have drawn a line, leaving the prohibition for teaching a tenet of religion and adding, " nor shall such property, credit or public money be used in aid or maintenance of any other school which is not wholly controlled by the State or some subdivision thereof." But Mr. Cassidy's amendment comes the nearest to my idea, and, therefore, I shall vote no on the subject before the Convention.

Mr. Mereness — Mr. President, when the advocates of special interests appeared in this chamber and made their argument before the Committee on Education and Charities, they recognized that there was an overwhelming sentiment in this State in favor of the most unequivocal position in behalf of this great principle of separation between church and State, and after having obtained from the Committee on Charities a report, which is now upon the desks of the members, which effectually protects all those interests, and in which institutions represented by them, the wards of the State can unquestionably be educated as they have heretofore been, it seems to me that this question, coming here in the shape that it does, advocated by men who have been disappointed because the amendment which they offered in the Committee of the Whole to this article, protecting these special interests, was voted down, come here now and by the solid vote of that element of this Convention, among which several of its members have announced that no matter what Constitution we submit to the people, that that party represented by them is unalterably opposed to the whole of it, it seems to me that there can be no doubt as to the duty of the members of this Convention who are in favor of this great fundamental principle. And, Mr. President, if I had a special interest on every corner of every crossroads in the district that I represent, nothing, sir, should stand in the way of my favoring this great fundamental principle, represented by the report of this Committee on Education. I, therefore, vote aye.

Mr. O'Brien — Mr. President, I was in favor of Mr. Cassidy's amendment because I thought it required absolutely the separation of church and State. As I examine it further, it seems to me that it is not radical enough; that it does not go far enough. I am not satisfied with anything which has yet been brought before this Convention in that respect. I hope that this will be so amended that it will be plain, clear, unequivocal in terms, so that neither now nor hereafter shall any of the funds of the public schools be devoted to anything except public education. I must, therefore, vote aye.

Mr. Osborn — Mr. President, I ask to be excused from voting, on the ground of personal interest. I am a trustee in a society in New York which is receiving large sums of money from that municipality, and it seems to me it is hardly proper for me to vote upon this question.

The President put the question on the request of Mr. Osborn to be excused from voting, and he was excused.

Mr. Peck — Mr. President, it has been said that this is a blow at religion. I do not look at it that way. I look at it as a blow to the dependent childhood of this State, excluding them, if this majority can, from the benefits of the public school system of this State, of the teachers of the public school system, of the school books of the public school system, of the methods of the public school system, and outlawing these poor citizens of our State from the benefits of our public school system. It is said that something is to be done by way of charities. Charity for the children of this State when they ask education? Are we to answer them in that way, that if you are to be educated while your father is living it is a privilege which has grown into a right, but if your father dies it is a charity, and that charity goes to an institution, and that institution can teach what it wishes without any supervision of any State department? That is the kind of sectarian education that you are seeking by putting this in the charities article. It belongs where all education belongs, in this article. Gentlemen, this is a stroke at the real public school system of this State, and I vote no.

Mr. Platzek — Mr. President, I ask to be excused from voting. Abraham Lincoln once said: "You can fool all the people sometimes, some of the people all the time, but you cannot fool all the people all the time." That is precisely what is attempted here in this Convention. In the Committee on Education and here, it has been stated that there was no intent to exclude any denomination from participation in funds for charity, even though education be incidental. But, nevertheless, when the safeguards and the proviso are asked for, they are stricken out, and when another is introduced, excepting only orphan asylums and correctional institutions, that is voted down, and when a resolution or amendment is brought here by which all the people shall be put on terms of equality — Catholic, Jew and Protestant alike — then the outcry comes from opponents of the separation of church and State, I claim, and they seek to vote that down. I believe in the child of the State. I do not want the orphan to go to the public institution, where the political servant serves for so much money. I want to have the child of the State to

have heart and soul service, and not be cared for merely for money and by time-serving political servants. I believe that in private institutions, fostered and aided by the State, we have people at their head who have heads to plan, hearts to feel and hands to give, and I want to leave the child of the State with those good men and those angelic women who stand at the head of the charities of our State, and I vote no.

Mr. Powell — Mr. President, I charge against the amendment proposed by the Committee on Education that it puts a premium upon religion of every kind. Atheistic and agnostic schools under it might receive public aid, but the very moment that you whisper in a school the name of God, then the great State of New York is to put the seal of its condemnation upon that school. I charge against that amendment that it is intended to discriminate against school sects in favor of another class of Christians; that it is intended to prevent Catholic schools and Hebrew schools from securing party aid, while there is a hole large enough in it to drive Protestant schools through by the post road and get public funds. I charge that the adoption of that amendment would drive the Bible out of every public school or institution in the State of New York. I am, sir, a Protestant from the crown of my head to the sole of my feet, and I believe in the amendment proposed by Mr. Cassidy as the power and the means to settle this controversy forever. What the people are afraid of is that money raised for public schools may be diverted for other purposes. That is what they are afraid of, and this amendment provides once and forever that money raised for public schools can never be appropriated or set aside to any other schools. It means what it says. It provides an honest measure, which treats all religious faiths exactly alike, and, therefore, as a Protestant, an honest Protestant, I am in favor of it, and shall vote no.

Mr. Putnam — Mr. President, I believe that it is the duty of the State to instil morality and manhood, through its school system, into the children of the State. I believe that it is the duty of the church, the duty of the parent, to instil and teach religious doctrines to the children. I am not thoroughly in accord with the provision as presented. But, Mr. President, I am precluded from voting on this proposition for the reason that I am paired with Mr. Blake, of New York, and ask, therefore, to be excused.

Mr. Root — Mr. President, I have moved to recommit this measure with instructions to report back the amendment as proposed by the Committee on Education in place of the substitute of Mr. Cas-

sidy, because I know that Mr. Cassidy's substitute fails to accomplish the object that all alike agree ought to be accomplished — the separation of church and State—because I know that that substitute is being supported in a great measure in this Convention by those who wish to prevent the accomplishment of any measure to separate church and State in matters of religion, because I know that that substitute is being supported in this Convention by men who have their own little petty private interests in institutions at their homes for which they wish to keep State aid and State money and, therefore, wish to kill the whole measure. And, Mr. President, because I know that that measure of the committee as it now stands says exactly what we mean, and is effective to procure what we need, the absolute separation in all educational matters of the State from the church, and from every church, from religion, and from all religions, and I deny that such a separation is a blow at any religion, or is aught but the assertion of a principle as sound and as fair as any religion preaches. I repel, sir, the assertions made, most of them not in good faith, that this is a blow at religion. It is to promote religion and to promote human freedom at one and the same breath, and, therefore, I vote aye.

Mr. Spencer — Mr. President, I desire to explain my vote on this proposition. I do so for two reasons. First, the gentleman from New York, Mr. Lauterbach, has challenged the integrity and doubted the intelligence of every gentleman who votes against the amendment proposed by the gentleman from Schuyler, Mr. Cassidy. Now, sir, I challenge no man's integrity upon a vote of this kind; nor shall I say anything in regard to his intelligence, whether he understands this proposition or not. But I do challenge the integrity of this proposed measure. I believe it deceptive. I believe, sir, that it holds out in words a thing which it will not give in substance. I believe, sir, it is conceived to mislead the people and to deceive them into the belief that this Convention is in favor of divorcing church from State, and yet at the same time effectually leaving the matter just where it stands now. I explain my vote, sir, for another reason, and that is that I am well aware that most of the sectarian jealousies, the religious animosities and bitternesses that have grown up in this State have grown out of this question — this matter of a squabble or scramble by the various sectarian denominations to receive aid from the State. I believe, sir, that if this question can be laid at rest and every religious denomination assured positively that there is no chance and never will be any chance for it to receive any aid from the State, much of the bitterness and discord that now exists between religious denominations will disappear. I con-

gratulate the State of New York on its history, that it has ever kept its skirts clear of religious animosities and sectarian hates. We have gone in this State from the beginning on broad constitutional, humane principles. We have not delved into religious matters, have not gone into sectarian questions, although I am sorry to say I have observed too much of it in the remarks that have been made upon this question in the Committee of the Whole. We should, sir, vote intelligently upon this question, and if we desire to say in the Constitution that sectarian institutions cannot receive State aid, why not say so? Why cover it up by this peculiar phraseology that is made use of in the proposition of the gentleman from Schuyler. I withdraw my request to be excused from voting and vote aye.

Mr. A. B. Steele — Mr. President, if I understand the explanation of some of the gentlemen here, they vote against this motion with a view of destroying or killing any proposed amendment that may be presented by this Convention. I do not believe, Mr. President, that that should be our position. I believe every vote we take here should be a candid expression of our real sentiment and that whatever we do we should do in good faith and with the interest of the whole people at heart. Now, I believe that the amendment of Mr. Cassidy is a mere subterfuge, a mere evasion of the direct question. I believe it points out a way where any institution of any denomination in the State of New York may come within its provisions and share with the common schools in the common school funds. I believe that can be done in any place and by anybody that sets to work to accomplish that. I do not believe, Mr. President, that that is what this Convention desires to do. I believe it is the intention that so far as the educational feature is concerned it should be entirely removed from all charitable institutions. In fact, as a member of the Charities Committee, I have carefully and earnestly investigated the question and I have come to the conclusion and have joined with the majority of the committee in expressing that sentiment in the charities article, which, I believe, amply, fully and fairly protects all of the institutions that are now called charitable institutions in the great work that they have been doing, and that I hope they will continue to do. But I believe if this amendment of Mr. Cassidy is carried out it will change the whole matter and leave them no divorce, no separation between the charitable work that is being done now and the taking of the common school funds. Charitable! Where? These institutions that pay for even the education of the inmates? Charitable institutions?

If this scheme, as I believe it is, is accomplished, I believe it will rob all of the institutions of that noble work that is being done now under the subject of charity. Mr. President, I vote aye on this motion.

Mr. W. Sullivan — Mr. President, I wish to explain my vote. I believe, sir, in the system of free common schools, and I also believe and have always believed in excluding all other schools from State aid. Any one entertaining that opinion certainly could not vote in favor of the amendment as presented by the Educational Committee. That amendment not only does not recognize the principle of separation of church and State, but emphatically recognizes a polygamous union between church and State. Sir, it is a very simple mater, if we intend to deal with the question, not as bigots, not as hypocrites, not as cowards, but as American citizens. What has the State to do with religious questions, with any form of religion, whether denominational or undenominational? If the learned chairman of that committee had been reading some of the literature recently published in the magazines, notably the essay of Mr. Baxter, defining the distinction between denominational religion and undenominational religion, he never would have been guilty of putting into the organic law of the State terms that are not juridical in any sense. If four or five or six denominations unite, then they cease to be denominational. Why, sir, they may be undenominational with reference to themselves, but they are denominational with reference to all others. It is impossible to make any such classification, and the only classification that we can make is between government schools supported by the State, and all other schools are private, call them what you will, and they should be rigidly excluded from any participation in the common school fund.

The Chairman — The gentleman's time has expired.

Mr. Sullivan — I, therefore, vote no.

Mr. Tibbetts — Mr. President, the great measure which was demanded by the people of this State was this particular measure, which the Committee on Education have been endeavoring for months past to formulate into a proposition so strong and so complete that not even the wiles of any sectarian or denominational institute could squeeze in and get anything from the public funds. The committee which took into consideration the very proposition which Mr. Cassidy has moved to-day, looked over it carefully and found that it was full of subterfuge, found that it was but another name for leaving the Constitution as it is now, advocated by those people who are now receiving the largest aid from the State of New

York, as you can see it has been to-day. Looking at that consideration, seeing how easy it was for any municipality, through its board of education, through its common council, if a majority were of any denomination, either Protestant or Catholic, to give aid to those institutions, after deliberate consideration of that subject, we struck that very thing out, and after taking the concensus of the opinion of all the members of the committee, we, by a decided majority, presented the proposed amendment you have to-day. We thought we were doing a good work. We thought we were actuated by the sentiment of the people who came from different parts of the State and said they were in favor of the separation of church and State. We find, gentlemen of the Convention, that we have been betrayed in the house of our friends. Gentlemen, I am reluctant to speak about the proposition, and I should not, except it had been spoken of by another. Do you know what you have done to the greatest institution within the borders of the State of New York? Do you know what you have done to that college, Cornell, which every year of its existence is giving $180,000 to the State of New York and is getting back a paltry $18,000? Those are the absolute facts, gentlemen, educating 512 citizens free every year, Cornell University will be obliged if this amendment is passed increasing the members from seventy to 150, to add $30,000 more to the fund, and give it to the State of New York. This proposition was introduced, and the gentleman himself will not deny it, as a direct blow at Cornell. I should think, gentlemen of the Convention, you should know the history of Cornell. You know what it has done for the State. You ought to be proud of it. It would be long ——

The Chairman — The gentleman's time has expired.

Mr. Cassidy — I rise to a question of privilege.

Mr. Tibbetts — Mr. President, I desire to vote aye.

Mr. Cassidy — Mr. President, I rise to a question of privilege. It has been charged upon this floor that I offered this amendment with the express intention of striking a blow at Cornell University. I deny the charge. I represent no special college here, but I say that the colleges of this State should all be placed upon the same footing. I had no intention to strike Cornell University any more than any other private institution, but, if Cornell University can come into this Assembly Chamber every winter and lobby with the Legislature for large grants, there is no reason why other colleges cannot.

Mr. Titus — Mr. President, I desire to explain my vote. I fully agree with Mr. McIntyre that our Constitution has fully covered

all necessary points. The only rivalry that should exist between our institutions should be that which will best fit the youth for the battle of life. During the debates here I have listened very attentively, and the gentleman from Franklin in his debate loaded a steamer with all religions, with Catholics, with Jews, with Buddhists, with Mohammedans, and he took them all out to sea, and then he rang the bell of "never, never, never!" and was finally lost in his own reverberation. From that time I have been trying to suggest to my own mind what he meant. Did he mean that never, never, never would the Hebrew and Catholic institutions of the country receive any State aid? I think the debate of the friends of this amendment fully supports that view. Gentlemen of the Convention, the committee says, "send it back to us." They have had it for weeks, and what did they put in? Victor Hugo, in his description of the octopus, does not compare with this amendment in his horror of bigotry. (Laughter.) Mr. President, I withdraw my excuse, and vote no.

Mr. Veeder — Mr. President, I desire to explain why I vote as I shall. I desire, in explaining my vote against the motion of Mr. Root, to say that I regard his motion as an outrage upon the good feeling now existing among all the citizens of this State and an evidence of a return to that feeling of intolerance, bigotry and prejudice that all liberal-minded citizens of our State so much deprecate and desire shall never prevail. We have existed as a nation and as a State for over a century without any such restriction, and the good sense of our citizens will always see to it that no injustice upon this subject shall be done. Moreover, I believe religious teaching is absolutely necessary and beneficial to all children and for the best interests of the State. The agitation of this spirit of prejudice at this time, or, in fact, at any time, all conservative citizens should not encourage. Mr. Cassidy's amendment fully cuts off State aid from all sectarian schools and institutions. This is not actually desired, it seems, by those who, while they pretend that they seek a separation of church and State, only want to strike at one of two particular religious denominations. But another feature, Mr. President. Since 1875, by a statute of this State, poor children of the State have been committed to charitable institutions, and in that law there is a provision that in committing these children to these institutions, taking them from the alms-houses throughout the State, the magistrate or mayor committing these children shall commit them, as near as may be, to an institution that is controlled by trustees or people who are of

the same religious faith as the parents of the child. That was incorporated in the first statutes of 1875; it was stricken out in 1876 by the advice and direction of some country legislators, restored in 1879, re-enacted under the general law of 1884, and is the law to-day, and I submit, therefore, that this motion to return this subject back to the committee is an indirect way of trying to impose upon the people a question that they do not desire at all.

The President — The gentleman's time has expired.

Mr. Veeder — And for that reason I vote no.

Mr. Woodward — I will vote aye, but I would like to explain the reason of my vote. I am opposed to giving public moneys to sectarian schools, and I want a section in the Constitution, if we adopt it, that shall exclude entirely any such thing. Now, I call your attention to a law passed in 1850, and I wish to have the Legislature prevented from passing any other such laws hereafter. Chapter 261 of the Laws of 1850 is as follows:

"1. The schools of the several incorporated orphan asylum societies within this State, other than those in the city of New York, shall participate in the distribution of the school moneys, in the same manner and to the same extent in proportion to the number of children educated therein as the common schools in their respective cities or districts.

"2. The schools of said societies shall be subject to the rules and regulations of the common schools in such cities or districts, but shall remain under the immediate management and direction of the said societies as heretofore."

That law was passed in 1850, and I am not aware that it has ever been stricken from the session laws, ever reversed. Now, under that law, the orphan asylum at Batavia, as they call it, in the course of the year sometimes would have as many as twenty orphans brought down from Buffalo to their schools, but frequently they did not have more than two or three orphans there that they were educating and supporting, and yet they drew $1,500 a year from the State by direct appropriation as an orphan asylum. But they were not contented with that. They attempted to get $1,500 more from our school district there. Because, you see the common school districts ——

The President — The gentleman's time has expired.

Mr. Woodward — They attempted to get it under that law. Mr. President, I vote aye.

The President — I desire to explain my reason for voting in the affirmative. Mr. Cassidy's amendment sounds very well, but it is calculated to mislead the unwary, as it has misled several unwary

delegates in this Convention already. Stripped of all its disguises, Mr. Cassidy's amendment is nothing more nor less than local option for the rankest sectarianism. (Laughter.) There are certain schools under public authority in this State to-day where sectarianism is directly taught. The entering wedge has been driven to that extent and has aroused the attention and alarm of the people of this State, who demand that no such thing shall be continued. There are those who believe — I am not one of them — that a great hierarchy is attempting to extend the influence of its religion and its power over the institutions of this State. Its supporters, to a man, are advocates of Mr. Cassidy's amendment. I believe that it will open the door for that power to get possession of public schools in the great cities of this State, where they are so powerful. If it can be done in Poughkeepsie, it can be done in New York, or it can be done in Brooklyn. Now, I believe that that is something that the people of this State will never tolerate. It was, as I understood it, the purpose of the amendment, as proposed by the Committee on Education, after the last two lines had been stricken out absolutely, to prevent the possibility of any such occurrence. The real effects of Mr. Cassidy's amendment is to make it forever and all the time possible, and I vote aye.

The Secretary having concluded the call of the roll, the question was decided in the affirmative, as follows:

Ayes — Messrs. Acker, Ackerly, Allaben, Arnold, Baker, Barhite, Barnum, Becker, Cady, Church, Clark, G. W., Clark, H. A., Cookinham, Cornwell, Davies, Davis, Dickey, Doty, Durfee, Faber, Francis, Frank, Augustus, Fraser, Fuller, C. A., Fuller, O. A., Gilbert, Goodelle, Hamlin, Hawley, Hedges, Hill, Holls, Johnson, I. Sam, Johnson, J., Kellogg, Kinkel, Kurth, Lewis, C. H., Lewis, M. E., Lincoln, Manley, Mantayne, McArthur, McLaughlin, C. B. McMillan, Mereness, Moore, Morton, Nichols, Nostrand, O'Brien, Parker, Pashley, Phipps, Pool, Porter, Pratt, Root, Spencer, Springweiler, Steele, A. B., Steele, W. H., Storm, Sullivan, T. A., Tibbetts, Vedder, Wellington, Whitmyer, Wiggins, Woodward, President — 71.

Noes — Messrs. Banks, Bigelow, Bowers, Brown, E. R., Burr, Bush, Campbell, Carter, Cassidy, Chipp, Jr., Cochran, Crimmins, Danforth, Davenport, Deady, Dean, Deterling, Deyo, Durnin, Emmet, Farrell, Fields, Fitzgerald, Floyd, Foote, Forbes, Frank, Andrew, Giegerich, Gilleran, Goeller, Green, A. H., Hecker, Hotchkiss, Hottenroth, Jenks, Kerwin, Kimmey, Lauterbach, Marks, Marshall, Maybee, McCurdy, McDonough, McIntyre, McKinstry,

McLaughlin, J. W., Meyenborg, Nicoll, Ohmeis, Parmenter, Peabody, Peck, Platzek, Powell, Roche, Rogers, Rowley, Schumaker, Smith, Speer, Sullivan, W., Titus, Truax, C. H., Truax, C. S., Tucker, Veeder, Vogt, Williams — 68.

Mr. Root — I move that the proposed constitutional amendment, as reported from the Committee on Legislation in its present form, be ordered to a third reading.

Mr. Foote — I offer the following amendment to section four.

Mr. Root — Mr. President ——

The President — The Chair holds that Mr. Foote's amendment is out of order.

Mr. Root — And upon my motion I move the previous question.

The President — Shall the main question be put now on the motion to order this amendment to a third reading?

Mr. Bowers — Mr. President, I make the point of order that Mr. Foote offered his amendment before Mr. Root moved the previous question and I claim the amendment is in order on the motion to deal with the report from the committee.

The President — I think not.

Mr. Root — Mr. President, I had not yielded the floor, I had not taken my seat.

Mr. Holls — Mr. President, I rise to a point of order. The motion of Mr. Root was to direct the committee to report the amendment in complete form. That of itself made amendments out of order.

The President — The motion to amend is certainly not in order. The question is upon Mr. Root's motion for the previous question on agreeing with the report of the committee.

Mr. Roche — Mr. President, I rise to a point of order. Under rule 35, this motion has got to go to the Committee on Revision and Engrossment and be reported from that committee.

The President — It will go that way, of course.

Mr. Roche — No, sir; before it is ordered to the third reading, no proposed constitutional amendment can be put upon its third reading until it shall have been reported by the Committee on Revision and Engrossment, unless by unanimous consent.

The President — Undoubtedly it cannot be put upon third reading, but it can be ordered to a third reading.

Mr. Roche — Well, that is putting it to a third reading.

The President — The question is upon Mr. Root's motion, shall the main question now be put upon ordering this to a third reading?

Mr. Foote — Mr. President, as I understand it, the committee to which this matter was referred as the result of this motion, makes a report and that report is before the Convention for agreement or disagreement.

The President — What is before the Convention is the amendment as the Convention has ordered it already, and the question is on ordering it to a third reading.

The President then put the question.

Mr. Veeder — I call for the ayes and noes.

The call was sustained.

Mr. McKinstry — Mr. President, I would like to know whether this amendment now inserts the last two lines that were stricken out.

The President — Why, of course not.

The Secretary proceeded to call the roll.

Mr. Cassidy — Mr. President, I regret, indeed, that this Convention shall adopt an amendment and put it into the Constitution that shall necessitate my opposing the work of this Convention *in toto*, and I want to say to the members of this Convention now, that what little influence I possess, if that amendment goes into the Constitution, shall be used from now henceforth to oppose the work of this Convention. I shall know no rest in my efforts to save the State from going into the business of hounding men and private corporations down because of certain sectarian views which they may hold. If you are not willing to have an entire separation of church and State ——

Mr. Gilbert — Mr. President ——

The President — I do not think Mr. Cassidy can be interrupted.

Mr. Gilbert — I merely wish to inquire what question is before the House.

The President — The question is on ordering the amendment to a third reading.

Mr. Cassidy — I was about to say, Mr. President, that I shall never give my vote or my voice in favor of turning back to the religious persecution from which we have come. It is said that history repeats itself and that we move in cycles. I am satisfied that by this amendment we go back two hundred years, and that we make

this statute a hound to chase down sectarian prey, and I can never give my voice or my vote to any such business as that. I vote no.

Mr. Foote — I wish to explain my vote. I understand that when this article comes from the Committee on Revision back to the Convention a motion may be entertained to recommit it to that committee or some other, with instructions to report the article with some amendments. Under those circumstances, I shall at the proper time move that the article be recommitted to that or some other committee, with instructions to report it with Mr. Cassidy's amendment and the following clause added to it:

"No doctrines nor tenets of any religious sect or denomination shall be taught in schools or institutions of learning receiving such maintenance or aid."

For the purpose of progressing the article to that point, I vote aye.

Mr. A. H. Green — Mr. President, upon the understanding that some provision is to be made for the inmates of orphan asylums and delinquents that will provide for their education, I vote aye.

Mr. Lauterbach — Mr. President, I think, if twenty minutes more had elapsed this morning before the roll-call, that a suggestion of the nature of the amendment which had been the subject of discussion for the last two days between those who were interested in supporting the report of the Committee on Education and those who were opposed to it until the certainty of the protection of those in orphan asylums and correctional institutions should be secured, would have caused such an adjustment as to have necessitated no vote of the character which was taken and which, from its closeness, is such as to make it apparent that the whole subject should be one of proper adjustment. Mr. Green has just stated that in the expectation that in the charity article some phraseology would be inserted in addition to the present words of "care and support" that will clearly enunciate the proposition that the passage of the amendment to a third reading as now proposed will secure the result that is intended to be accomplished he will vote aye, and he has perhaps been entirely consistent in voting aye, although he formerly voted no, upon the main proposition. I cannot bring my own mind to the condition of recanting my vote even for the purpose of securing any pledge in that respect, but I feel that although I shall vote in the negative, when the matter of charities comes to be presented and the possibility of the emasculation of those institutions is threatened, the Convention as a whole will unite in placing in the charities article such a proposition as was merely adopted by assent

this morning and which I trust will be finally adopted when the report of the Charities Committee comes in and the announcement will state that on neither side, Republican or Democratic, in this nineteenth century, is there the slightest idea of discriminating or differentiating against any creed, religion or color, and that they will stand a unit upon the proposition of doing justice to the waifs whom we have adopted and whom it is our duty to sustain.

Mr. Lincoln — Mr. President, in voting to recommit a few moments ago, I suggested to the Convention that I was not satisfied with Mr. Cassidy's amendment nor with this. I have very serious doubts whether this amendment proposed and as now being ordered to a third reading will accomplish the purpose intended by its framers, but with the possible hope that some amendment may be agreed to finally before this Constitution is passed by the Convention on the proposition that is now on its third reading, I vote aye.

Mr. McKinstry — Mr. President, I shall vote aye very cheerfully at this time, reserving my right to vote for the amendment suggested by Mr. Foote, of Rochester, if such an opportunity occurs. That amendment satisfies my idea exactly and is in accord with an amendment which I have drawn myself. I vote aye.

Mr. Roche — Mr. President, I desire to explain my vote. Up to the present time, every effort that has been made to secure adequate protection for the children as to whom the State stands in the relation of a parent, with a view to making it certain that they shall not only be housed, fed and clothed, but that they shall also be educated at public expense, has failed. If such an effort had succeeded and proper provision therefor had been made in this article, or was certain to be made in the charities article, and this article also contained a provision somewhat upon the lines suggested by Mr. Foote, it would probably be acceptable to a great majority of this Convention, if in fact it did not receive nearly a unanimous vote. Because it does not contain either of these provisions, or secure either of these objects, I vote no.

Mr. T. A. Sullivan — Mr. President, I wish to explain my vote. Voting on this proposition, I simply do so with the understanding that those waifs who are dependent upon the charity and protection of the State of New York and who must come to the State of New York for their education, both sectarian and secular, in the hope that it will be provided in the charities article, and unless there, then I shall vote not only against this, but against the charities article on the third reading. I vote aye.

Mr. Alvord appeared on the floor of the Convention and was received with applause.

The Secretary — Mr. Alvord.

Mr. Alvord — I vote aye. (Applause.)

Mr. Campbell — Mr. President, I ask to be excused from voting. I am against this remarkable section four. If an article, providing that church and State should never be united were proposed to us, it would not receive a dissenting vote in this body. But where, under the thin mask of a desire for such a separation, we have an article which strikes a fatal blow at charity, the fundamental virtue of all proper religion, then no man will vote for it. He could not do it without violating the Constitution, for that begins with the words, "We, the people of the State of New York, grateful to Almighty God for our freedom, in order to secure its blessings, establish this Constitution," and this amendment, when submitted to a man of ordinary comprehension, is not comprehensible to him. He will need a glossary furnished by the apologists, the delegates from New York, who began and who ended this debate, together with the masterly exhibition of pagan morality furnished by the gentleman from Franklin. We have that explanation here, and we now know that the amendment is really aimed at all morality, and especially at its greatest upholder, the Catholic church, that church which carries to its fullest extent, completely and entirely, the injunction: "Suffer little children to come unto me, for of such is the Kingdom of Heaven." I am against section 4 of the article, because it provides that the State may examine and inspect all schools in which religion and morality are taught, that is to say, in those schools which are not of the State. Since the purpose of the amendment has been declared by its apologists to be the separation of church and State and to have education furnished in them, but of course without morality or Christian morality, then in the light of these speeches it is possible for the officers of the State to examine private schools, academies and colleges, and suppress them. I am against this article, Mr. President, and I beg to withdraw my excuse and vote no.

Mr. Kellogg — Mr. President, I am willing to follow the lead of the gentleman from New York (Mr. Lauterbach) in the consideration of the charities article of the Constitution, so far as shall be consistent with the cause of religious liberty, the advancement of humanity and the cause of good government. I withdraw my excuse and vote aye.

Mr. Kerwin — Mr. President, I wish to explain my vote on this

question, and I shall take but a limited portion of the time allowed me by the Convention to do so. After the committee appointed by the President of this Convention brought in the report which should have been received favorably by the Convention, and was so until the roll-call, with certain sections, it was offered to this Convention. Following on down we find that line by line the majority of this Convention killed that report. Then comes Mr. Lauterbach with the very amendment that the people came to this Convention with and said to them this Convention should adopt for the separation of church and State. That was defeated, and the majority in their fright, afraid to go before the people and say, "We will kill the article entirely," now turn around and say, "Let us take up more time in the Convention on the third reading." They want now to send this question to the third reading to gain more time and open up this whole question, and then create a fight, and then they will kill it again. Mr. President, I withdraw my excuse and vote no.

Mr. Powell — Mr. President, the expression used in this amendment is "religious denominations." Now, if that expression means what it apparently does, and does not mean Christian religious denomination, then Christians are a religious denomination; they are not a Christian denomination. They are not a Christian denomination, but they are a religious denomination, and by the passage of this amendment you preclude the possibility of teaching any Christian doctrine whatsoever in any school to which the public funds are given. You cannot read the New Testament in your public schools, because the New Testament when it is read teaches Christian doctrine and Christians are a religious denomination, and by this act which this Convention proposes to take to-day it creates a constitutional prohibition of the reading of the Bible, which is recognized by all Christians in the public schools. Some of you gentlemen know how public opinion stands on that point, and when you go back and face your constituents in the country and say to them, "We have passed the amendment which drives the Bible which your fathers loved, and which you love, out of the public school," your constituents will have something to say about your conduct. Furthermore, this amendment provides that a school under the control of any denomination cannot have public aid. A school conducted by Baptists and Presbyterians and Methodists is not under the control of any religious denomination. It is an undenominational school and it can draw public funds. How will you face your honest Protestant constituent when he tells you that you have voted for an amendment which cuts off Catholic schools and

cuts off Hebrew schools, but which allows Protestant schools to draw public funds for their support? You may find a few narrow bigots who will support you in your doctrine, but I tell you that honest Protestants, fair-minded Protestants, Protestants who believe in fair play and the treatment of all sects exactly alike, will rise up against you and cry out against a doctrine that you have put in the Constitution.

The President — The gentleman's time has expired.

Mr. Powell — I vote no.

The roll-call having been concluded, the following was the result:

Ayes — Messrs. Acker, Ackerly, Allaben, Alvord, Arnold, Baker, Barhite, Barnum, Barrow, Becker, Cady, Carter, Church, Clark, G. W., Clark, H. A., Cookinham, Cornwell, Davies, Davis, Dean, Dickey, Doty, Durfee, Faber, Floyd, Foote, Francis, Frank, Andrew, Frank, Augustus, Fraser, Fuller, C. A., Gilbert, Goodelle, Green, A. H., Hamlin, Hawley, Hedges, Holls, Johnson, I. Sam, Johnson, J., Kellogg, Kinkel, Kurth, Lewis, C. H., Lewis, M. E., Lincoln, Manley, Mantanye, McKinstry, McLaughlin, C. B., McMillan, Mereness, Moore, Morton, Nichols, Nostrand, O'Brien, Parker, Pashley, Phipps, Pool, Porter, Root, Spencer, Springweiler, Steele, A. B., Steele, W. H., Storm, Sullivan, T. A., Tibbetts, Vedder, Wellington, Whitmyer, Woodward, President — 77.

Noes — Messrs. Banks, Bigelow, Bowers, Brown, E. R., Burr, Bush, Campbell, Cochran, Crimmins, Danforth, Davenport, Deady, Deterling, Deyo, Durnin, Emmet, Farrell, Fields, Fitzgerald, Forbes, Giegerich, Gilleran, Goeller, Hecker, Hotchkiss, Hottenroth, Jenks, Kerwin, Kimmey, Lauterbach, Marks, Marshall, Maybee, McCurdy, McDonough, McIntyre, McLaughlin, J. W., Meyenborg, Nicoll, Ohmeis, Parmenter, Peabody, Peck, Platzek, Powell, Roche, Rogers, Rowley, Schumaker, Smith, Speer, Sullivan, W., Titus, Truax, C. H., Truax, C. S., Tucker, Veeder, Vogt, Williams — 60.

The President — The Convention now goes into Committee of the Whole upon the apportionment article and Mr. Durfee will please take the chair.

Mr. McMillan — I desire to offer a resolution, to be laid on the table.

The Secretary read the resolution offered by Mr. McMillan in the language following:

"Resolved, That the vote by which general order No. 64 (O., I.

N. 391, P. No. 443), relating to the use of money for political purposes, was adopted be reconsidered, and that the motion lay on the table."

The President put the question on the adoption of the resolution offered by Mr. McMillan, and it was determined in the affirmative.

The Convention then resolved itself in Committee of the Whole in consideration of general order No. 74, and Mr. Durfee took the chair.

The Chairman — The Convention is now in Committee of the Whole on general order No. 74 (O., I. No. 376, P. Nos. 404-454), being the report of the Committee on Legislative Organization in respect to the apportionment of Senate and Assembly districts.

The Secretary read section two of the article in the language following:

"Sec. 2. The Senate shall consist of fifty members and the Senators shall be chosen for two years. The Assembly shall consist of one hundred and fifty members, and shall be chosen for two years."

Mr. Becker — Mr. Chairman, for the parliamentary purpose of getting the floor on this amendment, I move to substitute in line 4, the words "one year" for "two years."

Mr. Chairman, as stated repeatedly upon the floor of this House, the Convention is about to consider one of the most important matters which can come to its attention. I most sincerely and earnestly hope that now that we have escaped out of the calm, unruffled atmosphere of semi-religious discussion we may hope in the discussion of this important matter, which necessarily may be tinged with partisanship, that as little of the feeling of heat or passion or recrimination will be displayed as is possible under the circumstances. So far as I am personally concerned, speaking naught in malice nor naught in extenuation, I shall endeavor within the lines of courtesy and self-respect to conduct so much of the discussion of this amendment as shall fall properly to my lot. In endeavoring, however, Mr. Chairman, to accomplish that purpose in that way, I shall not be able to avoid, nor can I in the performance of my duty hope to avoid, some reference to some matters of history bearing upon the duty which this Convention, in the opinion of the majority of the Committee on Legislative Organization, owes to the whole people of this State to frame a new apportionment — I shall not be able, I say, in the performance of that duty, to avoid, in referring to historical matters, calling some things by their right names.

Naturally, Mr. Chairman, the first question that would be asked by a delegate here, and the first question that is asked by the people, is, what is the necessity for a Constitutional Convention dealing with this question of apportionment in view of the fact that the Legislature of 1892, but two years ago, undertook to deal with it? What are the precedents in reference to such matters? In answer to such questions we say, that it has been considered the duty of every Constitutional Convention which has been organized in this State, and has acted as such from the time that the State itself was organized, to deal with the matter of apportionment. And when you come to consider this question of apportionment, so far as it relates to the safeguards and checks which time and the operation of historical events, in our judgment, show, are necessary to be imposed, in addition to those contained in the Constitution of 1846, the amendment proposed in 1867 not having been adopted, it is important, it is necessary, that the whole question of apportionment should be taken up.

But, Mr. Chairman, if that reason did not exist, history shows, facts show, that it is the bounden and imperative duty of the majority of this Convention, in justice to their constituents, in obedience to their wishes, to undo and rectify the great wrongs committed upon the whole people of this State by the legislative enactment of 1892. And in presenting very briefly, and I trust without any exaggeration whatever, the facts relating to that apportionment and its history, it will be developed that under the rulings and decisions made in reference to it by our courts, it becomes perfectly apparent, and is painfully manifest, that in order to prevent such occurrences in the future a system of safeguards and checks should be devised, and must be devised. The present provisions of the Constitution of this State in reference to the division of the State into Senate and Assembly districts, and the apportionment of the Members of Assembly among the different counties of the State, are very simple and very few in number, and, as I shall show, are wholly inadequate, as they have been construed by the highest courts of this State, to prevent willful, intentional wrong to the citizens in reference to their right of representation, and have been ineffective in the past for that purpose. These provisions are as follows:

The Constitution requires that there should be an enumeration of the inhabitants, under the direction of the Legislature every ten years; that upon the coming in of that enumeration the Legislature should divide the State into Senate districts, and the safeguard and check, and the only one there imposed, is by the use of the exceedingly vague and indefinite language, permitting the exercise of wide

discretionary power, that that division of the State into Senate districts should be made in such a manner that such districts, in respect of the number of their inhabitants, excluding aliens, should be "as nearly equal as may be," and unfortunately, if I may use that expression, although I use it solely with reference to the preceding term, that provision is coupled with another one — that in making Senate districts no counties should be divided, a provision which has existed in the Constitution of this State and has been regarded by the people without reference to party affiliations as an important and valuable provision for three-quarters of a century at least. But that provision, as you readily see, serves to hamper and affect the limit of discretion of the Legislature imposed by the prior provisions which I have quoted, namely, that the Senate districts should be as nearly equal in population, excluding aliens, as may be; because unless counties were divided, opportunities, in fact, almost necessities, for some inequalities would necessarily occur. As to the Members of Assembly, a curious condition of constitutional law has occurred, although under the decision of the courts, made in reference to it, it is not different in purpose and effect from the provision with reference to Senate districts. The provision of the Constitution of 1846 was that the Legislature should apportion the Members of Assembly among the different counties of the State, each county to have at least one member, which everybody has always regarded as a just and proper provision, "as nearly as may be" — the same language that was there in reference to dividing the Senate districts, with reference to their inhabitants, excluding, of course, aliens. In 1874, in order to avoid the effect of some provisions which had existed, or to change the effect of them, with reference to persons of color not taxed, a constitutional amendment was adopted which altered this section, and in making that alteration the words "as nearly as may be" were left out probably unintentionally. Notwithstanding that fact, in the most recent adjudication on the subject by the Court of Appeals, all the members of that court concurred in holding that the legal effect and purpose and intent displayed throughout the whole of the provisions of the Constitution on the subject of apportionment were such that although by this accident, if such it may be termed, these words were left out, there were enough other words of sufficiently clear and well understood import to enact and provide that the same rule should still exist with reference to the apportionment of members of the Assembly that existed with reference to the members of the Senate, namely, that while the words "as nearly as may be" were not in the Constitution now, the legal effect of all the provisions taken together

was the same as if they were there. This was the decision in the case of The People ex rel. Baird v. The Supervisors of Kings County, decided in 138 N. Y., in which two of the members of this Convention participated as counsel.

These, then, are all the provisions of the present Constitution with reference to apportionment and limiting in any way the exercise of the discretion of a partisan Legislature, a Legislature which is necessarily partisan, a Legislature which is dealing with what may be the method of electing every member who is passing upon this question.

In 1892, one of the political parties of this State, having at last obtained control of the executive and of both branches of the Legislature, passed an act that made provisions for an enumeration to be had. This enumeration was taken. It was brought in at an adjourned or extraordinary session of the same body, a thing that had never occurred before in the history of this State. That body was in session for about two days, certainly not to exceed three, as I am informed. If I am wrong about it gentlemen will correct me, but I do not understand that the correction will be of any great importance. The control of that body had been obtained in a manner and method and by means which it is not necessary to particularize, but which will be recalled to the thoughtful consideration and disapprobation of every good citizen in this State when the name of the "Mylod" return is mentioned, when the name of Maynard is spoken, when the name of "Sherwood" is pronounced, who was unseated because he was a park commissioner, drawing no salary, performing no important public functions, in one of the small cities of the State, as being ineligible, although members of the same body that unseated him, upon the side that unseated him as I am informed, when they decided to unseat him, had objections relating to them of an equally important character — when we recall the name of "Peck" who also lost his seat because of the error and, concededly, the honest error and mistake of a county clerk, in printing the name of an election district on a few ballots in one of the districts of his Senatorial district. And so on down the list. We may recall the manner and means and methods that have since been and at almost the first opportunity thereafter repudiated by the whole people of this State at the ballot-box, by a majority against one of those who participated in it, of over 100,000. That Legislature thus organized — and I have not recalled all of the matters connected with it which are matters of record and matters of history, which have consigned to eternal political oblivion some of those who theretofore had been recognized as great partisan leaders — undertook to and did make what is called an apportionment, under

the provisions of the Constitution, of the Senate districts of this State. It also undertook to apportion the Members of Assembly, leaving to the boards of supervisors, as the provisions of the Constitution were, the power to go on under the apportionment and bound the districts to which each of these Members of Assembly should be attached and which each of those members should represent. Was it likely under the operation of all the well-known rules of human nature that a body thus constituted, thus brought together for that purpose, would fail to use its power and discretion to the utmost partisan advantage? Certainly not, And the result demonstrated that having the power, having the discretion, it did so exercise them.

What did they do in that respect? There was a natural, well-established rule which had existed by common consent for many years, based upon an equitable and fair interpretation of these constitutional provisions with reference to the apportionment of Members of Assembly, that wherever, as was necessarily the case, there should be unrepresented fractions of population, because of the operation of the rule that each county must necessarily have one Member of Assembly, no matter what its population, that that fraction should be so divided and so arranged as to go to the counties having the largest unrepresented fraction.

In a recent case in one of our sister States in which an apportionment was considered the court says — I refer to the case in Wisconsin, of the State v. Cunningham, reported in 51 W. Reports — "There must be substantial equality of representation, in proportion to population. That is to say, there must be no unnecessary inequality in the proportionate representation in the Assembly of the counties and of such districts on the basis of population. Each county, and each district having a population equal to the numerical unit of representation in the Assembly (alleged to be 18,868), is entitled absolutely to one Member of Assembly. For each multiple of such numerical unit reached by the population of any county, such county is also absolutely entitled to an additional Member of Assembly. The remainder of the one hundred members, not thus absolutely apportioned to counties and districts, should be apportioned to an equal number of the several counties by some uniform, equitable rule, perhaps to counties having the largest fractions of population in excess of such numerical unit of representation or multiple thereof. The Legislature must, however, determine such rule; but the writer will be pardoned for saying, for himself alone, that he is aware of no mathematical formula which will accomplish

the desired result, other that that above suggested, which prefers in the apportionment the largest fractions of population."

The Chairman — Mr. Becker will continue his remarks at three o'clock.

Mr. Griswold, who is confined to his bed by illness, desires to be excused until his recovery.

The President put the question on excusing Mr. Griswold, as requested, and he was so excused.

The hour of one o'clock having arrived, the Chairman declared the Convention in recess until three o'clock P. M.

AFTERNOON SESSION.

Tuesday Afternoon, September 4, 1894.

The Constitutional Convention met in the Capitol at Albany, N. Y., September 4, 1894, at 3 P. M.

Second Vice-President Steele called the Convention to order.

Mr. Hedges — Mr. President, I desire to attend the encampment of the Grand Army of the Republic which meets in Pittsburg next week, and for that purpose I ask leave of absence from Monday until Friday.

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

Mr. Marshall — An unavoidable engagement requires me to ask for leave of absence until Friday morning, and I ask to be excused until that time.

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

Mr. Choate — Mr. President, I move that the privileges of the floor be extended to the Rev. Dr. Henry M. Field, of New York, a distinguished citizen of this State.

The President *pro tempore* put the question on the motion of Mr. Choate, and it was determined in the affirmative.

Mr. C. B. McLaughlin — Mr. President, on account of official work, I ask leave of absence for Saturday afternoon.

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

Mr. Lauterbach — Mr. President, on account of pressure of business, I ask to be excused from attendance for to-morrow.

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

Mr. Jenks — Mr. President, on account of important family matters I ask leave of absence for Saturday of this week and Monday of next.

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

Mr. Banks — Mr. President, I ask leave of absence for Saturday.

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

Mr Kimmey — Mr. President, I ask to be excused from attendance this afternoon and to-morrow.

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

Mr. Durfee took the chair in Committee of the Whole upon the pending matter.

The Chairman — The Convention is in Committee of the Whole for the further consideration of general order No. 74 and Mr. Becker has the floor.

Mr. Becker — Mr. Chairman and gentlemen, I trust you will bear with men in the presentation of this subject, and I will not continue it as long as might be inferred from starting it upon the lines on which I have begun speaking.

When the adjournement was taken at noon, I had quoted from the decision of the Supreme Court of Wisconsin. I now desire to call attention very briefly to the expression of the Supreme Court of Michigan, another sister State, on this subject, by Chief Judge Morse. In delivering his opinion in the case of Giddings v. Blacker, reported in the 52d Northwestern Reporter at page 948 — and it should be remarked in passing that this gentleman afterward became the Democratic candidate for Governor of that State — he says, "There is no higher privilege granted to the citizen of a free country than the right of equal suffrage, and thereby to an equal representation in the making and administration of the laws of the land. Under our State Constitution the right of the elector is fixed. To him equal representation is a right, as well as a privilege, of which the Legislature cannot deprive him. These wrongs have been committed for partisan purposes. Their object and effect have been to deprive the majority of the people of their will in the administration of the government. The greatest danger to our free institu-

tions lies to-day in this direction." The learned chief judge also added some very pertinent remarks in reference to gerrymandering, as it is called, for he said: "I believe that the time for plain speaking has arrived in relation to the outrageous practice of gerrymandering, which has become so common, and has so long been indulged in, without rebuke, that it threatens not only the peace of the people but the permanency of our free institutions. The courts alone in this respect can save the rights of the people and give to them a fair count and equality in representation. It has been demonstrated that the people themselves cannot right this wrong. They may change the political majority in the Legislature, as they have often done, but the new majority proceeds at once to make an apportionment in the interest of its party, as unequal and politically vicious as the one that it repeals. There is not an intelligent school boy but knows what is the motive of these legislative apportionments, and it is idle for the courts to excuse the action upon other grounds, or to keep silent as to the real reason, which is nothing more nor less than partisan advantage taken in defiance of the Constitution and in utter disregard of the rights of the citizen." Judge McGrath, who concurred in the decision in this case in Michigan, used this language: "The purpose of the constitutional enactment is to secure as nearly as possible equality of representation. Any apportionment which defeats that purpose is vicious, contrary not only to the letter but to the spirit of our institutions and subversive of popular government. Power secured or perpetuated by unconstitutional methods is power usurped, and usurpation of power is a menace to free institutions. The greatest danger to the republic is not from ignorance, but from machinations to defeat the expression of the popular will."

Now, applying these decisions of the courts of Michigan to the facts in the apportionment of 1892, let us see what those facts were, and see what our courts have said in reference to them, as to the necessity of imposing checks and safeguards on the exercise of legislative discretion. Let us briefly compare a few of the Senate districts under the apportionment of 1892. The Thirteenth Senate District in the city of New York, according to that apportionment, contained 241,153 citizens, while the Twelfth Senate District, in the same city, contained but 105,720 citizens, more than double the number in one district that there was in the other in the same city. The Twenty-first Senate District, comprising the counties of Washington, Warren, Essex, Clinton, Franklin, Fulton and Hamilton, contained 229,905 citizens, while the Thirtieth Senate District, being part of the city of Buffalo and the county of Erie, contained

but 143,500 citizens. When you turn to the Assembly districts you still see the injustice continued, the inequality continued, and in a more marked degree. The smallest Assembly district in the rural counties of the State is the county of Putnam, which has but 13,225 citizens. The next smallest is Schuyler, having 16,326 citizens, each of which has one member, while but one Member of Assembly is apportioned to St. Lawrence county, with 80,679 citizens, and one to Chautauqua, with 73,844 citizens. More than five times the number of inhabitants, exclusive of aliens, in the last two counties over what there is in the first two, although in that case as to each of the two small counties owing to the rule that one Member of Assembly at least must be apportioned to a county, they were entitled to a member. But it is not a question as to what they were entitled to — it is a question of why did not the other counties get two members. Possibly a scrutiny of the election returns for a period of years may convey some information to the mind of the inquiring citizen. The smallest Assembly district in a city is the Thirtieth Assembly District in the city of New York, which contains 30,725 citizens. The largest district is the twenty-sixth district in that city, which contains 56,613 citizens; not quite double the former district. Why was this inequality? This whole matter of inequalities under the act of 1892 was summed up in a very concise and admirable manner in the opinion of Chief Judge Andrews, based upon what he believed to be the record, in the case of The People ex rel. Carter v. Rice, reported in the 135th New York Court of Appeals Report, at pages 475, 502 and 503. That case was an attempt to get a construction by the courts of the Apportionment Act of 1892, and a declaration that it was unconstitutional. The Democratic members of the Court — alas that it should be so, the court divided on party lines — Judge Peckham writing the opinion, said that there were inequalities, that there were great inequalities, but they were unable to say that these inequalities might not have occurred within the exercise of legislative discretion, which indicates very plainly, does it not. that if the Constitution was so extraordinarily liberal as it appears to be, construed as it was by the opinion of the majority of the court in the Rice case, as to permit such inequalities as these I have called attention to here of over a hundred thousand unrepresented number of inhabitants in one district of this State, it is high time the Constitution was changed and provisions were put in it which shall forever forbid any such exercise or abuse of legislative discretion? That there were these inequalities and what they were, is clearly exhibited by the opinion of Judge Andrews in that case. He says:

"By what process the Legislature reached the results embodied in the Apportionment Act does not distinctly appear. It had before it the enumeration of the representative population in each of the counties of the State. The problem (in respect to the Assembly) was to apportion among the several counties the 128 Members of Assembly, 'as near as may be,' according to the number of the respective inhabitants, excluding aliens. It seems to have first assigned to twenty-nine counties (reckoning Fulton and Hamilton as one), each having less than a full ratio of population necessary to constitute an Assembly district, one member each, leaving ninety-nine of the 128 members unassigned. It then assigned to each of the other counties a member or members, corresponding with the number to which it was shown to be entitled, as ascertained by dividing the whole population of the county by the ratio. This left remainders on all the counties, and eleven of the 128 members unassigned. The eleven counties having the largest remainders were: Orange, 44,474; Onondaga, 44,460; Kings, 39,400; Ulster, 39,593; Monroe, 34,833; Steuben, 32,600; St. Lawrence, 31,800; Westchester, 31,226; Queens, 26,376; Dutchess, 26,272; Chautauqua, 25,085.

"If, in apportioning the eleven unassigned members, the apportionment had been made upon the principle of assigning them to the counties having the highest remainders, one would have been assigned to each of the counties above named in their order. The Legislature did assign an additional member to each of the first four counties named, and when it came to Monroe, skipped, and gave no additional member to that county, but did instead award one to Steuben. It refused to give an additional one to St. Lawrence, but gave one to the succeeding county, Westchester. It gave one to Queens and one to Dutchess, but gave none to Chautauqua. In preference to Monroe, St. Lawrence and Chautauqua, it gave an additional member to Albany, having a much smaller remainder than the others. It gave one to New York county, which had a remainder of 8,813, and one to Rensselaer, having a remainder of 24,081. Neither Albany, New York county nor Rensselaer had a remainder equal to any of the eleven counties named, and in some of the cases the disproportion was very great. The inequality in the distribution of political power under this apportionment is illustrated by another form of statement contained in the opinion of Judge Dwight. Dutchess county, with a population less than St. Lawrence, received double the representation of the latter; Albany county, with less than twice the population of St. Lawrence, received four times its representation, and Monroe

county, with 24,000 more population than Albany, received one less representative.

"The question is, was this apportionment of members to counties having smaller remainders of representative population than other counties, and giving the former additional representation denied to the latter, a compliance with the command of the Constitution that the apportionment should be made "as nearly as may be" according to the number of inhabitants of the respective counties. I think the question admits of but one answer, and that it is incontestible in reason, that the constitutional rule required that the eleven members should have been assigned to the counties having the highest remainders. This would have been the nearest approximation to equality, according to population. That this is so is a mathematical certainty, and admits of no controversy."

Subsequently the same court unanimously concurred, when reviewing the action of the board of supervisors of Kings county in laying out the Assembly districts in that county pursuant to the act of 1892, in holding that a variation in Assembly districts from a population of 31,000 in one district to 102,000 in another was entirely too great to sustain the claim that there was any attempt to comply with the Constitution, and the court unanimously sent back the apportionment made by the board of supervisors to that court for correction, saying that there was a difference in the power of the two bodies, that the Legislature was vested by the Constitution, by the use of the words as nearly as may be, and by the use of the other language in the Constitution requiring that each county should have at least one Assemblyman, and as to the Senate requiring that county lines should not be broken and counties should not be divided in constituting Senate districts, that the sense and extent and purpose and scope and effect of those provisions taken as a whole, were, to vest discretion in the Legislature so that such discrepancies quite as large as those upon which the same court subsequently set aside an apportionment made by boards of supervisors, would stand as an apportionment if made by the Legislature. The case I refer to is the one heretofore cited, the Baird case, in the 138th New York Court of Appeals Reports. Now, Mr. Chairman, I insist as a plain moral, as well as legal, proposition before this Convention that inasmuch as the Constitution of this State has been by the courts thus construed to afford such an opportunity for the exercise of partisanship and of wrong doing as we have seen exhibited and conclusively shown under the apportionment act of 1892, by these comparisons and by quotations from these decisions, it became the plain bounden duty of your committee, and it remains

the duty of this Convention, to prescribe new rules for an apportionment, and to right the wrongs that have thus been committed under color of authority and of law, by this Convention doing as did the Convention of 1821, as did the Convention of 1846, and as did the Convention of 1867, that is, making a new apportionment on fair lines, restoring the balance of power and the balance of representation where it was and where it properly ought to be before the gerrymandering act of 1892. With that argument, and with that statement of these principles, I leave this branch of the question and proceed very briefly to show how your committee has attempted to arrive at that result.

In the first place, we found that the Secretary of State, in our belief and judgment, should be vested with the power of making this enumeration. The reasons for that are stated in the report, and I do not care to fully restate them. They are, in brief, that disputes have arisen heretofore, when the status of the Legislature was one way and of the State officers another politically, as to who should make the enumeration, so we put it beyond their power of ever having a dispute by providing that the Secretary of State, who is the clerical officer of the State, should do this clerical work, leaving, however, to the Legislature the full control of the amount of money to be expended for that purpose, so that he has not the power or authority to go on at his own sweet will and employ whomsoever he pleases at whatsoever expense. Next, turning to the Senate districts, we found that this was the situation: for years the population of the great centers of money and of commerce in cities has been increasing. It has been increasing disproportionately to the rest of the State. These great centers are now, at least, as to two of them, coterminous as municipal corporations, as city corporations, with the counties in which they exist. Every county has, and these counties particularly have, as pointed out in the opinion of the majority of the court in the Rice case, a legal entity, many things in common, a local government in common, the same city and county officers in the case of the counties as distinguished from the cities, or of the counties and cities together, where city lines are coterminous with county lines. We found in regard to the principle, which has always been recognized in the Constitution, of not dividing county lines and giving counties a fair representation, that giving these particular city districts exactly the population fixed for them and spreading the other members among the other districts of the State, with the small number of one hundred and twenty-eight Members of Assembly and thirty-two Senators, we were getting districts in this State, whose citizens were away out of

touch with their representatives. Here, for instance, is the twenty-first district, composed of the counties whose names I have read heretofore. Those counties comprise nearly one-sixth of the State. There are long distances from one part of that district to the other, and from some one county to some of the other counties. How can a Senator represent them intelligently, carefully and fully as he ought to represent them? And so, there were other considerations of the same character which I do not care to particularize, one of them, that I have in my mind as personally very much controlling, being that an increase in the number of Senators and members would have a tendency to break down combinations for corrupt purposes to control the Legislature in aid of the vast trusts and monopolies, or by partisan bosses; and we decided for these reasons to increase the number of Members of Assembly from one hundred and twenty-eight to one hundred and fifty, and the number of Senators from thirty-two to fifty. It is indeed right that this should be done on the basis of population, for as pointed out in our report, when this present number of Members of Assembly and Senators was fixed, the population of the State was very much less than it is now. I have the exact figures here. This number was fixed under the Constitution of 1821, when the population of this State was in round numbers 1,300,000. The total citizen population of the State under the census of 1892, was nearly five times greater, namely, 5,790,865. Of course, it needs an increase in representation. Whatever may be said upon the score of expense, I, for one, will always believe that the great people of this State would much prefer to expend the sum of $61,000 per annum, which is what this increase will cost in exact figures, to have themselves fully represented in the Assembly and in the Senate, than not to be fully represented and to be saved the mill, or quarter of a mill or so of tax, that might possibly be thereby required, or even less than that. I have not figured it down to mills, but I have no doubt my mathematical friend, Mr. Osborn, will do so, and I will take his figures.

Now, Mr. Chairman, without going further into this question, we, believing that the representation was inadequate in the other districts outside of the cities, made provision so that this increased representation should be had. These great centers of population are always represented by their Senators. For instance, under our apportionment the city of New York gets twelve Senators, and I ask any member of this body, and I do not care on which side of the political fence he sits, whether any one of the Senators does not represent the whole city of New York? The city of Brooklyn gets seven Senators, and I ask any one the same question as to Brook-

lyn. Each one of these Senators represents a political entity as a whole. But when you come to put three counties into a senatorial district, as you must do to bring up the ratio of population, then I say that any thinking man, any intelligent man, any fair-minded man, must admit that there cannot be fair representation. So that we provide rules in our proposed amendment which will, under such conditions, do two things. In the first place, we believe that they are so drawn as to both the Senate and Assembly districts that, with the other provisions in the amendment giving the courts power to review, it will be absolutely impossible to make a partisan gerrymander without running the risk of having it corrected by the courts, and restored where it ought to be. In the second place, we have provided so that this vast influx of population, a very large proportion of which comes by immigration into our great cities of the State, while it will not be below its representation on the basis of the city being a political entity, a business entity, a commercial entity, will at the same time not unjustly and wrongfully affect the representation of the rural districts, where there are several counties, each one of them equally a business entity, a political entity, a commercial entity, with any of the great city counties, and deprive those counties of their just and full representation. What those provisions are and the exact working of them you will find expressed in the amendment and in the explanation of it given in our report, Document No. 65, to which are attached certain tables of figures. We have caused to be prepared under the resolution of this committee, by the State Engineer, a map which shows the Brooklyn districts, the districts of the State and the New York districts. I find that in one or two instances there has been a mistake in footing up or in the figures, which ought to be corrected. We took the figures for Monroe county as given to us by the members of this Constitutional Convention from that county, which we supposed were correct. I find that in Document No. 65, district No. 43 is given at 113,091 population, and district No. 44, 84,612 population, the division being made by using the Genesee river, which is a natural boundary, as the division line between the two districts. But those figures are incorrect, one or the other of them, I have not yet ascertained which, but it is being figured out from the census proper and will be stated. One district or the other is out of the way, for those two items together figure up 197,703, whereas the total population of Monroe county, as given by the census of 1890, in the document which was printed No. 65, and also in Document No. 30, from which in part 65 was taken, is 181,230. The footings are correctly given in the Document No. 65. The footing is given at 181,230, which

is the correct statement of the total population of Monroe county. This error, the engineer not knowing which was right, our footing or the figures of the separate district as given, has allowed to creep into his map; but it can easily be corrected and is not an intentional error. He simply put down the figures as we gave them to him in Document No. 65, and put his own footing to it, which is correct, although our own footing is incorrect and should be corrected. I believe there are also some corrections to be made in the first lot of documents numbered 65, that were printed in regard to Kings county. The figures for that were given by the Brooklyn representatives. As I understand it, they have been examined by Colonel Morton and Mr. Sullivan. They were supposed to be correct, and were given as correct. It seems there are some changes in those figures, but they make no difference in the result, because the footings, as I understand, are correct, and the plus and minus fractions as stated in Document 65, in the first one hundred of them, are correct. In the subsequent publication of this document those corrections were made, and if you get from the document room the second lot of Document No. 65 you will get the corrected copies in reference to the Kings county district. I believe, also, that there are some slight corrections in footings in the New York district, but they do not change the result in any important particular. Now, Mr. Chairman, having stated this, I refer you for any further statement of what was attempted by the committee, and what the committee believes it has accomplished, to the report. It is on your desks, it has been once read by the Secretary, and I do not care to take you any further upon this subject. The position of your committee, briefly expressed, is simply this: the apportionment of 1892 was manifestly unjust and unfair, illegal and wrongful. The courts of this State declared that under the then existing constitutional provisions, while that was so, they could not set it aside, because it was within the exercise of legislative discretion, although apparently an abuse of it. Therefore, it becomes necessary for this Convention to recommend new rules for apportionment. We say, secondly, that it was our duty, inasmuch as it was so unfair and so unjust, and following the precedents of prior Constitutional Conventions since 1821, to ourselves make an apportionment that we believed to be fair and just, and leave it to the people to say whether they wanted the change or not. Otherwise, no one could tell what would occur one way or the other in reference to the matter. Having provided a new scheme and plan of apportionment and put it in operation in plain figures, as we set forth in our report, it is for the people to

say whether they approve of it or not. They have a practical example of how the thing will work, how it has worked out, in the apportionment as made by this committee so far as it can be worked out, and they are given plainly to understand that it is not left to the Legislature to determine the thing one way or the other, but the people are told by the figures presented to them just what the committee and this Convention mean to do, namely, to right the wrongs that have heretofore been imposed upon the people of the whole State, and also to see to it that in the future the sparsely settled districts of wide extent of territory which are compelled to come together in the form of Senate districts, shall not, because of the long-settled rule that counties shall not be divided, fall below a fair representation to the great advantage of other sections where population is compact, where business is compact, and where there is no necessity for a very large increase in representation, and to see to it that in future the Assembly districts cannot be unequally created without being corrected by the courts.

These are the principles that are embodied in this report, together with the proposition already spoken of, of a just and fair increase in the number of Senators and Members of Assembly, to bring them up to the great increase in the population of the whole State that has occurred. We leave it in your hands. We believe that the more you examine it, the more carefully you look into it, notwithstanding the fact that any one can make criticism of any matter of figures and find fault with it, and show that there was a mistake and there was something wrong, yet, in the main, after you have looked it carefully over, I believe you will say that it is a just and fair apportionment, an equitable apportionment, one that ought to be made in order to right wrongs and remedy injustice, and one that the great people of this State who have heretofore denounced these wrongs and have pronounced their verdict upon them at the ballot-box to the extent of a hundred thousand votes, will say is a just and fair apportionment and will approve.

Mr. Bush — Mr. Chairman, I have listened with a great deal of interest to the remarks of the chairman of the Committee on Legislative Organization and to the explanations, if I may so call them, which he has pretended to make of this proposed constitutional amendment.

The gentleman states that gerrymanders are wrong in principle, that they are subversive of good government, that they tend to make the people restless and to diminish faith in popular government. I thoroughly agree with every word that he has said upon that subject. He has quoted decisions of the courts of Michigan

and Wisconsin to this effect. With these decisions I agree thoroughly and absolutely. I simply want to call the attention of the gentlemen of this committee to the statements made by Mr. Becker of what he believes to be correct and right and just in reference to an apportionment, and later on I wish to quote Mr. Becker against Mr. Becker's work. For I assume that the chairman of the committee may be held, to some extent at least, responsible for the work of that committee, particularly so, when the members of the minority of that committee never saw the report as it finally came into this House and knew nothing of what it contained until they heard it read from the Secretary's desk, or saw it in the newspapers. Accompanying the report of that committee to the Convention was a document known as Document No. 65. This Document No. 65 states that the apportionment of 1892 was an outrage upon the people of the State of New York. The gentleman from Buffalo coincides thoroughly with the statement in that document; he states that that was a rank gerrymander, intended to prevent and stifle the will of the majority of the people, and if that was so, it was certainly reprehensible, and should be wiped off the statute books as soon as it is possible for the people to do it. But, is it wise to take Mr. Becker's unsupported statement, or the statements of a partisan press, or the criticisms of men who know little about apportionments, other than the fact that districts, when they see them on the maps, do not look to be what they call symmetrical? They lay great stress upon the fact that Senate districts should be compact, as though it made any great difference to the people of the State of New York whether the district from which a man came when he stood upon the floor of the Senate or Assembly was square, circular or elongated; as though the fact that a district was gerrymandered or not depended upon the shape of the district rather than the population in it.

Mr. Chairman, much has been said about the apportionment of 1892. Much has been said about it by people who know nothing about it whatever. Much has been said about it by people who intentionally wish to misrepresent it for partisan ends.

Now, let us look at the apportionment of 1892 for a few moments. I assume that it is a waste of time to discuss that matter to any extent in this Convention. It is already history, and if this Convention has its way it will soon be off from the statute books. But, Mr. Chairman, this Constitutional Convention and the Legislature which prepared that apportionment of 1892 are two separate and distinct bodies. The Legislature of 1892, which made the apportionment of 1892, was hampered and bound by constitutional pro-

visions. It had a majority in the Assembly of two members, and in the Senate of one member. Those members were human, as well as the members of this Constitutional Convention. And I admit that where a disproportion must exist, it is in the nature of almost every man who belongs to any particular party to lean somewhat toward it. With that concession of party spirit, I am perfectly willing to discuss the apportionment of 1892 with the gentleman from Buffalo.

The Constitution under which that apportionment was made provided that the State should be divided into thirty-two Senate districts, and the Assembly should consist of 128 members. This Constitutional Convention is not so hampered, as you will see by the committee's report. We, in 1892, divided the State into Senate and Assembly districts, as you will find them here. Now, let me call your attention to one brief statement of Mr. Becker, something which he relies upon and lays great stress upon, and that is this, that the population of the State, less aliens, should be divided by the number of members into which it is proposed to apportion the State, and that shall be the ratio. Then every county shall be given as many members as the ratio divided into the population of that county will give, and counties having the largest surplusage shall be given the extra members in proportion to the amount of the surplus. This is entirely just and entirely equitable, and I agree with that principle in every respect. Wherein was that departed from in 1892, because you will remember that this question was carried to the Court of Appeals principally upon the Assembly representation? Was this method departed from? I admit it was departed from in two or three instances in that case. But why, and how? I introduced that apportionment measure into the Assembly, and I say to every man upon this floor that when it was introduced into that Assembly it was mathematically correct and in line with what the gentleman states and with what the courts said was the correct principle. The population of the State was divided by 128, and each county was given the number of members that divisor would give, each smaller county having one member anyway, according to the Constitution. It was then proposed to divide up the remaining members among those counties having the largest surplus. But, Mr. Chairman, the Democratic party had but two majority in the Assembly. A certain faction of that party in the county of Albany had four members in that Assembly. They said you will do one of two things; Albany will have four Members of Assembly, or you will pass no apportionment. This same faction had one Senator in the Senate. There was a condition which confronted us, and not a theory. Upon that occasion it was within the power of the Repub-

lican party of this State to have had a mathematically fair apportionment. The Senator from St. Lawrence county came to me and agreed that if we would fix his district up there to suit him that he in the Senate would vote to offset the vote of the Senator from Albany, and that the three Republican members from St. Lawrence county in the Assembly would vote with the Democrats upon that fair and mathematical apportionment, and I agreed to it. That agreement stood until the morning when the subject was brought up in the Assembly. Then the Republican party supposed the Democratic party was in a hole, and could not pass the apportionment without them, and he receded from his bargain. There was nothing then left to do but to let the apportionment go or make terms, and we made terms, just as you would have done. To that is due this slight unfairness of giving St. Lawrence only one member, and Monroe one less than it was entitled to. If the Republican party in this State can make any glory out of its own wrong in that case they are entirely welcome to it. The gentleman said that the people repudiated that apportionment by a hundred thousand votes. Did they? What was the result of the election of 1892? It was carried by nearly fifty thousand majority for the Democratic ticket. But, if that apportionment of 1892 was a gerrymander, then I would ask any man of ordinary intelligence and honesty, what was the apportionment which preceded it? What was the rank injustice that the people voted against time and time again? The gentleman made some allusion to the manner in which the Democrats obtained the Senate upon that occasion. He mentioned the names of Sherwood, of Peck, and of Dean. At that very same election, the people of the State of New York voted by forty-seven thousand to turn the Republican party out of power in this State and put the Democratic party into power and that it should make its laws; and yet, with that forty-seven thousand majority, with the assumption of fairness which the gentleman claims, he says right here that we were not entitled to that Senate under any circumstances, and I say frankly that we could not have had it if it were not for Republican blunders. They knew what the Constitution of the State was. It had existed for forty years. They nominated ineligible candidates, and they knew it, but they assumed that they would have control of the Senate and they would not unseat their own members. Therefore, they took no heed to the protests made in those districts where ineligible candidates were nominated, and the matter terminated as it did. A majority of forty-seven thousand people by a pure accident got its rights. What was the result under the apportionment of 1892 of the very

first election of Senators under it if it were a gerrymander? And now, let me right here interpolate: what is a gerrymander? Is any apportionment a gerrymander which quickly responds to a change in public sentiment? Let us look at the last Republican apportionment previous to 1892. In 1884, the Republicans had nineteen Senators and the Democrats thirteen. The Republicans elected seventy-three Members of Assembly and the Democrats fifty-five, and yet the Democrats at that election carried this State. In 1885, the Republicans elected twenty Senators and the Democrats twelve; the Republicans seventy-nine Members of Assembly and the Democrats forty-nine — a majority of thirty; and yet the Democrats carried the State by 11,000. Talk about gerrymanders. In 1887 the Senate was twenty-one Republicans and eleven Democrats. The Republicans had seventy-two Members of Assembly and the Democrats fifty-six, and yet the State went Democratic by 17,000. Did their apportionment ever respond to public sentiment? Never. Now, what was the result under the apportionment of 1892? The Republicans carried the State of New York in the fall of 1893 by 24,000 majority. That not only gave them the Senate by six majority, but it gave them the Assembly by twenty majority. Did that apportionment respond quickly to public sentiment, and if it did, where was the gerrymander? How is it that Albany, with 156,000 population, is given under this proposed apportionment one Senator and one district, while Monroe county, with 181,230 population, is given two Senators, one district having but about 68,000 population? Twice 68,000 is 136,000. So Albany has 20,000 more than twice the population in that Senate district in Monroe, and yet it has the same representation. (Applause.) It makes an awful difference with some of these gentlemen who it is that does the gerrymandering, as it always has.

But, Mr. Chairman, I will return to that question a little later. Now, what is necessary in making an apportionment? How should an apportionment be made? What should be considered, if anything, other than population? First, there are certain conditions in this State. The rural districts in the State are decreasing in population, while the city districts are increasing in population. Second, the country districts of the State are Republican, and the city districts are Democratic, as a rule. Now, this document which the Committee on Legislative Organization have presented to the Convention is full of errors and entirely misleading in a great many respects. But out of this very document they are easily condemned. First, they change the Senate from thirty-two to fifty members, and the Assembly from 128 to 150. What reason do

they give for this change? Mr. Becker said that the Senate had consisted of thirty-two members since 1821. The he said that the districts are so large now that one man cannot represent them; territorially large, of course, he means, because it is the large districts in extent which are in the country, which I presume he refers to, and not to the population. How is it that in the days when there were no railroads, or comparatively few, at least, and no telegraphs and few newspapers, and when the population of the State was probably one-quarter of what it is now, that one man living in a country district, which was then as large as it is now, could represent that district intelligently and without any means of communication between the various parts of it, if he cannot do it to-day when he has railroads, telegraphs, newspapers and everything of that sort, so that he may hear from every quarter of his district in half an hour? But that is not the reason they changed it from thirty-two to fifty. The Legislature is bound by the Constitution. It can make no more Senate districts than the Constitution permits; but this grave and dignified body is not hampered in that way. They might take any number, from ten to a thousand, as they see fit, so far as any constitutional inhibition is concerned. There is one other thing: if the Legislature does a grievous wrong and it is unconstitutional, a citizen can then appeal to the courts and have the error corrected, but that is not so with this Constitutional Convention, and the gentlemen know it, or they never would have introduced this thing. No Supreme Court can declare this unconstitutional, because it is proposed to imbed it in the Constitution itself, and there will be no getting away from that. Ten years hence the Democrats may apportion this State. The majority provides one set of rules for them, and the Supreme Court may review their action; but to-day they are apportioning the State, and they put it in the Constitution, and no tribunal can review their action except the great court of all the people of the State, and we propose to let the people of the State understand what is proposed to be done here, and that is our only salvation.

Now, Mr. Chairman, any man who will take the pains and trouble to investigate this subject closely and to try the various divisors of forty Senators, fifty Senators, or sixty Senators, will find a curious state of facts. He will find that in this State there are thirty-seven counties having an average population of 35,000 each. If the State is divided into forty districts, it will take four of those counties on an average to make a Senate district, because the divisor by taking forty districts, will be 144,771, and four times 35,000 is 140,000. And so it will take four of those small counties to make

a Senate district. If you divide it into sixty districts, it would take three of those counties to make a Senate district, and there would be a surplus of about 9,000, which can be easly defended if you can defend this with a difference of seventy and ninety thousand. But those counties are Republican counties, and if you divide the State into sixty districts, New York city and Brooklyn, Albany, Westchester, Rensselaer, Monroe and Erie counties would have a preponderance of members. Forty senators would make the Senate a tie, twenty Democrats and twenty Republicans; sixty Senators would give the Senate to the Democrats, but fifty Senators, peculiar as it may be, leaves such a divisor, viz.: 115,000, that while it will take 123,000 to elect a Senator in New York, Kings, Albany, Rensselaer and Erie, it takes only 110,000 to elect a Senator in the Republican counties under this proposed apportionment. So, you can see where the advantage is. Under this proposed apportionment, there is a Democratic surplus of about 150,000. The Republicans get representation for 150,000 more than they have population; so, that makes a difference in favor of the Republicans of 300,000 in population, or about five per cent of the total population. The political division under this will give about twenty-eight or twenty-nine Republicans to twenty-one or twenty-two Democrats. And now you know why they take fifty in preference to any other divisor. It is absolutely absurd to say that an increase of twenty-eight Members of Assembly would make this body any more popular or sufficiently so to go to the increased expense and to do away with the precedent of thirty or forty years or more, or to do away with the work of the people when they voted upon the Constitution in 1874, or to make all those changes unless there was some great political benefit to be derived from it.

Now, Mr. Chairman, while it is fresh in my mind what Mr. Becker has said about dividing up the Assembly and giving those counties which have the highest surplus the additional Members, I want to call the attention of this body to one thing. The most peculiar division that was ever made in the State of New York, or in any other State, as to Assembly districts, is provided for in this document. It provides, first, that the population of the State, less aliens, about 5,750,000, shall be divided by 150, the number of Members of Assembly. That gives about 38,000 as the ratio. Now, what do they do with the ratio? Do they divide up the State, and give to every county having 38,000 population or less, one member, and any county having double that, two members, and so forth? In the beautiful scheme which is advocated here, and which the chairman has quoted decisions of the court in favor of, does he adopt

that system of apportionment? Oh, no. That would give the cities their just dues. And it is openly stated by the majority of the committee that the purpose of the committee was to prevent the cities from getting the apportionment to which they were entitled and to give it to the country districts, and this work does it beautifully. They take this ratio of 38,000 and multiply it by one and a half, and that gives 57,000. Then they say the counties having less than 57,000 shall have one Member of Assembly. Very well. There are thirty-seven of those counties, and all but three of them are Republican, so that it works all right there. Those counties are, Allegany, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Lewis, Livingston, Madison, Montgomery, Ontario, Orleans, Otsego, Putnam, Richmond, Rockland, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, Sullivan, Tioga, Tompkins, Warren, Washington, Wayne, Wyoming and Yates. Those counties have thirty-six Members of Assembly. The population of those counties is 1,296,192. The average for a Member of Assembly is less than 36,000.

Now, that is one class of counties. Then they start out on a new ratio. All counties having more than one and a half ratios, that is, more than 57,000 inhabitants, and less than two and a half ratios, which is about 96,000, are entitled to two Members of Assembly. There are thirteen of these counties, namely: Orange, Suffolk, Niagara, Broome, Cattaraugus, Cayuga, St. Lawrence, Jefferson, Oswego, Steuben, Chautauqua, Ulster and Dutchess, and they have each two members, making twenty-six in all; an average population of 35,572 for a member.

Now comes the beauty of the scheme. The remaining counties of the State are to be divided by the remaining Members of Assembly, and that is to be the ratio for the division of the remaining counties. The remaining counties of the State are Albany, Queens, Kings, New York, Westchester, Rensselaer, Oneida, Onondaga, Monroe and Erie, where the large Democratic majorities come from. The population of these counties is 3,569,798, and there are eighty-eight Members of Assembly, which gives an average for each member of 40,566. So, that you see, under this beautiful scheme, which seeks nothing but fairness, that while 35,500 population elect a Republican Member of Assembly, it takes 40,566 to elect a Democratic Member of Assembly; and yet, there is nothing of the gerrymander about it, and it is put into the Constitution to prohibit wicked Legislatures from ever gerrymandering the State.

Any Legislature that can get up a more beautiful scheme than that ought to have a medal. I do not believe there will ever be one in the State.

Now, what should be taken into consideration in making an apportionment? Is it the population on the day upon which the apportionment is made, only? Or should the tendency of the population to increase in certain sections and to decrease in others be looked to, to a certain extent, at least? The population of the State increased from 1880 to 1890 eighteen per cent. In the same period twenty-four counties decreased in population, and the decrease was an average of five and three-tenths per cent. They decreased in population 43,445, and every one of these counties which decreased in population is Republican with the exception of two. On the contrary, the counties of New York, Kings, Queens, Westchester, Richmond, Rensselaer, Erie and Albany, every one Democratic except Erie, which is about a tie, gained in that same period an average of 29.4 per cent, and the population increased 627,925. Thus, while to-day, under this proposed apportionment, the country districts are over-represented to the extent of 150,000, these Democratic counties are under-represented to the extent of 150,000, and this divergence becomes more and more apparent as time goes on, and you cannot change this for the next ten years, at which time the divergence will be very much greater than it is at present.

Now, Mr. Chairman, I maintain that in making an apportionment these facts should be taken into consideration, and that the smallest number should be placed in the districts where the tendency of the population is to increase, and which will most quickly make up any deficiency, and that districts where the population is decreasing should not be over-represented now, because the situation becomes more aggravated as time progresses. These twenty-four counties, which are decreasing in population, are over-represented under this proposed apportionment, and will be more so in ten years. That is wrong. If justice and fairness are what you want, and the great cities are increasing at the rate of about three per cent per year in population, that fact should be considered in making an apportionment. But, the gentlemen in the majority absolutely disagree with us upon this point. They say the cities should not be given this representation, and the reasons they give for that position are these: that the county of New York has twelve Senators, and that every Senator of the county represents the whole county. Well, that may be true to a certain extent. But Legislatures can only act by a majority vote of its members, and no matter how able a member may be he has but one vote. By a majority vote they regulate the expendi-

tures of the State, they levy taxes upon the State, they levy taxes on New York city as well as upon the rural districts. How should these matters be arranged? Should there be any relation whatever between taxation and representation? Evidently the Republicans on our committee think that the greater the taxes a county pays, the less representation it should have, because that is the scheme presented here. New York, under the proposed apportionment, has 24 per cent of the representation in the Senate and 23.3 per cent of the Assembly representation. New York city pays forty-four per cent of the total State taxes. But New York does more than that. New York city is taxed for building armories throughout the whole State of New York. New York city is taxed for the support of the insane of the whole State of New York, but New York city cares for its own insane in addition to that. New York builds its own armories, and the State does not pay a cent toward building New York city's armories, nor for caring for her insane. New York does that herself, and pays her proportion of expenses for all the rest of the State. It would seem, then, that New York city paying such a large proportion of the taxes of the State, should at least have representation in the halls of the State Legislature which levies that tax somewhat in proportion to the tax it pays. But it has nothing of the sort. New York, Kings, Albany, Rensselaer, Erie and Westchester counties have seventy-four out of 150 Members of Assembly under this proposed apportionment, and twenty-five out of fifty Senators. That is about fifty per cent of the representation; and yet, those counties pay sixty-one per cent of the total State taxes.

Now, Mr. Chairman, here is one point that the gentlemen of the Convention can take into consideration when comparing the apportionment of 1892 with this proposed apportionment. The apportionment of 1892 left the largest representation in the city which pays the highest tax and which increases in population most rapidly. This proposed apportionment, on the contrary, gives proportionately the smallest representation where the greatest tax is collected, and the smallest representation where the population increases most rapidly. Which is most nearly just?

There is another subject that I wish to call to the attention of this body — and I may say here, that I hope the Democrats will not propose a single amendment to this proposed bill, for the simple reason that the foundation principle upon which it is based is absolutely wrong, and any amendment which we could make, unless it could bring it back so that the fundamental principle is correct, would be absolute folly. For that reason, I shall propose no amend-

ment, and I hope no Democrat will propose any amendment, except changing the term of the Members of Assembly from two years to one; and the reason of that statement is this: in proposing to divide the Senate districts of the State, Mr. Becker and the Committee on Legislative Organization have made the assertion that they proposed to so fix this Constitution, that a gerrymander hereafter will be impossible; that districts shall be so nearly equal in population that no fault could be found by any reasonable person; that it should not be left to an indefinite interpretation by the Legislature, but they would provide right in this article how it should be done specifically. Now, I wish to call the attention of the Convention to the manner in which it is proposed to do that. It is provided that in apportioning the Senate districts to the counties, no Senate district shall differ from the adjoining Senate district in the same county to a greater extent than the population of a block on the line dividing those districts; a very fair proposition, apparently. It would certainly prevent any very great disproportion in the population of districts in the same county, because the blocks in a city, as a rule, do not contain any great number of inhabitants, and the smallest block on a line between two districts would necessarily have but a very small population. It is proposed in addition, in dividing up the Assembly districts, to provide the same rule; that no Assembly district shall differ from another Assembly district in the same Senatorial district by a greater population than the population of a block on a line dividing those Assembly districts. It is proposed, in addition, that no Assembly district shall be divided in making a Senate district. In other words, that the same number of Assembly districts shall be placed in a Senate district, except where they are not exactly divisible, and in that case, either one more is to be put in the largest Senate district, or one less in the smallest district. Now, let us apply that rule. The rule is intended to prevent disproportion between the population of adjoining districts, and to prevent gerrymanders. If it will answer the purpose, it is an excellent thing. The committee evidently believes that it will answer the purpose, because they have incorporated it in this article after having considered the matter for three months, and if the committee are so sure that this will remedy the defect, they, of course, will apply it in their own apportionment. But do they do it? Not much. They do absolutely nothing of the kind. They utterly ignore it, and I wish to call the attention of the gentlemen of the Convention to the division of the cities of New York and Brooklyn, and Erie and Monroe counties, and apply the methods there which they propose. In the city of Brooklyn lives one of the principal members of the

Committee on Legislative Organization. The gentleman came to this Convention and stated that he had just one object in coming, which was to remedy the infamous gerrymander of 1892. And that if his voice could do it he intended to fix the apportionment scheme so that nothing of the kind could ever happen again. That districts should be so near in population that no reasonable man could ever find any fault, and that they should not differ in population to an extent greater than one block on the line between them. By that very same gentleman I was handed a statement of the population of the districts of Brooklyn, and there is a map over there showing it. We find that the Third District in Brooklyn contains 116,612 population and that the Fourth District contains 129,504, or a difference of 12,892. Does the gentleman from Kings or any other member of this Convention assume to tell me that the smallest block on that street dividing district number three and district number four in Brooklyn contains 12,000 population? Absolutely absurd. Now, district numbers four and five; number four contains 129,000, and number five, 121,000, a difference of 8,000; district number six has a population of 113,000, while number seven has a population of 130,000, or a difference of 17,000. They must have tremendously large blocks in Brooklyn when the smallest one contains 17,000 population; as large as some of the cities in the interior part of the State. And so, by looking over the districts in Brooklyn, which have been prepared by the members of the Committee on Legislative Organization, a member of which who so detests gerrymanders that he says that districts should not differ from each other more than the population of a block, they present to this Convention the rankest apportionment that is presented in the whole State, except the Rochester district.

Now, let us look at New York. I wish to state to the Convention that the figures in this Document No. 65, in reference to the New York districts are not correct. I say this advisedly, because we have taken descriptions of the districts, gone over the election districts and compared them, and they are grossly incorrect. They may have been correct when the gentlemen got up this apportionment in New York; I don't know who made it: some say it was the Committee of Twenty-four, and others the Union League Club. I don't know who did it, but the facts are these: the Thirteenth District, as given in this document, and on the map presented here, has 113,661 population. They claim that it has 117,401. District No. 15 has a population of 120,189, while these figures make it 119,495. District No. 16 has a population of 123,017, and this

document says it has a population of 118,468. District No. 20 has a population of 117,199, and this document claims it has a population of 117,229. These figures are wrong, and I think the explanation of it is, that after these districts had been mapped out some Republican politician in New York found they could not probably get two sure districts, and changed the figures afterward on the map without changing these figures in this document. If you will look over this document you will discover that New York city is beautifully apportioned. There is a very slight difference in the figures. When I looked at them first I was very suspicious; these two districts were too nearly equal to have very much manipulation for political purposes, and so we went through the districts and compared the figures, and we found that they differ as much as eight and ten thousand from the figures they give this Convention.

Now, I insist that when a committee brings a public document into a body like this, purporting to give correct figures, it should give them correctly, and not state that there are some trifling errors that make no difference. It makes all the difference in the world, for this reason: the Fifteenth District in New York city is entirely surrounded by other districts. There are six or eight districts surrounding it. This apportionment scheme provides that the Fifteenth District shall not differ from any district touching it by a population greater than the population of the smallest block on the border line; whereas, the Thirteenth District has 113,000 population only, and the Fifteenth District has 120,000. There is a difference of 7,000. And they pretend to state to this Convention that the smallest block on that line between No. 15 and six other districts contains 7,000 inhabitants. This is absolutely absurd. So you may go right on through these districts and you will find that, while they give us one method for making an apportionment ten years from now, they take an entirely different method in this apportionment which they propose to embody in the Constitution.

Now, there is another question to which I wish to call the attention of the Convention. It is proposed here that each Senatorial district shall contain the same number of Assembly districts. This proposed apportionment gives Brooklyn twenty-one Members of Assembly and it gives it seven Senate districts, so that in Brooklyn each Senate district must contain three Assembly districts. That is a mathematical calculation which you cannot get away from. Now, under the third ratio of apportioning Members of Assembly, each Assembly district in Brooklyn must have 40,566 population. If they have three Assembly districts in a Senate district, and each Assembly district has 40,566 population, a Senate district in Brook-

lyn must contain at least 121,000 population in order to contain three Assembly districts. But you will find that district number three has 117,000 population. Will some gentleman tell me how you can put three Assembly districts with 121,000 population into a Senate district having only 117,000 population? The man who can do that can square the circle.

Again, district number six has 115,671 population. How are they going to put three Assembly districts into that, with 121,000 population? District number eight has 113,219 population. That certainly cannot contain three Assembly districts. Number nine has 117,735, and that cannot contain three Assembly districts.

Now, the gentlemen will probably say that where the Senate district is small you may make the Assembly district correspondingly small. But recollect the first objection: the Senate districts cannot differ from each other more than the smallest block on the line between them. If there is a block on the line between them containing only 100 inhabitants, the Senate districts under this proposed apportionment shall not differ from each other more than 100 inhabitants. The same rule applies to the Assembly districts in that Senate district; they cannot differ more than the smallest block. I say it is absolutely impossible for the board of aldermen of New York or Brooklyn to divide up the Members of Assembly in the manner provided for in this proposed gerrymander. There is no possible explanation.

Now, take Monroe county; that rule probably will not apply. Monroe has four Members of Assembly. There the Senate districts on the figures given here, 113,000 and 68,000, will be vastly disproportionate. But it is the principle I am finding fault with. It is absolutely impossible to obey their rules in making an apportionment, and what I ask this Convention is this: why will you stultify yourselves by adopting a set of rules to make future apportionments, and absolutely ignore them in making the apportionment which you put in the Constitution? Do you pretend to say to the people of New York that this great Constitutional Convention, with the Republican majority of fifty members, is in any way hampered or prevented from making a fair, just and equitable apportionment, one which will stand as a model for the courts as well as for future Legislatures? What is to hamper you? Or do you wish the people of the State of New York to believe, as they cannot help believing, that while you profess one thing, you practice an entirely different thing; that what might be good for a future Legislature, although it might be necessary to tie it down by impossible rules, is unnecessary for this great body which assumes superior virtue and superior

intelligence, and that we can afford to absolutely ignore every rule of fairness and justice?

Now I wish to call the attention of the Convention to another matter which I dropped a moment ago. Mr. Becker, in his opening remarks, stated that it was a cardinal principle of apportionment that the counties should have representation in proportion to the ratio adopted, and that those counties having the highest surplus should have the additional members. But Mr. Becker took good care not to inform you that he utterly ignored that rule in making this apportionment. I was somewhat astonished when I first saw this apportionment of the Committee on Legislative Organization, and was assured by the gentleman who proposed it that the principal reason he proposed it was, that it left the smallest minus fractions. So some of us took occasion to compare it with the apportionment of 1892, and we found that the average variation in that iniquitous scheme of 1892 was less than the average variation in this one. So, that certainly could not have been the motive that actuated the gentleman who first originated this beautiful scheme. Now, if we are going to quote Mr. Becker on his feet in this Convention, as against Mr. Becker in his report to this Convention, we will find that he stutifies himself absolutely. If the decision of the Minnesota court and the Michigan Supreme Court, and the Supreme Court of the State of New York is one that Mr. Becker believes is fair and just and honest, and what this Convention should adopt, that is one thing. But, if he does believe it he should practice it and give us a sample, in order to show his faith by his works. If you divide the State of New York into 150 Assembly districts, having a ratio of 38,605, which is the ratio adopted by this committee, their first ratio, you will find an entirely different scheme, an entirely different result from the result obtained by taking these three different ratios which the bill finally takes. Under the apportionment as introduced into this Convention, New York city is given thirty-five Members of Assembly; but if you adopt the ratio of 38,605, and apply it to the population of New York city in the way Mr. Becker says the Supreme Courts of three States say it should be done, and in the way he says on his feet it should be done, then New York city will have thirty-six Members of Assembly. If you will divide the population of Kings county by the ratio of 38,605, you will have twenty-two, and an unrepresented fraction left of 9,673. But Mr. Becker's proposed apportionment gives Brooklyn only twenty-one members. You will find that by choosing the ratio of 38,605, and applying it to Monroe county, Monroe county would

have five Members of Assembly; but under this scheme, Monroe county gets only four.

Now, why was it necessary to go into this complicated method of getting three ratios to divide up the Assembly, and only one ratio to divide the Senate districts? It was for this purpose: it was to take away Members of Assembly from the Democratic districts of New York and Kings and give them to the rural counties; and let me show you how it is done. Under the proposed apportionment, Cattaraugus county would get one Member of Assembly; that is, under the scheme of dividing up the population by 38,000, and giving the counties with the highest surplus the additional members. Cattaraugus county has about 59,000 population. It is just over the one and one-half ratio limit of 57,000, which the gentlemen adopted. Now, why? Mr. Lincoln is a member of the Committee on Legislative Organization and resides in Cattaraugus county. Mr. Vedder is also, I believe, a resident of Cattaraugus county. Whether this complicated method was adopted so as to give Cattaraugus county one Member of Assembly more than it was entitled to I do not know, but that is just exactly one of the results that is accomplished. It takes away a Member of Assembly from Brooklyn, which has population enough for an additional member and 8,000 over, and gives it to Cattaraugus county, which has only 2,000 over the first limit. The gentleman from Buffalo wept a moment ago when he found that St. Lawrence, under the iniquitous apportionment of 1892, as he terms it, had one less Member of Assembly than a county which had a little less population, but we find he does not weep at this spectacle of giving Cattaraugus county, with 2,000 over the ratio, an additional Member of Assembly, and Brooklyn, with about 50,000 over the ratio, none.

In addition, I want to call the attention of the Convention to this matter: here is the result of this complicated method of dividing up the Assembly districts and the reasons for it. If the ordinary method of apportionment had been adopted, namely, of applying the ratio of 38,605, and then giving the additional members to the counties having the highest surplus, New York county would have had thirty-six members; Kings county, twenty-two members; Monroe county, five members; but with this complicated method of three ratios, we find that New York gets only thirty-five, Kings county, twenty-one, and Monroe county, four; but Cattaraugus county, which was never known to give anything but a Republican majority, gets two members, when it is entitled to only one; Broome county, that never gives anything but a Republican majority, gets two members,

and is entitled to only one, and Cayuga, which never gives anything but a Republican majority, gets two members instead of one.

Now, Mr. Chairman, if this proposed method of apportionment is not a raid upon the great centers of population of this State, upon the cities of this State, upon the Democratic regions of this State, I would like to hear some gentleman give any other explanation of these surprising results. I cannot understand, Mr. Chairman, the intense hate with which some of the delegates upon this floor seem to regard the great cities of the State. They never hesitate under any circumstances to vilify them, to in every possible way cheat them out of representation, to load them up with surplus taxes, and to deny them the representation in the Legislature to which they are entitled. Why it is I do not know. The great cities of the State are the centers of wealth, intelligence, culture and refinement. The great cities of the State support the charities. They form the public opinion of the State to a great extent, and it is in the great cities of the State where public sentiment makes itself soonest felt. Last fall there was dissatisfaction with the people of the city of Brooklyn against its government, and the people, without reference to party, overthrew it and wiped it out of existence. Public sentiment was aroused immediately and responded. Can any gentleman in this Convention conceive of a situation of affairs in the counties of St. Lawrence, Cattaraugus, Cayuga, or any of these remote Republican regions where the people would reverse their majority and elect a complete Democratic board of officers? Has any one ever heard of it? It would be absolutely impossible; and why? In those remote regions of the State the great daily newspapers do not, as a rule, circulate. The only newspaper they see is their own little organ, which is wedded to the party it advocates, and opposes every principle which is at all derogatory to that party. It will print nothing which will in any way tend to praise the opposition. The result is, that the people in those places know comparatively little of what is going on in the outside world, compared with the people of the great cities. In the cities there are the great morning papers and evening papers, their public speakers, their press bulletins, and a hundred and one sources of information which are denied to those in the rural districts. And yet, when you listen to the gentlemen upon this floor, you would imagine that all the intelligence, education, refinement, culture and morality that this great State can boast of, existed in the remote regions of the State where the newspapers seldom reach. It is absolutely false and contrary to all human experience.

Again, in reference to the apportionment: this method of appor-

tionment which gives to the rural districts more than the representation they are entitled to, in effect makes that representation perpetual and sure, for the simple reason that public opinion in the remote regions seldom or never overturns the usual majorities; but on the contrary, in New York city, or in Brooklyn, or in Erie county, the people are apt to rise at any moment in a spasm of virtue, and overturn entirely their normal vote; as witness what took place in Buffalo and Brooklyn last fall.

Now, there is one other thing I wish to call attention to in passing: the gentleman from Erie is a stickler for fairness and honest representation, and thinks that the Legislature should change with public sentiment, and for that reason the various political parties in the State should have a fair division of the population and of the districts. Look at Erie county under this proposed representation. Erie county is politically a tie. I have the gentleman's own figures for my statement. Yet, he unblushingly presents to me a districting of Erie county as follows: Erie county is divided into three districts; one with 2,000 Democratic majority, two with 1,000 Republican majority each. In other words, a Republican county having no majority, sends two Republicans and one Democratic Senator. I find no fault with that; I am not standing here pleading the baby act. I do not blame any man for standing up for his party to a reasonable and fair extent, but I absolutely despise any man who stands on his feet and cries down as a gerrymander the apportionment of 1892, but who advocates and proposes to vote for this constitutional gerrymander.

Now, had the State been divided into forty districts, the ratio would have been 144,000, and Erie county would have had two Senators, one would have been a Democrat and the other a Republican, and they could not have prevented it. New York city would have had ten Senators, and they would have been all Democrats. Brooklyn would have had six, and they would have probably been divided five and one. Monroe would have had one Senator. The Senate would have been twenty Democrats and twenty Republicans. Forty Senators and 160 Members of Assembly would have retained the proportion between the Senate and Assembly which has existed in this State for fifty years; and yet, for the purpose of a gerrymander, and nothing else; for the purpose of making the Senate of the State of New York surely Republican, so that the great political bosses of the party can levy blackmail on the corporations of the State for campaign purposes, they make this change from thirty-two to fifty, and give no other reason so far, either in their printed document or in the statement of the chairman of the committee other

than this, that thirty-two have existed for a good many years, and they thought they ought to have fifty, so that corrupt political bosses — I quote the language of the gentleman from Erie, who is a Republican, and fault cannot be found with me if I repeat it — so that political bosses and corruptionists cannot corrupt the Senate. In other words, that it will be more difficult for a political boss to control a man who comes from a small district than one who comes from a large district. Mr. Chairman, I assert that the contrary of that proposition is true; that the only reason that the Senate of the State of New York has better representatives and abler men than the Assembly is the fact that it takes an abler man to control three or four counties, to secure the votes of the delegates of three or four counties in a convention than if he simply seeks the votes of delegates in only two counties. So that the very reasons they give for a change are reasons that militate against their position. The larger the territory and the greater the population to be represented, the greater on the average is the calibre of the man whom the people select to represent them, and the more intelligent, and greater as a rule, his integrity, because he must be better known, or he will not be nominated.

Mr. Chairman, it seems to me that the gentlemen of this Convention must see that if they are to support this proposed apportionment they must do it as partisans and not as patriots. But, if they are going to support this scheme on this floor, I protest against their using the language of the Supreme Court of the State of New York, or any other court, in justification thereof. If they use that language I demand that they abide by it. If they insist upon fairness and equity; if they declare upon this floor that an apportionment which does not respond to public sentiment, and by which, while the State may give a great majority for one party, another may still retain the Legislature, I insist in the name of all fairness, that they shall do it in the name of their party, and not in the name of equity.

Mr. Chairman, I find no fault with any man for being a partisan and believing in his party. I profess those sentiments, and I am ready to advocate them at any time. I believe the best and purest government this country ever had or can have is a fair and honest party government, and that honest, rugged partisanship is the safeguard of the country, State and nation. I do not believe in the theories of these visionary dreamers who imagine that they alone can govern this great State, and that we are blockheads for not taking their advice. I do not believe in new-fangled ideas simply for the sake of change. I do not believe, for instance, in changing the term of a Member of Assembly from one year or two, for the pur-

pose of letting a few reformers in New York city vote for a mayor as they say, without having the tariff question interfere. But, on all questions, if you follow them up, you will see the absolute futility and impracticability of their ideas. They simply see their own immediate surroundings, without seeing the effect on the country at large. It is proposed here, for no other purpose, to change the term of Member of Assembly to two years, as they say, to eliminate party politics from mayoralty contests. Yet, in 1874, the people of the great State of New York adopted a constitutional amendment changing the term of the Governor from two to three years, so that the office of Governor and Lieutenant-Governor of this great State might not be decided by the tariff issue in a presidential year. By having the Governor and Lieutenant-Governor and every State officer in the State, both branches of the Legislature, Senate and Assembly, elected every two years, you inject into every presidential election this question, and all the officers of the State government will be running for their various offices on the tariff question. Then, which is the better, that a few *dilettante* reformers of New York shall be put to the great inconvenience of being compelled to stand up by the side of politicians soliciting votes on election day and asking a man to vote his party ticket, or that the whole State government should be upset so that they may conscientiously support a business men's movement?

Mr. Chairman, I insist, and I think the Convention will agree with me, that it is to the best interests of the State of New York to have the Members of Assembly returned to the people every year, in order that the people may pass upon their acts. You take away the dread that the average Member of Assembly has that his constituents at home are watching his acts, and will pass upon them at the coming election, and you take away one of the greatest incentives to upright actions. If the cities of the State wish to have separate municipal elections, let them have them in the spring, when they do not interfere with anything else. But I, as a citizen of the State, outside of the city, protest against their upsetting the whole State government, in order that they may have their way. And now, Mr. Chairman, as the hour of adjournment has very nearly arrived, I will yield the floor to some gentleman who wishes to get it for to-morrow. (Applause.)

The Chairman — The question is on the motion of the gentleman from Erie (Mr. Becker), to strike out the word, "two," and insert the word, "one," in line 40 of section 2 of the proposed amendment.

Mr. E. R. Brown — Mr. Chairman, while it was furthest from my intention to enter into a controversy by following closely the

remarks made by the gentleman who preceded me, it may not be improper for me to very briefly call the attention of the delegates to some matters to which he has referred, and to which reference, no doubt, will have to be made by delegates more fully at another time upon this floor. I noted with pleasure that the gentleman said the apportionment of 1892 was an apportionment which he himself was unwilling to make. I am not surprised that that is the case, and I was very glad to hear him declare that that was so. I was also pleased to hear him state that it had a good point, and that that good point was that notwithstanding the fact that it was a gerrymander, and notwithstanding the circumstance that it was unjust, it yet followed in the election of 1893 that the party which had been wronged, or rather, most wronged — for the State had been wronged — was enabled to overcome the effect of that gerrymander and to regain the Legislature. And from this the gentleman makes an argument that, therefore, it was just.

He asks upon this floor whether or not it would be proper to have an apportionment rest upon the population only, and suggests to this Convention that we should also take into consideration the prospective increase of the cities. Why, Mr. Chairman, one of the greatest troubles in solving the problem of apportionment has been the ascertainment of rules which would prevent the seizing of partisan advantage by whosoever had the matter in charge. If you left it to the speculation of a partisan as to what the growth of any particular section of the country might be in the future, where would the rights of the people be? They would be swallowed up in the greed of some politician.

The gentleman suggests, too, that it should be based upon taxation, and after figuring out that sixty-one per cent of the taxpaying community of the State of New York have only twenty-five Senators under this apportionment, he raises the cry that that is an unfair apportionment. Should we put it into the Constitution that when we make up a Legislature of the State of New York, the Senate and Assembly shall be apportioned among those men who pay taxes according to the per cent of the tax of the State which they pay? Is this a suggestion boldly and calmly submitted for the consideration of this Convention?

Mr. Chairman, he omitted a consideration which, it seems to me, would be a very valuable one for him to take into consideration; he omitted to discuss the problem of electors; he omitted to tell this Convention how, while the increase of population might have some remote bearing, never recognized by constitutional provision, that the Democratic districts as formed under this proposed bill,

have a minus fraction in almost every instance in the State of New York, if you take into consideration the electors who go to the polls and vote. Is this not a legitimate consideration in looking at the matter? Let us see. We find in the city of New York that they have 286,600 electors, according to the last presidential election. We find that apportioning to that city twelve Senators, there is a minus fraction of 35,388 electors, and that each Senatorial district in the city of New York, if you take as a basis the electors of the last presidential election, is 2,409 electors below the average. If, on the contrary, you go into the rural districts which have the minus fractions you will find that in almost every instance (there being only a few exceptions, and those not marked) they have more than their proportion of the electors according to the last presidential election. I have not asked this Convention, I shall not ask this Convention, to engraft into the Constitution the rule that prevails in Massachusetts, that representation shall be based upon electors. We give you the benefit of the enumeration taken, as I believe, in the great cities, improperly.

People are reported as citizens who are not citizens, and when it comes to the test of voting, only those who are citizens may exercise that privilege, and, as a consequence, we find that all the great city districts in the State, even in the most exciting elections, fall below the ratio.

I was pleased to note, Mr. Chairman, that the gentleman advised his associates upon this floor to move no amendments to what he is pleased to call this outrageous measure. No amendments, and then the gentleman caught his breath, and moved one himself, to wit, that we should reduce the term of an Assemblyman from two years to one; not, in my personal opinion, a very improper suggestion. But, when he first made his announcement of his position upon the subject, I supposed it was his intention to let the impression go abroad that a measure containing such enormities could not possibly be adopted by the people of the State; but when I found that he wanted one amendment, and only one, I concluded that he believed it would be adopted by the people of the State, and that his amendment covered the only matter which he believed ought to be changed.

Mr. Chairman, the gentleman has suggested to this House, without the presentation of any scheme of apportionment on the basis of forty or sixty Senators, that if either one of those numbers had been chosen, it would have resulted favorably to the Democratic party. Where is his demonstration of it? It is absolutely without foundation. There is no truth in it. Not that the gentleman intends to state a falsehood, but that he is so grossly mistaken that I am

astonished he should not have taken pains to inform himself upon the subject. With the great Democratic majority in New York city and Kings county huddled together, if you should divide New York State up into square blocks, each one of which should have precisely the same number of population as every other, without the variation of five, and you should set those districts down throughout the State, it would result favorably to one party as against the other.

Recess was here taken until 8 P. M.

EVENING SESSION.

Tuesday Evening, September 4, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, at the Capitol, Albany, N. Y., Tuesday evening, September 4, 1894.

Second Vice-President Steele called the Convention to order at eight o'clock.

The President *pro tempore* — If there is no business before the Convention, it will resume in Committee of the Whole and Mr. Durfee will please take the chair.

The Convention resolved itself into Committee of the Whole. Mr. Durfee in the chair.

The Chairman — The Convention is now in Committee of the Whole for the further consideration of general order No. 74, the question being upon the amendment offered by the gentleman from Erie (Mr. Becker) to substitute "one" for "two," in line 4 of section 2 of the proposed amendment. Mr. Brown, of Jefferson, has the floor.

Mr. E. R. Brown — Mr. Chairman, I referred to the inequality between the districts of the State from the point of view of the electors instead of that of the enumeration or the census, and it will do no harm to state more specifically in regard to that, that in 1892 there were 1,341,617 electors in this State, and dividing that number by fifty gives a ratio of 26,832. On that basis there would be eight districts in the State composed of more than one county, each of which would be below the ratio and eight only out of the twenty districts so formed. One of these districts is an undoubted Democratic district, and the seven districts of Kings all stand below the ratio, each one on an average 1,366, or five per cent below the ratio, and each one of the twelve districts in New York on an

average stand 2,949, or about eleven per cent below the ratio. When we consider the rest of the State, or the whole State, on the basis of the Assembly, I find the disparity between the cities and the rural districts is still greater. The average for the Assembly is 8,944 electors. The average number of electors to an Assemblyman, in Exhibit No. 1, being the large class of counties embraced in Exhibit No. 1, having less than a ratio and a half, is 9,343, about 400, or five per cent above the ratio. Taking Exhibit No. 2, the second class, composed of thirteen counties having a ratio and a half and less than two ratios and a half, we find it takes 9,059 electors to elect an Assemblyman. Taking the third class, which embraces the ten large counties in the State, having more than two ratios and a half, we find the ratio is 8,507, or 400 below the ratio. Figuring on the same basis in New York city it appears that instead of having 8,944 electors to a Member of Assembly, they would have on the basis of the election of 1892, 8,188 electors to a member. Considering Exhibit No. 5, which embraces only the counties of this State having less than one ratio, we find that 7,547 electors on the average elect a Member of Assembly, but when we take into consideration the counties which of right have a Member of Assembly by reason of having more than a ratio, but which are not entitled to two Members of Assembly, we find that the average is 10,108 electors. So that 10,108 electors in these rural counties of the State, of right have a Member of Assembly on the basis of the census as against 8,944 electors on the average through the State, and as against 8,188 electors in the city of New York.

Mr. Chairman, the gentleman who preceded me (Mr. Bush) made complaint that the State of New York might go Democratic on a general ticket and yet the Legislature be Republican. I trust that the members of this body will bear in mind that if New York, Brooklyn and all south of the Harlem river were cut off from New York State there would yet remain one of the greatest States in the Union, a State which, in its political complexion, would not be very much behind Pennsylvania in its immense Republican majority. But, sir, the question is not whether we will make an apportionment which will give advantage to one party or to another party; it is whether we shall make an apportionment on the lines laid down by the various Constitutions heretofore adopted in this State, which shall give proper, suitable representation to the various sections in this State. The parties which may, perhaps, be interested in the result of that apportionment must be an accident, a mere incident, while the representation of the various sections of the State is essen-

tial to the integrity of the State, and essential to representative government. If the gentleman's argument upon that point is sound, then there is no other way to elect a Legislature in the State of New York than upon a general ticket. Such a proposition would be as unwelcome to the gentleman who addressed the House upon this subject as it would be to the majority in this body. Such a plan would be in hostility to all the constitutional enactments upon this subject not only in this State, but in all the States of the Union.

I regret very much in view of the gentleness of the attack which the gentleman made upon this measure to call attention to the error upon which he bases the claim that it was intentionally made to favor the Republican party so far as the second ratio is concerned. He discovered to the committee that if there had been no second ratio an additional member would have been given to New York, Brooklyn and Monroe, but he said we thought it proper to adopt this rule, which would give to Cattaraugus an additional member, one to Broome, and one to Cayuga, which are Republican counties. I know the high ability of the gentleman, and it cannot be that he was so far misinformed, after referring to the tables submitted by the majority, and also after considering the matter at length himself, that he should not have known that the three counties that got these members are Cattaraugus, Niagara and Suffolk. Cattaraugus is a Republican county, Niagara and Suffolk are now represented by Republican members, but history discloses that these counties have been represented evenly by Democrats and Republicans. If Suffolk and Niagara have two members, it is almost certain that each will be represented by one Democrat. The point of his argument was that we had given to Broome and Cayuga, two Republican counties, an additional member, when in fact we had given them to Niagara and Suffolk, two doubtful counties. Where is the partisanship in taking a member from Monroe, which is Republican, and giving it to Suffolk, which is Democratic, and one from Kings and giving it to Niagara, which is more than likely to be Democratic?

Now, Mr. Chairman, I am talking somewhat more at length in reply to Mr. Bush than I had intended to; but it may be well for me to call attention to his remarks at this time when they are fresh in your minds. Taking the apportionment of 1892 we find that of the districts of the State formed out of more than one county there was in the First District a plus fraction unrepresented of 1,745. This was a Democratic district. In the Sixteenth District there was a plus fraction of 18,775; in the Twenty-first District a plus fraction of 48,106; in the Twenty-second District a plus fraction of 35,048; in the Twenty-third District, a plus fraction of 15,582; in

the Twenty-fourth District, a plus fraction of 2,833; in the Twenty-fifth District, a plus fraction of 20,118; in the Twenty-sixth District, a plus fraction of 26,667; in the Twenty-ninth District, a plus fraction of 5,023; every plus fraction going to a great rural district composed of more than one county and being Republican, with the exception of one, where they allow a plus fraction of 1,745 to a Democratic district.

Turn to the other column and to the maps. Look at the Twenty-seventh District, for instance. The Twenty-seventh has a minus fraction of 11,400 intended to be Democratic; the Twenty-ninth District has a minus fraction of 4,671; the Fifteenth District has a minus of 18,808; the Seventeenth District has a minus fraction of 4,558; the Eighteenth District has a minus fraction of 15,230; and, Mr. Chairman, wherever there is a minus fraction there is a Democratic district, and when you figure the fractions, taking the plus and minus together, you will find that the rural portion of New York loses in representation by that apportionment 114,510.

Turning to the districts submitted by your committee, which are before you, and which I will not detail for that reason, although I should be very glad to do so, if figures were not so confusing, we find there is in favor of the rural districts of the State a minus fraction of 95,220.

I will not at this time, but will take occasion later to discuss the fairness of the actual apportionment made and the fairness of the rules which the committee have proposed for the purpose of having fair apportionments in the future. But let me refer to one point to which the gentleman objected, and that is the division of the Assembly districts in the city of New York, where there are twelve Senate districts and thirty-five Members of Assembly. He claimed that there would not be equality in the districts, because there would be eleven Senate districts containing each three Members of Assembly, and in the Twelfth Senate District two Members of Assembly, and as the Senate districts should be very nearly equal, he claims that this would be the cause of injustice and inequality. We concede it, Mr. Chairman. Taking the basis of 116,000 as the ratio, each one of the Senate districts would have three Assembly districts containing each about 38,000 people. Take the district which has only two Assemblymen and a district would contain about 58,000 people, a difference of about 20,000. That is a remarkable divergence from the absolute equality which the committee sought to attain in laying down these rules, but, Mr. Chairman, it was necessary to establish this rule and suffer this inequality to prevent the

enormous inequalities that have always heretofore prevailed in all apportionments, not only in one district, but throughout the State.

Take the present apportionment. The smallest Assembly district in New York city has 31,000, and the largest Assembly district 56,000, and the want of uniformity is such as to give the impression, upon looking at these districts, that it exists for the purpose of favoring some political party and some private ends.

My friend objected to the discrepancies which the committee had allowed to creep in in forming the Senate districts in the city, and I confess, Mr. Chairman, that the committee, in seeking to equalize the districts in the city do not reach that ideal equality which it hopes will be reached in the future. Why? To divide the districts on a basis of absolute equality, it is necessary to have a census taken by blocks. A census must be taken in the way prescribed by the Constitution before an apportionment can be made which will be governed absolutely by these rules. A census of the State was taken in 1892, taken by our political opponents, and we believed it would not be wise to impose upon the State at this time the expense of another census. We thought we had better form an apportionment of this State, coming as near as possible to absolute equality and correcting the wrongs of the present apportionment, rather than incur the enormous expense of having another census taken for this express purpose.

Mr. Chairman, what shall we say to criticisms coming from one who formed the Senate districts in 1892? He claims there is a difference between the Brooklyn districts — District No. 4, of 129,000; District No. 6, 115,000; and District No. 8, 113,000. The census in that city was taken by wards. The wards there are important political divisions, and it was believed by the committee that if the division was by wards there would be a substantial compliance with the spirit of its own bill, the census not having been taken by blocks, as our bill provides.

He complained of a difference of 16,000. Take the apportionment of 1892. We find there is a district of 189,000 and a district of 163,000 in Brooklyn. This is a much wider discrepancy, Mr. Chairman, than any which has crept into the report of your committee. Take the districts in New York, where the ward organizations had ceased to be important political factors. The greatest variation, as reported by your committee, between the districts is 116,000 to 122,000. By the apportionment of 1892, we find that it runs from 105,720 in the Twelfth District to 231,138 in the Thirteenth District. It was not that the committee believed it was absolutely essential that there should never be a greater dif-

ference than the difference of the population of a block, but it was because the committee perceived that unless they laid down some such iron rule as this, such outrages as the Twelfth and Thirteenth Districts in New York would from time to time be perpetuated upon the State by partisan Legislatures.

Now, Mr. Chairman, I have been diverted from the line of discussion, which I had intended to pursue, by the remarks of the gentleman from Ulster, but I desire to call the attention of the committee, if they have the patience, to some of the considerations which have led to the proposition for the numbers of fifty and one hundred and fifty. The increase in the Senate and Assembly is made necessary by the increase in the population of the State. In 1790 the population of the State was 349,120. There were twenty-four Senators elected from the four districts. The Members of Assembly, as was provided by the first Constitution, were to be at least seventy in number. They were apportioned to fourteen counties. Every county then had more than one Member of Assembly. The number was based absolutely on population and an increase in both Houses was permitted with a limitation that the Senate should not exceed 100 and that the Assembly should not exceed 300 members. In 1800 the population was 589,051. In 1800 there were forty-three Senators and 126 Representatives. In 1801 the Constitutional Convention reduced the number of Senators and fixed it at thirty-two, where it has since remained. The controlling consideration in fixing upon this number, Mr. Chairman, was that this was not only to be the Senate, but it was to be a Court of Errors. At the same time, in 1801, there was a constitutional amendment providing that the Assembly should be increased to 150, precisely the figures which your committee has now adopted. In 1821 the population had increased to 1,372,011. The State was divided into eight Senate districts, and the Fourth Senate District then formed was identical with the present Twenty-first Senate District, under the apportionment of 1892, except that it then included the counties of St. Lawrence, Saratoga and Montgomery, which are not now in that district, and did not include the county of Fulton, which is in that district. In 1821 the proposition to fix the two Houses at thirty-six and 144 was lost on a vote of 60 to 40.

In 1846 the population was 2,604,495. A strong attempt was then made to increase both Houses of the Legislature, which fell short only of success. It has remained, Mr. Chairman, as was provided by the Constitution of 1821 to this day. The Convention of 1867 attempted, however, to increase the Assembly to 139, and adopted a proposed amendment to that end. The population now, exclusive

of aliens, is almost 6,000,000, and there has been an increase without change in the Legislature from 1,372,000 to the present figures.

The argument from the increase in population would not alone be sufficient to warrant an increase in the Legislature, nor does the committee so claim, but, Mr. Chairman, it is a circumstance to be considered, that in every Constitutional Convention since the organization of the State there has been an attempt, and an almost successful attempt, to increase the representation of the State, notwithstanding the small population it had from time to time as compared with the present.

In 1846 a change was made from eight large districts to thirty-two single districts. The reason of this change was, as will appear from an examination of the debates of 1846, that the people of those districts did not deem that they were represented by any one who was in touch with their interests. The complaint was that citizens voted for Senators whom they did not know and never saw, and who could not speak as their representatives. The districts were not materially larger than some of the single districts now are, and there were then four Senators in a district, and each of four counties could have a representative. The lack of representation is much greater now.

Under the Constitution of 1846, Mr. Chairman, there were formed eleven Senate districts identical with eleven of the districts now proposed by your committee: Ulster and Greene; Rensselaer; Warren, Essex and Clinton; St. Lawrence and Franklin; Oneida; Madison and Oswego; Jefferson and Lewis; Onondaga; Broome, Cortland and Tioga; Orleans, Genesee and Niagara; Chautauqua and Cattaraugus. Eleven districts, each formed by combining two or more counties, are not identical with those of 1846, but of these eleven districts five districts contain, each, two counties that were then united.

The additional eighteen Senators which the committee propose, Mr. Chairman, are all conceded to the great centers of population of the State. We give of these additional Senators, nine to New York, six to Kings, two to Erie and one to Monroe, and surrender one or two more to counties now having a Senator which then had to be combined with other counties to form a Senate district. By thus providing for the great cities we are able to restore to the great rural counties the fair and historic representation which they had enjoyed for fifty years prior to 1892.

Mr. Chairman, the gentleman claims that the rural section of New York is decreasing in population. Such claim is not supported by the facts. In 1846, with thirty-two Senators, the ratio was 81,000.

In 1894, the ratio is 116,000, and yet eleven districts formed by the combination of two or more rural counties are identical now with the districts formed in 1846, and a number of counties then not entitled to a Senator, like Westchester, Queens and Albany, are now entitled to a single Senator.

There is one point in this proposed amendment upon which criticism is made which it seems to me would be just criticism if it were an original measure — that is, that we give Assemblymen to counties having less than the ratio. In 1777, as I said, the Assembly was a purely popular House, the representatives being awarded according to the population. In 1821, when the number of Assemblymen was limited to 128, it first happened that there was a county in the State which fell below the ratio. In fixing the number at 128, its advocates in the Convention would not have been able to persuade the Convention to so limit the number unless this exception was made in favor of the counties having less than the ratio. It was a protection which the smaller counties then demanded. It was an exception which had no practical effect upon the division of the Members of Assembly, as there were only one or two instances of the kind. It was conceded, and it became a part of the Constitution. The population of the State has greatly increased, until now there are, on the basis of 128, twenty-nine counties which are below the ratio. On the basis of 150, twenty-one counties will be below the ratio. Mr. Chairman, why this complaint because counties below the ratio have a Member of Assembly, and at the same time a complaint because the committee have raised the number of the popular House, so as to reduce this inequality? Is it because there is a desire to complain of the measure, no matter what its purpose or what its effect? Not only does it reduce the number of counties that are below the ratio, but it largely does away with the discrepancies, more largely than would appear from a mere statement of the number of counties below the ratio. The ratio on 128 is about 45,000, while the ratio on 150 is 38,000, and when you apply this difference of seven or eight thousand to twenty-one of the counties of the State it has a considerable effect — nearly 150,000. The plan of the committee thus approaches equality of representation by 150,000 nearer with 150 Members of Assembly than it could with 128 members.

Your committee have not been disposed to disturb this rule that each county have a member, not as has been suggested by the gentleman, because of the thirty-seven counties, or twenty-one counties, there are only three which are Democratic, but because, as the gentleman knows, no Republican or Democrat dare advance the

proposition to deprive any county of representation in the popular House. Such a claim would be resented by Republicans and Democrats; by rural and by city men alike.

But, Mr. Chairman, not only does it tend to do away with the inequality thus arising, but it also tends, if we increase the Assembly to 150, to provide for a large number of the counties of the State a fair and reasonable representation, which they do not now have. The four largest single Assembly districts in the rural portions of the State are St. Lawrence, Chautauqua, Oswego and Jefferson, footing up a total population of 289,831, averaging to each Member of Assembly 72,457. The four smallest districts in the city of New York aggregate 155,465, averaging to each district 38,866. The four counties to which I first referred are not entitled, by reason of having two ratios, to two Members of Assembly on the basis of 128 members. New York is entitled to her thirty Members of Assembly and loses no unrepresented fraction. There is a large number of small counties throughout the State with more than sufficient population for one Member of Assembly, but not entitled to two. Will you throw away twenty or thirty fractions of a half in these counties and charge no loss on the city of New York?

One of the most distinguished men in the Convention of 1821 was Erastus Root, a member from Delaware county, and he stated in the debate on this subject a truth which is pertinent at this time. He declared that "there was another objection to so great a representation from one county, and that was with regard to the fractions which in smaller counties were thrown away and in New York secured them an additional member. Instead of eleven members they were justly entitled to but ten. Besides all this, their all coming from the same place, with the same interests and the same views, carries irresistible force in pursuit of a favorite object. The representatives from New York could effect great changes in the political aspect of the State, all acting in concert. Eleven in number would make a difference of twenty-two by going from one side to the other." And yet, Mr. Chairman, notwithstanding my friend figured up half of the Members of the Assembly from four or five great counties of the State, he complained because an additional member had not been given to New York, and an additional member to Kings, and an additional member to Monroe. As it now stands, Mr. Chairman, 31,000 people are represented by an Assemblyman in New York city, and 72,000 are represented by an Assemblyman in some of the rural counties of the State.

Now, Mr, Chairman, in attempting to provide for these counties, the committee could not take into consideration what might be in

the future. It may be that when the next enumeration of the State is taken, when the next apportionment is made, there will be a slight discrepancy in favor of either one or the other, but it will be a discrepancy, as any one will discover who will sit down with his pencil, that will be far within the limits of the present apportionment, discrepancies which amount to nothing, which are nothing when the case is considered broadly. It may be five hundred in favor of the rural counties, or it may be a thousand in favor of the cities. But that is not what the committee object to; this 72,000 in the country in one district and this 31,000 in one district in the city is what we object to. It is discrepancies, not of five or six or eight per cent, but of discrepancies which range from forty to one hundred and thirty per cent that the committee object to and intend to prevent if possible.

In arranging these rules, seeking to make them applicable to the conditions as they exist in the counties of the State, it was discovered that there were thirteen counties standing in a group having approximately a population of from 60,000 to 90,000 inhabitants, most of them falling below two ratios, although above a ratio and a half; counties which in population, in material wealth, in everything that would go to require representation and to deserve equal representation in the popular House, are equal one to another and may be fairly said to need two Members of Assembly. There was below these another very large group of counties ranging from 45,000 to 14,000 — Putnam county. Above the counties ranging from sixty to ninety thousand there were the ten great city counties of the State.

Now, Mr. Chairman, it has been disclosed by the action not only of Democratic Legislatures, but by the action of Republican Legislatures, that general instructions to be good are not obeyed by partisans when they come to make an apportionment, and your committee in laying down these rules have not laid them down with the purpose of gaining or giving party advantage to any party or for any party, but to prevent parties from using apportionment for party ends. The conditions in this State may not be always as they are now. The political power of the two parties will be very close under the proposed apportionment, but whatever the political conditions, it will give the counties of this State a firm, a stable and an equitable representation in both Houses of the Legislature.

But this increase in number of Assemblymen which the committee have suggested has not gone to rural counties. It has all gone, and more has gone with it, to the great city counties. The representation in the Assembly in 1846 was: in New York, sixteen; Kings,

three; Erie, four; in 1892, New York, thirty; Kings, eighteen; Erie, six; in 1894, New York, thirty-five; Kings, twenty-one; Erie, eight. Deducting the representation of 1846 from that of 1894, it shows that we have not only lost in the rural counties of the State, we have not only surrendered from the rural counties of the State all of the increase, but we also surrender nineteen of the representatives which then belonged to the rural sections of the State. Forty-one representatives more do New York, Kings and Erie have in 1894 than in 1846.

Now, Mr. Chairman, it will be borne in mind that this representation is not excessive, and it may not be amiss for me to call the attention of the committee to the fact that Columbia and Saratoga county, in 1800, had five Members of Assembly each; in 1803, four members; in 1825, three members; in 1847, two members; and now, one member. The great counties embraced in the second class, commencing with St. Lawrence and Chautauqua and ending with Cattaraugus, have, from time immemorial, had a representation of two members of the lower House. It is better that there should be one Member of Assembly in Cattaraugus, in Suffolk and in Niagara, with 60,000 population, and two Members of Assembly in New York to 80,000? Should there be a representation in New York county where a Member of Assembly can traverse his district in three minutes, where he can visit every constituent within two days, should such a district have as large a representation as the county of Cattaraugus, with its tremendous territory, its varied interests, its historic representation of two members? Is this a fair and equitable division of representation in the popular House of the Assembly?

Now, Mr. Chairman, all these considerations are ample warrant for an increase in the Senate from thirty to fifty, and in the Assembly from one hundred and twenty-eight to one hundred and fifty, leaving the representation in the rural parts of the State substantially as it has been for fifty years, making it ample, proper, not excessive. It makes it proper that we should have a moderate increase in the lower House from 128 to 150, not for partisan purposes, but for the purpose of preventing an undue representation in the great cities which do not have unrepresented fractions as against the great counties of the State which have unrepresented fractions. (Applause.)

Mr. Osborn — Mr. Chairman, I think it is but justice to this Convention and to the public to understand that this report does not represent the deliberate convictions of the committee, or, perhaps, I should say, the deliberated convictions of the committee,

from which it emanates. There never has been a time since this bill was taken up when as to any of its essential provisions there was the slightest doubt as to its ultimate passage. There was considerable doubt in the committee, there was serious doubt as to what its provisions meant. In fact, I think I am disclosing no secret of the committee if I recall a ludicrous incident that happened in the committee-room, when a member of the committee thought we had better adjourn because the proposer of the amendment was not present to explain it, and nobody else understood it. The measure has its origin, the underlying features of the amendment, run far back of this Convention. In the Convention of 1846 a motion was made to increase the number of Assemblymen and Senators, and Mr. Taggart, who was a distinguished member of that Convention, said it was desirable that the number should be increased, for the reason that it would meet the then apparent necessity of securing to the agricultural districts their fair representation, which, he said, would in time be encroached upon by the commercial counties having in them the large towns and villages. Mr. Chairman, the gentleman who has just sat down has said that Mr. Bush was incorrect in stating that the rural counties had decreased. If he will examine the census of 1880 and contrast it with the federal census of 1890 he will find that the population of twenty-four of the interior counties in this State has decreased. Now, Mr. Chairman, that significant fact lies at the very bottom of this motion. The whole bill is prepared, and the excellent speech of the gentleman from Watertown (Mr. E. R. Brown) betrayed it time and time again, that the whole bill was prepared on the basis of counties and cities, of rural districts and city districts. He said nothing about the people of the State of New York. He made no mention of any consequence in regard to the important question as to whether this measure gave a closer popular representation than any other possible measure. His speech was wholly devoted to the consideration whether such and such a county got its proper ratio and whether such and such a city was not going to get its preponderance. There, Mr. Chairman, lies the whole, the entire matter. It is necessary, in order to maintain county population and county preponderance in the State, that the number of Senators and Assemblymen shall be increased. This proposition has some four or five new features; new features that have never been considered in any former Constitutional Convention. I propose to touch upon these features, and as I do so you will observe that each one of these new rules is calculated to be one step away from popular representation and one step toward political representation. In the Constitution of this State, the

organic Constitution of the State, as Mr. Brown has very properly observed, it has been thought necessary to preserve the county as a unit. That was due, Mr. Chairman, in my judgment, almost solely to the fact that the county was the center of political activity, which could with propriety be centered upon a contest for the Assembly. The caucuses and primaries and county conventions, all the machinery with which you gentlemen are so familiar, are all limited by the boundaries of the county. In consequence it was necessary to introduce a rule which was a long step away from popular representation. I do not desire to quarrel with that rule. It was founded and is still founded upon political principles and that the gentleman has considered that it was founded upon political principles is evident, because if that was not so he would have changed his rules, since in the city of New York it makes no difference whether the surplus population laps over into Westchester and Putnam counties, for the Twenty-fourth Ward of the city of New York is in Westchester county. The Twenty-fourth Ward of Westchester county should be connected, as it is under the present apportionment, and if he had considered other than political ideas in the formation of that rule he would have taken notice of the fact that Putnam county and Westchester county and New York city are indissolubly connected, commercially and socially. Man after man gets up in Putnam county in the morning and goes to New York to his business and yet the gentleman who has separated these two counties has put Westchester by itself and Putnam in with Dutchess and Columbia, with which it has no political affiliations and no personal affiliations whatever. I might add that the same thing is true in regard to Mr. Maybee's district, who says that the same state of affairs exists in his section. I have heard a number of members suggest the same thing. The sole basis of the county rule is political. It is quite natural, Mr. Chairman, that that political rule should be followed, but my point is that it should be followed only so far as is absolutely necessary; that the very moment that that political rule ceases to be necessary, then we should abandon it and go absolutely upon the rule of popular representation without exception. But has that been done in this instance? Take the Assembly. The average population to an Assemblyman in the first class of counties is 36,000. Next proceed the second class of counties, based not upon a ratio, but because they are counties. There are thirteen of such counties and they are given twenty-six Assemblymen. Those twenty-six Assemblymen represent only 35,000 apiece. Now there is no political necessity for making a second class of counties. There is no commercial neces-

sity, and it is stepping directly away from the idea that the rule of population should govern. We should go by the rule laid down by the Court of Appeals, namely: give each county a member and then divide the remaining members among the remaining counties according to their population in mathematical order. That is a satisfactory and a fair and popular system of representation.

Now, take the senatorial districts, the first new rule in regard to senatorial districts is that in senatorial districts having less than three members, a surplus of a half ratio may elect an additional Senator. Neither of the gentlemen has referred in particular terms to that rule. It is a very peculiar rule, because it is followed by the provision that wherever a county has three or more members it must have an average surplus of more than one-tenth ratio in each of the senatorial districts in order to be entitled to an additional Senator.

Now let us see how that rule works. The county of Erie has three Senators under this apportionment. That is not in that category, because one-tenth of a ratio, or 11,500, would be 36,500. The county of Kings has eight Senators. Each one of those senatorial districts might have a surplus of one-tenth of the ratio, namely 11,500, making about 87,000 or 89,000, which total surplus it is necessary for the county of Kings to have for the election of an additional Senator. But the county of New York, having twelve senatorial districts, cannot have an additional Senator until it has the full ratio of 115,500. So you see, Mr. Chairman, that there is a direct step away from popular representation. It again builds up classes of counties; classes of political districts in this State. It says that certain classes of political districts shall be entitled to a Senator on a surplus of a half ratio and certain other classes shall only be entitled on a surplus population of 89,000, and certain other classes — one class, the city of New York, shall be entitled to an additional Senator only on the ratio of 115,000.

Then, Mr. Chairman, the very numbers of fifty and one hundred and fifty which they have chosen as the particular numbers tending to produce (so the learned chairman has stated and the gentleman from Watertown has stated) the greatest equality of representation as a matter of fact produce the greatest inequality of representation. One test of equality of popular representation, to my mind, would be a contrast between the Assembly districts having the least population.

Now, Mr. Chairman, I have been to some trouble and pains to figure out the difference between the seventy-five Assembly districts having the least population and the seventy-five districts having the

greatest population, and there is a difference in popular representation between those two classes of Assembly districts, the lowest and highest, of 267,000 people. It would have been very simple to have reduced that difference by giving to the city of New York an additional Assemblyman, to which she is more than entitled by virtue of her population. I may say in passing that New York city has twenty-four and a little over a half per cent of the total population of the State. Upon an absolute mathematical division that would give her thirty-six and three-fourths Members of Assembly. Brooklyn has fifteen per cent of the population of the State. That would give her a little over twenty-two and a half Members of the Assembly, a total to these two counties of three and three-fourths Assemblymen more than they have by the apportionment proposed by Mr. Brown. Take the Assemblymen for those two counties, three-fourths of the population required for one Assembly district would be still thrown away, and there would be a change of the popular misrepresentation which I have stated of 120,000, reducing it to only 140,000.

Now, Mr. Chairman, if these gentlemen had been desirous of popular representation, as against political representation, they would have followed that plan instead of the plan of adopting three classes of Assembly districts, giving to the class in which they live the smallest possible ratio. Examine the Senate with the same point in view, namely: to find out what difference you can make in a certain number of senatorial districts as to population from a certain other number of senatorial districts. There are fifteen senatorial districts in this State, Mr. Chairman (I have not examined them as to political lines, but solely as to population), there are fifteen senatorial districts in this State which exceed the population of fifteen other senatorial districts by upward of 350,000 souls; that is, over three ratios. The upward of 350,000 souls is the difference between the population of fifteen senatorial districts and fifteen other senatorial districts. Why, you cannot tell me that gentlemen of the capacity of the gentleman who first proposed this bill are unable to produce a closer system of popular representation than that. If he had been able to put his mind on the subject he would have noticed a difference of 115,000, and if he had selected forty instead of fifty, I confidently assert that the difference would be much less than this that I have suggested. There is not a line in this bill that has been prepared with the idea of securing popular representation. The whole object of it is to maintain the present balance and preponderance of the rural counties of this State against the city, and it has been said time and time

again by the proposer of this amendment and the chairman of the committee that that was their object, their sole object and their only object.

Mr. Chairman, the city of New York had only one representative of the dominant party in this Convention on that committee, and he has to go back to his constituents with the proud boast that his county is the only county in the State in which a full ratio is required for the election of a Senator. Mr. Chairman, if I had been a Republican on that committee, I do not care whether my county was opposed to me or not, I certainly would not allow my name to be connected with such a rule as that.

Now, I have run over the rules which tend to prevent popular representation. Every one of the new rules, except those in regard to the districting of cities, has that result. In regard to the districting of the city, I might say in passing, that the figures given by Mr. Bush this afternoon are subject to some correction. On the map which is placed back yonder, which Colonel Morton informs me is absolutely correct, and if it is, these figures are absolutely incorrect. Upon the map there is a difference between one senatorial district and the adjoining district of 26,000. Now, the gentleman from Jefferson has stated that it was very unfortunate that we were not able to follow the rules laid down by us in this measure; but the fact of the matter was that we had no block census. But, Mr. Chairman and gentlemen, you had a census by election districts, and I am informed by a resident of Brooklyn, who is here to-night, that there was an election district census of Brooklyn, and if there is an election district in Brooklyn which has a difference of 26,000 I should like to know it. The law in existence when that census was taken required three hundred voters to an election district. Five times that is 1,500, and that is the ordinary ratio. Call it six; six times 300 is 1,800. With 1,800 people, therefore, the population of one election district, by the rules laid down by your proposition, represents the maximum difference that there should be between two districts; but you have got 26,000. Why was it? It was because the gentleman from Kings realized perfectly well that if he went back upon the political lines of Brooklyn that the people of Brooklyn would rise up and smite this apportionment, as it deserves to be smitten, right under the fifth rib. Why Mr. Chairman, the gentleman, I know, is a very candid gentleman. I think he will acknowledge that it was because, in 1892, the legislative apportionment disregarded the political lines of Brooklyn that they arose and ousted the Democratic party from power in that city last fall.

But, Mr. Chairman, I have suggested at some length the features of this bill; what I consider its dominant features with respect to popular as against political representation, and I have been at some pains to understand why it was that the gentleman from Jefferson, whom I have learned to esteem most highly in this Convention, who represents a powerful district in this State, and whom I hope and confidently expect has an honorable public career before him, how it was that he considered this question upon these lines. A little consideration of the subject has enabled me to understand it pretty well. He comes from a rural district, and when he goes back to that rural district he will say: "Gentlemen, in my congressional district there is not an Assembly district which requires over 35,000 population for the election of an Assemblyman, but down yonder in New York they have got to have 41,000 or 42,000, and in Kings the same way," and the people of his district will rise up and say, "Great is Joseph, great is Elihu, great is Jesse, but greater is our Elon." (Laughter.)

Mr. Chairman, it is the most natural thing in the world that he should have taken the point of view that he does take. He has spent the long winter evenings on our northern frontier cogitating upon the political situation in this State, and who can tell, what man, in tracing the feelings of his mind, knows where his ideas of justice and fairness leave off and where his feelings of ambition begin? When a man studies the recesses of his own mind he has got into a condition complex even beyond an apportionment. That being the case, Mr. Chairman, what have we got here? We have got a proposition purely political in character, so far as representation is concerned. I have not said anything about its political effect, but when you come to examine it, you will find that while the gentleman may believe in it, as I firmly believe he does, while he may firmly believe in the principles that underlie it, you will find that all its benefits, by an odd coincidence, go to his political side of the House. Mr. Chairman, it reminds me of the great prophet, Mahomet and his book of the Koran. Mahomet believed thoroughly in the book of the Koran, and it was no injury to his faith that it succeeded in giving him a plurality of wives.

Examine now the political features, the political effects of the measure, looking at it from the standpoint most favorable to the Democratic party, assuming that they get every Assemblyman they possibly can get, they cannot possibly obtain over seventy-one Assemblymen, unless there is something like a tidal wave in the State. Look at the senatorial districts, they cannot get over twenty-one Senators, unless there is a tidal wave here. The gentleman has

said that that is due to the fact that our vote is massed in the cities of New York and Brooklyn, and yet he has allotted upon the cities of New York and Brooklyn, and the Democratic counties of the State a population which exceeds the population necessary in a like hamlet of Republican senate districts in the State by over 260,000 people. Assuming that the counties of New York and Kings are wholly Democratic; assuming that the other districts of the State are wholly Republican; assuming that that makes twenty-five Democratic and twenty-five Republican Senators, what is the result that you get? The result that you get is that upon these twenty-five Democratic districts there is a burden of 260,000 people, greater than the burden which is placed upon the twenty-five Republican districts.

Taking the Assembly districts and examining the difference between the numbers necessary to elect seventy-five Democratic Assemblymen upon the basis which I have just suggested, and seventy-five Republican Assemblymen upon the basis which I have just suggested, that is dividing New York and Brooklyn between the two parties, you will find that the difference between the number of people necessary to elect seventy-five Democratic Assemblymen is 267,000, over the number necessary for the election of seventy-five Republican representatives in the Assembly. Now, Mr. Chairman, it is not that our vote is massed in the cities of New York and Brooklyn; that is not what lies at the bottom of this matter. The bottom of this matter is that the Democratic districts are loaded with a heavy surplus of population. Two hundred and sixty thousand are enough to elect nearly seven additional Assemblymen. Those seven Assemblymen taken from a Republican column and placed in a Democratic column would make a very different aspect in this hall. Two hundred and sixty thousand people on the Democratic side in the senatorial districts are sufficient to elect two Senators, and that would make a very different aspect in the hall on the other side of this chamber.

Mr. Chairman, when we come to examine the effects in the districts we find ourselves very similarly placed. There is a rule in this proposed amendment that to no county shall be given more Members of Assembly than are given to a county having a larger number of people. Why was not that rule carried into effect in the Senate districts? It does not operate in the counties of New York, Kings and Erie, where the division is solely upon Senate districts, and it is very fortunate for the gentlemen that it does not so operate, because if it did, they would see that what was "sauce for the goose was

sauce for the gander." Take the county of Kings, the Eighth Senatorial District, which is Republican and has a population of about 114,000; it gets three Assemblymen. Take, again, that Twenty-first Senatorial District in the city of New York. It has a population of 116,000, and it gets two Assemblymen. Take the county of Erie; there are three senatorial districts there averaging about 100,000 apiece. Two of them get three Assemblymen and the other two. Take, again, that Twenty-first Senatorial District in the city of New York, which is to have two Assemblymen; each of those Assemblymen has about 58,000 and two or three hundred apiece as his popular representation. Take the county of Cattaraugus, whose total population is only 59,000 and a few hundred; that gets two Assemblymen. Why, Mr. Chairman, if there is to be any idea of equality in such things, why should the county of Cattaraugus get two Assemblymen for 59,000 population, and the Twenty-first Senatorial District must have over 58,000 apiece for its two Assemblymen? There is a great discrepancy between senatorial districts and the counties apparently, and it all works in favor of one political side of this Convention.

Now, Mr. Chairman, I do not desire to worry this Convention with a full statement of the effect of the rules provided for city districting. I have already said that the gentlemen in this Convention, in their endeavor to redistrict the city according to their own rules, have lamentably failed. They have failed in the city of Brooklyn by giving 26,000 more to one district than they have an adjoining district. While I believe that some rules might be prepared for city districts, the present rules are quite out of the question, in my judgment; but I will leave the development of that subject to those who are to come after me.

The gentleman from Jefferson (Mr. E. R. Brown) has spoken at great length about the difference between the electors and the population in the Democratic centers. Well, that is simply accounted for. I have not the figures beside me, but, if he had lived in New York or near New York, as I have, and had been there on election day or thereabouts, he would have seen the Republican silk stockings walking around in the country, with their silk stockings on, I presume, and not going to the polls to vote. That is one great reason why the vote in New York city does not accord with the population. If the gentleman had lived there, he would be quite aware of that fact.

Then there is another reason, and that is, that the families of the cities are larger than the families in the country, as a rule. In fact, I think it is notoriously the rule. I am not speaking from

any accurate figures, but I am speaking merely from common knowledge on the subject, that the average family in our rural districts is much smaller than the average family in the city. There is a peculiar thing about this State, and that is, that all the virtue resides in the country and all the population is rapidly coming to the cities. The virtue of the country is not equal to getting up the large families we have in the cities. The attraction lies in the metropolitan districts. The rural gentlemen know it. They come down and see it, and they all get on its back when it comes up here, so I am informed.

I might speak of the fact, Mr. Chairman, that ten counties under this proposed apportionment have eighty-eight Assemblymen, with an average population of 40,577. Of these, all but nineteen are in Democratic districts. On the high ratio you will find the Democratic party almost, without exception, in these districts. On the low ratio you will find Republican counties and Republican Assemblymen.

Now, gentlemen, you have made many brave professions, in regard to this matter in this Convention. You have come here through the mouths of your accredited representatives and you have said you are going to give us a fair apportionment; one that was going to "take the question of apportionment out of the region of politics," I believe, was the expression of our President; and, Mr. Chairman, there is not a line in this proposed amendment of new matter, except, possibly, some of the rules, in regard to city districting, which will not arouse every feeling of sectional antagonism and political fury that exists in this State. You have loaded this proposition in a way to make this State in the Legislative Department safely Republican for years. There is not a new line in it that is not calculated to enable you to retain your own political supremacy. There is rule after rule which is devised for the sole purpose of steering away from popular representation and toward political representation, and giving yourself political representation every time. Now, if you are going to do this thing in the light of your powerful majority in this body, for heaven's sake, gentlemen, do not stultify yourselves, do not be false to what you know to be the case, to what has been proven and can and will be proven to be the case; do not stand here and state that you are doing this in the name of political honesty. Come here and state what is the absolute truth: that you have been given the power by the people of the State and you mean to use it, and go before the people of the State like men, and ask them to back you up, but do not stand here with the pretense of honesty, saying that we are your friends and propose an

amendment which you must see is intended to militate to your advantage, with a measure which is intended to divide the State up into political camps. O, honesty, what crimes are committed in thy name! Gentlemen, come out and say what you propose to do, but do not continue the sort of talk we are accustomed to hearing about the honesty and the fairness of this apportionment. (Applause.)

Mr. Cookinham — Will the gentleman permit me to ask him a question?

Mr. Osborn — Well, I will try to answer it.

Mr. Cookinham — I would like to ask him what is the largest disparity in population in the proposed Senate districts?

Mr. Osborn — The largest disparty is between Albany, which has 156,000, and Monroe, which has 68,000.

Mr. Cookinham — How large is the disparity?

Mr. Osborn — I suppose it is a matter of mathematics.

Mr. Cookinham — Is it not true that under the existing apportionment there is a disparity of 155,000?

Mr. Osborn — I have not said a word about the present apportionment. History is no justification for crime.

Mr. Cookinham — As I have not made any study of the present apportionment, I should like to know what the largest disparity is?

Mr. Osborn — I have not studied the present apportionment.

Mr. Cookinham — Did you say that you cannot answer it?

Mr. Osborn — Not without consulting my tables. Perhaps you had better ask Mr. Lincoln; he knows all about it.

Mr. Bowers — I suggest that this is not in order. I submit that if Mr. Cookinham is permitted to question Mr. Osborn, I should be allowed to question him.

Mr. Barhite — May I ask the gentleman from Putnam a question?

Mr. Osborn — Yes.

Mr. Barhite — I understood him to say that he objected to the apparent disparity of the districts in Monroe county.

Mr. Osborn — No, sir; I did not make any objection to Monroe county. Mr. Cookinham asked me questions in regard to the disparity in Albany and Monroe counties.

Mr. E. R. Brown — I may say now, in reference to this discussion, that the figures in the report of the committee are in error, and that a proposed amendment to the bill will be submitted, making the districts approximately 90,000 each, and that the smallest Senate

district which the committee has formed intentionally is one of 87,000 — Cayuga and Seneca.

Mr. Schumaker — Mr. Chairman, I would like to ask the gentleman the purpose of this amendment.

The Chairman called Mr. Schumaker to order.

Mr. Schumaker — Mr. Chairman, I have addressed you, and I have risen to ask the gentleman a question.

The Chairman — Mr. Bowers has the floor.

Mr. Schumaker — He doesn't claim it. I want to ask the gentleman a question, why this amendment has been suggested here?

The Chairman again called Mr. Schumaker to order.

Mr. Schumaker — I can't out-talk that hammer.

The Chairman again rapped Mr. Schumaker to order.

Mr. Schumaker — I want to know of the gentleman why this amendment has not been brought up before, and why this discussion has been permitted to go on here and the time of the Convention wasted in this manner? Why has not this amendment been brought up so that it could be considered?

Mr. Bowers — I will yield the floor to Mr. Schumaker.

Mr. Schumaker — I will ask the gentleman why this amendment has not been introduced before? Why this unnecessary debate?

Mr. Brown — In reply to the suggestion of the gentleman from Kings, I would say that that section of the bill has not yet been reached, and that the amendment cannot properly be offered until it is reached, and will be offered as soon as it is reached, and I desire to ——

Mr. Schumaker — Is it not in the printed bill?

Mr. Brown — It is an error.

Mr. Schumaker — Ah! you should have stated that at the commencement of the debate. You have drawn the maps wrong.

Mr. Barhite — Mr. President, I would like the privilege of answering the gentleman further, with regard to that, in order that there may be no misapprehension in regard to the matter. That error, with regard to the figures for Monroe county, was no fault of the committee which has this bill in charge, It was the effect of Democratic misrule, and I will tell you how that occurred. Previous to 1892 ——

Mr. Osborn — I rise to a point of order.

Mr. Bowers — We hope this speech is being charged to the other side in the way of time, Mr. President, that is all.

Mr. Barhite — Previous to 1892 the city of Rochester consisted of sixteen wards, and the common council of that city was Republican. Our Democratic friends, through Senator Cantor, of New York, introduced a bill dividing the city into twenty wards. That measure was passed. And again, in 1892, the wards were changed back, or, at least, the first five wards were changed back to their original number. The census of 1892 was taken under the provisions of the old charter, by which there were sixteen wards. The Committee on Apportionment could not tell that fact without examining the Session Laws of 1892, and the Session Laws of 1894, and various other documents, until their attention was especially called to the matter. That is how that error crept in. It is no fault of theirs, but simply arose from the juggling of our Democratic friends with the wards of the city of Rochester.

Mr. Cochran — May I ask the gentleman from Monroe (Mr. Barhite) a question, Mr. Chairman?

The Chairman — Will the gentleman from Monroe answer a question?

Mr. Cochran — Were the Democrats in Monroe county also responsible for the addition of 113,000 and 84,000, making 181,000, as appears in the report of the committee?

Mr. Barhite — One hundred and eighty-one thousand?

Mr. Cochran — One hundred and thirteen thousand and 84,000, making a total of 181,000?

Mr. Barhite — That is the population of Monroe county, according to the census of 1892; 181,000 and something over.

Mr. Cochran — The Democrats of Monroe didn't add this up, did they; didn't add the figures as they appear in this Document No. 65?

Mr. Barhite — I don't know who added that up, but those figures are correct, of citizens, exclusive of aliens.

Mr. Lincoln — Mr. Chairman, notwithstanding the very fervent appeal from Putnam, that we ought not to talk about the fairness of this apportionment, I propose to address myself somewhat to some general considerations affecting this whole subject. I have listened with great interest to what Mr. Osborn has said, and I suppose the Convention have all taken notice of the fact, if they have examined the document, that, notwithstanding what our friends on the other side are pleased to term the iniquity of this proposed scheme, and the inequality of it, we have still permitted Putnam, with 13,000 people, to have a Member of Assembly. But he com-

plains that Cattaraugus may possibly have two, with 60,000, and that St. Lawrence may possibly have two, with 80,000, and that Chautauqua may have two, with 73,000, and that Jefferson may have two with 66,000, and that Suffolk, with about the same number of people, may have two members. But we still leave Putnam one member, with 13,000, and we still leave Schuyler one member, with 16,000. We have not disturbed the principles which have been in force so long in this State.

Now, Mr. Chairman, when, after reading the list of committees at the opening of the work of this Convention, I heard my name mentioned as one of the members of the Committee on Legislative Organization, unexpectedly to me, it occurred to me that we had a serious task on our hands. There is no more important subject before this Convention than the one now under consideration, because the question of the structure, and the tenure, and the distribution of the law-making power of any government is of primary importance. Indeed, it is the very first question which would present itself to any number of people who were for the first time organizing a government. I suppose if any number of men in the State of New York could be transported to some uninhabited portion of the world, to begin again a government of some kind, the very first question that they would think of would be: "What sort of a law-making power shall we have? How shall we constitute it? How shall we distribute it?" Now, the executive merely executes the laws made by the law-making power. The judicial branch of the government simply interprets those laws, and in nations and States having written Constitutions, within the limitations prescribed by the Constitution itself. So, I say the great question for this Convention, and the great question in organizing any government, certainly any representative government, is the question of the distribution of power. Now, the magnitude of the problem, and the intricacies of detail involved in its practical solution, are very important matters for us to consider, and I propose to speak for a few moments to-night upon these general questions, without coming down to the details of this scheme, which I am willing to say now meets with my approval. The great question of how this law-making power shall be distributed has been one of the great problems that have troubled every representative government. It has been so in this State from it foundation; it has been so in the United States from the organization of the government. What sort of a representative government shall we have? How shall we distribute its power and what sort of representation shall be made? Those are the great questions

which lie at the foundation of all these considerations, and here we are in a Convention, called by the people of the State, to revise and amend our fundamental law; and this sovereign body has now to consider the question whether we may possibly wish to recast our institutions, whether we will continue the form of representative government to which we are accustomed, or whether we will suggest some other. And we are not bound by the requirements of the present Constitution, because we are here with a view, possibly, of remodeling our entire fundamental law. Now, assume that we have never had any representation at all, if you please. Where shall we begin? We start out first with the proposition that this is a representative government, not a pure democracy. The Greek republics have passed away; we cannot model our institutions after them. We cannot follow the example of the Swiss republic. We have outgrown the democratic principles and practices of the New England town meeting. We are beyond all those things, and we have reached a state of complex civilization, and a concentration of population, in this State, where we must address ourselves to other considerations and see what we can do by way of distributing power for the purpose of making the laws for our great commonwealth. Now, our fathers established a Constitution for the distribution of power upon this theory, that the law-making power should be composed of two bodies, an Assembly and a Senate, and that was based upon the general idea then prevalent, and which has become a part of the general institutions of this country, that we should have two law-making bodies. I need not here discuss the philosophy of this, nor the reasons why our fathers construed their theory of government upon that basis. For the purpose of this apportionment, and for the purpose of revising our institutions upon this line, we will assume that that is the correct theory, and we will not undertake to change it in the least, but will stand by that principle of having what we term a popular assembly, and then having what we may please to term a representative body, used, if you please, as a check upon the other. Now, it became a principle at the beginning of our State government that every county should have some representation in the popular body, and that was termed an Assembly; but it has never been a theory that the Senate should be a popular body in the same sense. It was more restricted in its representation, more restricted in its membership, and the first law-making body which this State created was composed of seventy Members of Assembly and twenty-four Senators. Now, that Constitution provided for an elastic system, as has already been suggested, by which every seven years a census was to be taken, and

a new apportionment made, upon the basis of one-seventieth of the Assembly and one-twenty-fourth of the Senate, with the limitations already stated by my colleague on this committee, Mr. Brown, of Jefferson, that the Senate never should exceed 100 in number, and the Assembly should never exceed 300. I need not follow out here the development of that policy from that time to this, because it has already been sufficiently detailed. I want to show, Mr. Chairman, the difficulties that have surrounded this question of representation from the outset, not only in this State, but in the United States, and in various States of this Union; and I may not be able to complete my examination of that subject to-night.

Now, two difficulties have presented themselves. In the first place, should popular representation be based strictly upon population? If so, then it was simply a question of division, by which you were to divide the entire population by the number of members of each House. It was simply an arithmetical calculation which determined the number to be represented by a particular individual in either branch of the Legislature. But from the very foundation of our government, not only in this State, but in the United States, the theory of locality has prevailed; and in the State a county has been the unit of representation, and in the United States a State has been the unit of representation. And these matters were all the result of compromise, compromise in the State, compromise in the United States, as every one will remember who recalls his reading of the formation of the United States government, and the debates in the Convention which formed the Constitution. It was provided by that Constitution that every State should have, at least, one representative, and that every State should have two Senators. The small States gave up something there, the large States gave up something. It was a compromise, as I suggested it. So, in the formation of State government there was the same result of a compromise between the larger and the smaller counties, between the question of population and the question of territorial limitation.

Now, I want to follow here for a moment the difficulties that have presented themselves in the way of representation in the House of Representatives at Washington, and I have compiled a little table showing the population at each of these apportionments, beginning with the apportionment of 1792, the number of members of the House at each apportionment and the ratio of representation up to 1850, when the scheme of representation was changed. The aim was, apparently, all the while, to devise some scheme of representation which would produce the best results and produce the most representation, according to the population of the

entire Union. The Apportionment Act of 1792, which is the first one, created a House of Representatives of ninety-five members, and fixed a ratio of representation at 33,000. One result — and I will follow through five different apportionments — of that apportionment of 1792 was to leave 794,000 people unrepresented. In 1802 the number of members of the House of Representatives was fixed at 141, the ratio of representation was still 33,000, and there was an unrepresented population of 655,000. I omit the fractions, giving the round numbers. In 1811 the number of members of the House was fixed at 181 and the ratio of representation was 35,000, and there was an unrepresented population of 904,000. It was the result of the scheme which they adopted, but I will show you, as we proceed, that an effort was made afterward to change the scheme so as to reduce the number of unrepresented people. In 1822 the House was fixed at 212 members and the ratio was fixed at 40,000. That left an unrepresented population, as I make it, of 1,174,000. In 1832 the House was fixed at 240 members and the ratio was fixed at 47,700. That left an unrepresented population of 1,418,000. In 1842 the membership of the House was reduced to 213 and the ratio was increased to 70,680, and yet that left an unrepresented population, according to my figures, of over 2,000,000.

Now, right here, let me suggest that it was in 1842 that the change was made in the plan of election of the members of the House of Representatives, the act of that year requiring the election to be by districts. Up to that time members of the House of Representatives were elected by the State at large. Here was a change in the policy, by requiring district delegations instead of State delegations. In 1850 the membership of the House was increased to 233 and the ratio was fixed at 99,535, or, rather, that was the ratio under the act of Congress. Now, comes an innovation in the development of this policy of representation, showing the struggle which was going on to settle this problem on a fairer basis than had existed before, and to reduce the number of unrepresented people in the United States in the House of Representatives. That year an act was passed which has been followed in some of the States, and which has been followed in practice, in part, at least, in this State up to now. The act of Congress required the population of the entire Union to be divided by the number 233, which was fixed as the number of representatives. It then required that that ratio should be used in the distribution of members of the House among the several States by dividing the population of the State by this ratio. Then the act of Congress provided further, that if that dis-

tribution of members did not fill up the number 233, the balance was to be distributed among the States having the largest fractions of remainders by this process of division which I have stated. That, I think, has been the uniform practice since that time. Now, in 1862 the House was increased to 241, in 1872 to 283, in 1882 to 325, and in 1891 to 356, and the ratio has been growing larger all the while. In 1850 the general ratio was 99,535, in 1862 it was 130,470, in 1872 it was 136,248, in 1882 it was 154,325, and in 1891 it was 175,906.

Now, that is all that has been done in the House of Representatives in the various apportionment acts for the purpose of reducing the inequalities of representation, and yet, with all that effort, we have existing in the United States somewhat of the inequalities which we find in our own State. For instance, there are five States of the Union that now have less than the ratio of representation for one Member of Congress. Delaware has two Senators and only one Member of Congress, with a population of 168,493; Montana has two Senators and a Member of Congress, with a population of 132,159; Wyoming has two Senators and a Member of Congress, with a population of only 60,705; Idaho has two Senators and a Member of Congress, with a population of 84,385; while Nevada still retains her representation of two Senators and a Member of Congress, with a population of only 45,761.

The inequalities have not been worked out, and, Mr. Chairman, they cannot be worked out upon any possible apportionment which can be suggested by anybody in this Convention or out of it, if you undertake to retain territorial divisions as a part of your scheme of apportionment. You see where we are now in the House of Representatives; you see where we are now in the Assembly in the State of New York, because we have St. Lawrence, with one member, with 80,000 people, we have Putnam, with one member, with 13,000 people. There is a difference of nearly 70,000 between those two counties and that inequality must necessarily exist and cannot, as I say, be reduced to very much lower terms, except as we have done it in this proposed amendment.

Now, an effort has been made here, and that has been the aim of the committee, to find some scheme which would reduce these inequalities to still lower terms. We might have followed, of course, in this apportionment, the general plan of the acts of Congress and the general plan which has been adopted heretofore, in part, at least, in making the apportionments in this State. The apportionments have not been made, in fact, upon that basis, because every apportionment that has been made in modern times

has partaken more or less of the character of a gerrymander, and, speaking upon that question, I am not here to defend the Republican party as against the Democratic party. The political party that is without sin in this matter should cast the first stone. But with the various apportionments which have been made in this State and in other States of the Union staring us in the face, we may very well consider seriously the problem whether we can devise some scheme that will reduce these inequalities still further and adopt some rules, if possible, which will make these unequal apportionments impossible hereafter; that is to say, as impossible as they may be, still retaining our ancient theory of territorial limits for representation.

Now, we find that in the State of New York, according to my computation, there are twenty-four counties that now have less than the ratio fixed by this apportionment scheme of 38,806. It has already been suggested that as between the large counties, like New York, and Kings, and Erie, and Monroe, and Onondaga, and Westchester, and Albany, and two or three others — making ten in all of the large counties — and between the smaller counties that have less than 38,000 population, there are several counties having a large population, not up to the largest, of course, but much above the ratio, and there are intermediate populations between the smaller and the larger, and an effort has been made here to devise some scheme by which the inequalities could be reduced and these intermediate counties given a fairer representation than they have now; and that scheme has been worked out, not with a view of any political results, as I believe I may truthfully say for the majority of the committee — I certainly say so for myself — but with a view to work out some system by which these large counties should have better and fairer representation in our representative bodies, because everybody can see that it is eminently unfair that Putnam and Schuyler should have the same representation as Chautauqua and St. Lawrence in the Assembly, when their population is so much smaller.

Now, it may be absolutely impossible for the House of Representatives at Washington to apply this scheme which we are undertaking to use here, but I believe that if the State of New York will adopt this plan, the people of the State will approve it. It will be adopted by other States having similar populations, that is, similarly distributed in large counties and small counties, where they undertake to preserve the county unit, and it will be hailed as a solution of the problem of more equal representation in all the States of the Union. They are some States, and I will read from the Constitu-

tions of those States on another occasion — I have not the Constitutions before me to-night — I will read in detail some of the various efforts that have been made by constitutional provision in some of the States of the Union to solve this problem, and to show how far they are from solving it, even in their plans which they lay down in their Constitutions, and how far they come from the fair and reasonable plan which is laid down in this scheme which we present to this Convention.

As matters now stand, twelve or thirteen of these large rural counties are not fairly represented, and they are not to be criticised and condemned, even by the gentleman from Ulster, who, I think, comes from a rural county — rural counties further from New York than his are not to be condemned because they are still rural, any more than the county of Ulster is to be condemned because it is rural, although a little nearer to New York than Cattaraugus or Chautauqua. The question is, what can we do to give better representation to those people in those counties that have from 50,000 up to 80,000 population and only one Member of Assembly?

The solution of the problem lies right here, and that is the merit of this measure. The crowning feature of this scheme is that we devise an intermediate ratio, and that intermediate ratio produces such equal results, as you will see by comparison of the three classes, that I am surprised that any one in this Convention should complain of it, because it is so eminently fair. Take the ratio which produces results for thirty-six counties, having one member, and we have an average representation in those counties of 36,280. If we take another ratio of another class of counties, having only two members each, we find an average ratio in the Assembly of 35,572. If we take still another ratio, for the larger counties having more than two members each, we have a ratio of only 40,566 on the average for the representation of each Member of Assembly, while our general average for the entire State is 38,606, and I say that you have reached a degree of equality that was never before reached in any scheme of apportionment presented to any Constitutional Convention or any people involving the question of county and State units, and it ought to receive the commendation of every member of this Convention who is willing to do what is right and fair and just in the way of representation in our Legislature; that is simply speaking, Mr. Chairman, with reference to the Assembly, and I do not care to-night to address myself further upon this question. I think it is now nearly ten o'clock, and to-morrow, if I may still have the floor, I will take up the subject still further and discuss this question in view of the problems that have been presented to

the various States and the attempts at solution by the Constitutional Conventions of those States. All these things are instructive to us. We have used them to try to obtain light and information and guidance in preparing this bill.

Mr. Chairman, let me say one thing before we close, in reference to the trouble with the Monroe county apportionment. Possibly I am entirely responsible for that error. I am willing to take the responsibility. The figures were given to me by some person from Monroe who is familiar with the division of the county by the Genesee river. It was concluded by the representatives from Monroe that the Genesee river should be taken as a boundary line between the two districts. Not being informed as to the towns and wards of that county, I asked some member to give me the figures on each side of the river. I find now that by an error, which is probably chargeable to me, the figures are given of the total population instead of the citizen population, and that is what led to the error in the report. That can be very easily corrected, and should be corrected.

The hour of ten o'clock having arrived, Vice-President Steele took the chair and declared the Convention adjourned until Wednesday morning at 10 A. M.

Wednesday Morning, September 5, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, in the Capitol, Albany, N. Y., September 5, 1894, at ten o'clock.

President Choate called the Convention to order.

Prayer was offered by the Rev. Henry M. Field, D. D.

On motion of Mr. Acker, the reading of the Journal of yesterday was dispensed with.

Mr. C. B. McLaughlin — Mr. President, at the request of Mr. Lauterbach, the chairman of the Committee on Charities, I move that the report from that committee be referred back to the committee. It has become apparent to the committee that some changes will have, of necessity, to be made, and, therefore, we ask that this be done, and that it retain its place upon the calendar.

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

Mr. Peck — Mr. President, public business of a different nature, which must be attended to on Saturday morning, will require my

presence in Troy, and I would like to be excused from the session of Saturday morning.

The President put the question on excusing Mr. Peck, as requested, and he was so excused.

Mr. Veeder — Mr. President, I am requested to ask an excuse for Mr. Hotchkiss, of New York, until Friday morning, he being compelled to return to his family.

The President put the question on excusing Mr. Hotchkiss, as requested, and he was so excused.

Mr. McIntyre — Mr. President, I ask that Mr. Abbott's excuse be continued until he is able to return.

The President put the question on extending the leave of absence granted to Mr. Abbott, as requested, and it was determined in the affirmative.

Mr. Cornwell — Mr. President, I desire to be excused on Saturday.

The President put the question on excusing Mr. Cornwell, as requested, and he was so excused.

Mr. I. Sam Johnson — Mr. President, I move that the resolution offered by me yesterday morning he laid on the table until the apportionment amendment has been disposed of.

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

The Convention then went into Committee of the Whole, upon the further consideration of the apportionment article, general order No. 74, and Mr. Durfee resumed the chair.

The Chairman recognized Mr. Lincoln.

Mr. Lincoln — Mr. Chairman, in discussing the question of apportionment last evening I took occasion to say, what is, of course, familiar to every one here, that political divisions are taken into account in distributing representation. In addition to the political unit, which, with us, is the county and in the nation is the State, there is also the element of population, or citizenship; but in the formation of our system citizenship had to give way somewhat to the idea of local representation, because each locality seemed to demand a representative, on the ground of its being a political division, and, without regard altogether to the number of citizens or the number of people contained within its limits. So that we have this double theory of representation, that by political divisions and that by citizenship, in the State of New York and generally throughout the Union. Now, representation by counties in the State of

New York, as I suggested last evening, necessarily produces more or less inequality, and the object of this increase in the Assembly is to reduce that inequality. I did not come to this Convention with any notion of increasing the Legislature. In fact, I had no particular notion about it. But after I was placed upon this committee, of course, I began to study the question, and, studying it from both the standpoint of citizenship representation and also of political division representation, it became very apparent that there was a large number of counties that were inadequately represented in the Assembly, and I found by investigation and by making some figures upon the basis of 128 Members of Assembly that those counties could not be given the representation, which, I think, they are entitled to by reason of their large population. And that led to a computation of representation based upon a slight increase in the Assembly; and after various computations the number 150 was settled upon as the most equitable and just for all the counties of the State and as producing the most nearly equal results in representation. And that, so far as I am concerned, was the principal point in making this increase. If you take the same rules which we have adopted here, or the rules which were used by the Legislature of 1892, and undertake to work out a scheme upon the basis of 128 members, it will still leave unrepresented these large interior counties that I have referred to. I need not go over that ground again. So, a slight increase seemed necessary to produce more equality. That increase necessitates adding twenty-two members to the Assembly. Of those twenty-two members, speaking now from a political point of view, eleven of them, just half, go to the counties that are ordinarily Republican. The other eleven go to the counties that are either Democratic or doubtful. There has been no attempt here, and none can be ciphered out from this apportionment, or from any figures contained in these tables, to make a partisan apportionment of these additional twenty-two Members of Assembly. They have been distributed to these several counties by these fixed rules which we have prescribed, and the fact that Cattaraugus county has an additional member was adverted to by the member from Ulster yesterday in a spirit of partisan criticism, at least, I inferred so; but this rule was not made for Cattaraugus, although it happens to come within the rule. I do not think Cattaraugus is to be criticised for that reason, neither need she decline the additional member. If we had 50,000 population, then we would not be within the rule; but having 60,000, we are within the rule, and it produces the result of having a member in Cattaraugus representing but 30,000, while several counties in the State have members represent-

ing a still smaller number than that. Now, as to the division of the State into Senate districts. It seemed to the committee that if we increased the Assembly, we ought also to make some increase in the Senate, and the number was fixed arbitrarily at fifty, making the ratio of representation in the two Houses three to one, instead of four to one, as it has been for seventy-three years. It will be noticed that the first Legislature of this State stood about three to one, twenty-four Senators and seventy Assemblymen, and a sliding scale was provided by which an increase might be made in both branches. Now, there is no special magic that I can see, nor special virtue in the ratio of four to one, and the mere fact that we have kept that ratio for seventy years is of no special significance, in view of the fact that a necessary increase is made in the Assembly. Some increase ought to be made also in the Senate. Some reasons for the formation of a Senate of thirty-two members were suggested last evening by the gentleman from Jefferson (Mr. Brown), and I need not go over that ground again. But we have fixed the ratio here at three to one. That is not a large addition to the Senate. It is not a disproportionate representation between the two Houses. Some States in the Union have half as many Senators as they have members of the lower House, some have three to one, some have other ratios, some have an irregular number; it is not either four to one, three to one, or two to one, but it is an arbitrary number fixed by the Constitutions of the different States. There is not much in that suggestion one way or the other, except that it seemed to me and to other members of the committee who gave this matter attention, that the large increase in population in the State demanded an increase in the upper House as well as in the lower. When this representation of four to one was established, an Assemblyman represented, in round numbers, about 10,000 citizens, but he now represents, under the apportionment of 1892, about 45,000 citizens. A Senator in 1821 represented, in round numbers, 45,000 citizens. He now represents 180,000 citizens. Now, it seems to me, Mr. Chairman, that it is entirely reasonable for the State of New York, under these circumstances, to make a small increase in the Legislature. The House of Representatives at Washington has been increased in a much larger ratio than we have increased our Legislature. Increases went on from decade to decade, after each decennial census, until we now have a House of 256 members. And, of course, corresponding increases have gone on in the United States Senate, but not in quite the same ratio, because we have forty-four States, with eighty-eight Senators, while we have 356

members of the House. We increased the Assembly; therefore, we increased the Senate, and while the increase is slightly larger, it produces this even ratio, which may not be accomplished by thirty-five, or forty, or forty-five, or any other number but fifty. It was fixed arbitrarily, and without any intention to produce any political results, and I will seek to show you before I close that it is entirely fair, so far as its political aspects are concerned.

Now, we require the Senate district to be composed of entire counties. We prohibit the division of a county in the formation of a Senate district, unless the county has sufficient population to warrant the creation of two or more districts, entirely within its own limits. That, we believe, was the spirit, and that, we believe, was the fair interpretation of the Constitution of 1846, and of the present provisions of the Constitution. But that provision was varied from in two instances by the apportionment of 1892. New York county secured an entire representation for its entire population by having the last fraction in the northern end of the county attached to Putnam and Westchester to form an additional district. Kings county also secured representation for the entire population of the county by having a part of the county attached to a district including Richmond, thereby, as we believe, violating the spirit, as well as the letter, of the present constitutional provision. But to obviate any question of that sort, the language of the provision has been changed, and it is now made absolutely plain, incapable of any misunderstanding, that New York county cannot be divided, nor Kings, nor Erie, nor any other of the large counties, and a fraction of representation left over, after a division into two, or three, or twelve Senate districts used to make up another district in connection with an adjoining county. It is not fair that that should be done; it is not fair to counties like Albany and Onondaga; it is not fair to counties like Westchester, and Queens, and Rensselaer that have considerable population over the ratio, but not sufficient to entitle them to two Senators. It is not fair that those counties should retain that surplus and large counties, like Kings and New York, get the benefit of that representation by using all their surplus in connection with surrounding counties. It is not right; it is not a fair representation. Therefore, to remove any question upon that subject, this change has been made.

Mr. Vedder — What section?

Mr. Lincoln — Section 4, Mr. Osborn says. It is a slight change in the language, but a change that was intended to remedy what we believed to be a misinterpretation of the present provisions of the Constitution.

Now, Mr. Chairman, last evening I suggested that I would call the attention of the Convention to the practice in some of the States relative to this same subject; and I will seek to show, by reference to the Constitutions of various States, that the practice is substantially uniform, prohibiting a division of a county in the formation of a Senate district. I begin with Alabama, where the language is that no county shall be divided between two districts. That would cover the cases of New York and Kings, as I have suggested. California has this provision: "In the formation of Senate districts no county, nor city and county shall be divided, unless it contains sufficient population within itself to form two or more districts, nor shall a part of a county, or of any city and county, be united with any other county, or city and county, in forming such a district." Now, that language contains the whole idea, prohibiting a parceling out of counties between different Senate districts. Colorado has this provision: "No county shall be divided in the formation of a district." Idaho has the same provision. Illinois has provisions which I will read from the Constitution of that State: now, the population of the State was to be divided by the number fifty-one, which is the number of Senators, "and the quotient shall be the ratio of representation in the Senate. The Senate shall be divided into fifty-one senatorial districts. Senatorial districts shall be formed of contiguous and compact territory bounded by county lines, and contain, as near as practicable, an equal number of inhabitants. No district shall contain less than four-fifths of the senatorial ratio. Counties containing not less than a ratio and three-fourths may be divided into separate districts and shall be entitled to two Senators," and it proceeds further with the subject of ratios, which I need not refer to here. Indiana has a provision of the same sort: "No county shall ever be divided in forming a Senate district." Iowa has similar provisions. Kentucky has a provision bearing on the same question, which I will read, because it contains something on the subject of ratios. This Constitution of the State of Kentucky requires a division of the State into thirty-eight senatorial districts, as nearly equal in population as may be, without dividing any counties, except where a county may include more than one district. No part of a county shall be added to another county to make a district, and counties forming a district shall be contiguous. Louisiana has a provision of the same character, with one exception. This is the provision: "No parish shall be divided, except the parish of Orleans." That is the only exception in the State of Louisiana. Maryland has a provision of the same general character; so has Michigan; Minnesota has this arrange-

ment: "the representative districts shall not be divided in forming Senate districts." Missouri has provisions of the same general character. So has Montana; so has North Carolina, North Dakota, Oregon, Pennsylvania, Tennessee, Washington, West Virginia, Wisconsin. Those States have provisions similar to those which we have now put into our Constitution, absolutely forbidding the division of counties in forming Senate districts, unless the county is entitled to more than one member.

Now, that shows, Mr. Chairman, a quite uniform practice in the United States upon this question, and we are simply following the examples of these other States, and putting ourselves in line with them, and also putting ourselves upon the basis which was intended by the framers of the Constitution of 1846, as I understand it, when they prohibited, in the spirit, and, I believe, intended to in the letter, the parceling out of a county between two Senate districts, unless the population of the county itself entitled it to two districts.

A word or two, Mr. Chairman, upon the division of the State into Senate districts, and, first, I want to answer for a moment the suggestion made by the gentleman from Ulster, and also the gentleman from Putnam, relating to the feeling which they think exists in the country against the cities. There is no hostility on the part of the country against the city. I am as proud of the city of New York as any resident of that city can possibly be. I am proud of her past, and I am proud of her greatness; I am proud of her commercial supremacy; I am proud of her future, and I am glad that I am a citizen of a State which possesses within its borders such a great city as the city of New York; and I believe I speak the sentiment of every citizen of the State of New York when I say that we are all glad that we can have within our own State this great metropolis of the western continent. We glory in her strength; we glory in her prosperity; we are glad of her increase in population; we are glad that she contains the great wealth of the nation; we are glad of all of this supremacy that I have mentioned, and all the great influence that goes out from that city. We have no hostility against the city of New York. We want to give that city, we want to give that part of the State all the representation that it is entitled to, and I believe that I will be able to show that New York city has more now under this Senate apportionment that we have given than it is entitled to by a fair census of the population of that city. That part of the State including Suffolk, Queens, Kings, Richmond and New York, has twenty-one Senators under this apportionment. That part of the State has forty-two per

cent of the representation in the State Senate. Now, you add together the population, even by the census of 1892, which I will call attention to in a few minutes, you add together the population of those five counties on the basis of the citizen population of the census of 1892, and you have there forty-two per cent of the population of the whole State, if my figures are right. If not, Mr. Osborn, who sits at my left ready to correct me, will call my attention or the attention of the Convention to any mistake I make. That is the computation I make. So that, upon the basis of the census of 1892, that portion of the State, beginning with Suffolk and ending with New York, that thickly-settled part of the State, that has forty-two per cent of the population of the State, has forty-two per cent of the senatorial representation of the State. Is there anything unfair about that? Our political opponents complain about the apportionment of the city of New York and the county of Kings. Why should they? Those same counties have sixty-two Members of the Assembly under this apportionment out of 150. Now, an absolutely accurate percentage of the Members of Assembly, upon the citizen population of 1892, would give them, in the aggregate, sixty-three, but we must remember that in distributing Members of Assembly under the plan and the policy which has been pursued in this State from the foundation of the government, there is more or less loss in some counties, because some counties have slightly more than the ratio. So there is a loss of representation; but you take a single arithmetical calculation, you have sixty-two, and you cannot possibly get, by giving every citizen in all these counties representation, you cannot possibly get over sixty-three Members of Assembly. Now, I think that result is entirely fair, and I think our political opponents here who are complaining about the representation in New York and Kings have no just reason to complain.

But there is another feature of this plan, and I want to call attention to it now. The suggestion was made to me that the apportionment of the city of Brooklyn and the city of New York was not fair or not just, because those cities might not now have all the representation that they would be entitled to under the present population. But, Mr. Chairman, when we conclude to make a reapportionment of the State we must adopt some census. This Convention has no power to order a census. We may follow the present Constitution and adopt the last State census. That has been done in this case. But we must adopt some census or some enumeration, because we have no power to make another. We have adopted the last one which has been furnished us by the State

itself. That is the enumeration made in February, 1892. But I believe I can show, by a fair array of figures, which speak for themselves, that the census of 1892 was not an accurate census. First, I want to give some figures showing the development of the State, as shown by the federal census. The State census of 1865 showed a population of 3,827,602. The federal census of 1870 showed a population of 4,382,759, a total increase of 555,157. The State census of 1875 showed a population of 4,698,958, an increase in the five years of 316,199. The federal census of 1880 showed a population of 5,082,871, an increase of 383,913, or an increase for the ten years, from 1870 to 1880, as shown by the federal census, of 700,112, making about sixteen per cent. Now, the federal census of 1890 shows a population of 5,997,853, an increase for the ten years, from 1880 to 1890, of 914,982, an increase of eighten per cent. The State census taken in February, 1892, shows a total population of 6,513,343, or a total increase of 515,490 in twenty months. Now, I do not suppose anybody here believes that there was any such increase in the State of New York for the twenty months, from June, 1890, to February, 1892. That means an increase of over 25,000 a month. According to the State census of 1875, eight per cent of the population were aliens. For the purpose of arriving at a calculation, with a view of determining what the probable population of this State was in February, 1892, I have allowed for 1890 ten per cent of aliens; and, taking the population of 1890, as shown by the federal census, and deducting ten per cent for the alien population, we have a citizen population in June, 1890, of 5,398,068. Now, the average increase per month from 1880 to 1890 was 6,862. You take that for the twenty months from the federal census to the State census and we have the total increase of 137,240 for the State, instead of the increase which I suggested a moment ago, which makes the citizen population in February, 1890, 5,525,308, which, subtracted from the citizen population, as shown by the State census of 1892, gives us a padded increase, if I may be allowed to use that term, of 255,557. I have not heard any criticism upon the census taken by the United States government in 1870, nor 1880, nor in 1890; nor of the State census taken in 1875, and those enumerations show substantially the same increase, in substantially the same ratio, from one five years to another five years. Now, the total population of the county of New York, by the federal census of 1890, was 1,515,301. I have taken from this twenty per cent for aliens. That leaves in the county of New York a citizen population of 1,212,241, and that taken from the citizen population, as reported by the enumeration of 1892, leaves a deficiency of

211,743 in the county of New York alone. I think some other members who intend to speak upon this question may go into detail more upon this matter, but my purpose is simply to show that if we were to take what would be a fair census or enumeration of the county of New York, instead of the enumeration reported and acted upon by the Legislature of 1892 and which we have used as a basis, New York would get eleven Senators instead of twelve, because the ratio of representation for the entire State would be reduced from 115,000 to 107,000, and that, applied to the city of New York, would reduce the representation there to eleven Senators. Now, shall it be complained that New York has been treated unfairly, when we give that county one more Senator than it can rightly claim? I do not suppose that any one here will claim that the census of 1892 was an accurate census, or that it was anywhere near accurate; but we have given the State and all parts of the State representation upon the basis of that census — we have applied that census of 1892 in making this apportionment, and the city of New York gets the benefit of one additional Senator by the application of that rule. Now, I say that this Convention, in view of the investigation of that census of 1892 that was made by the Legislature, would have been justified in adopting the census of 1890 for the basis of this reapportionment, instead of the census of 1892; but there has been no disposition to do anything which could even have the appearance of unfairness here, and so, for that reason, we have taken this census, which we believe to be inaccurate, and have used it for the entire State, letting the benefits of it go where they would, in making this reapportionment. And that same rule applied to the county of Kings would reduce the surplus — it would not change the number of Senators in the county of Kings, but Kings, under our apportionment, has a surplus of about 58,000. That, if I remember right, would be substantially wiped out, if we were able to deduct this padded increase in the census of 1892. But it would make no difference in the representation in that county. It does make a difference of one in the county of New York, and, as will clearly appear, it reduces also the average ratio for Members of Assembly to about 35,000 through the entire State instead of 38,000, and that would make a difference also with those counties. But, even the census of 1892, taken for a basis of apportionment, gives that part of the State all it can possibly claim, and as I have already shown, while they have by that census forty-two per cent of the population, they get forty-two per cent of the Senate; so they have no reason to complain. The gentleman from Ulster made a very curious suggestion, that the senatorial represen-

tation, as I understood him, should be based upon wealth. That could hardly be a proper basis. I can hardly think that he intended to be taken seriously in making that suggestion. It is not the number of dollars in the city of New York, nor in the county of Cattaraugus; the basis is the number of people, the number of citizens in the county which is to be taken into consideration. If his suggestion were a good one and could be carried into practical effect, the apportionment ought to be made by the State Assessors instead of by the Legislature, because if it is to be made upon the basis of wealth, why, then, the State Assessors, who equalize the assessments through the State, ought to make the apportionment. But I do not suppose he intends to be taken seriously about that. Suppose one of the millionaires, one of the rich men of the county of New York, should move into one of the interior counties, say the county of Cattaraugus, if you please, and should bring his property with him, and should there be assessed $25,000,000; that would double the assessed valuation of the county of Cattaraugus. Would we be entitled to a double representation because one man moved into it with more money than all the rest of us had? But wealth locates itself in New York for purposes of convenience, and for purposes of business. The great corporations are there without regard to whether they are doing business in the State of New York or elsewhere. They are doing business in the city of New York. They have their offices there. As I have already suggested, it is the center of wealth and commercial enterprise on this continent. But treating this question as a question of population and as a question of county lines, not to be divided, that county gets all it is entitled to get. The gentleman from Ulster made another suggestion which I can hardly think was intended to be taken seriously, either, and that was in effect that the political party which could carry the State at a general election ought to have the Legislature. Now, the practical result of that, carried out to its logical conclusion is, that the members of the Legislature should be elected upon a general ticket; and, if that theory was adopted, it would destroy district representation. Is the gentleman from Ulster willing to take that position? Is he willing to offer an amendment here to this proposed scheme providing that the members of the Legislature shall be elected on a general ticket for the entire State? But there would be difficulty, even then. He claims, I suppose, as I infer from his argument, that because the Democratic party has carried the State several times in the last few years therefore it ought to have a sufficient number of Members of the Assembly and of Senators to ensure its control of the Legislature. If the control of the Legislature

depends upon carrying the State at a general election, some difficulties might be presented. For instance, in 1888, if I remember correctly, the Democrats carried the State for Governor and the Republicans carried it for President. That would create a difficulty under the scheme suggested by the gentleman from Ulster. But again, of the last nine presidential elections I think six were carried by the Republicans, and three were carried by the Democrats, and of the last six presidential elections, three were carried by the Democrats and three by the Republicans, alternating one after the other. And another thing, if the representation was to be based in any sense upon the entire popular vote of the State cast by one party or by any party, then ought not the theory of minority representation to be invoked, so that these smaller parties, thirty or forty or seventy thousand, as in one case within two or three years in this State, should have some representation? I say this thing carried to its logical result means the destruction of the district system; and I do not suppose the gentleman from Ulster meant to be taken seriously upon that question. But that may be the strongest argument that he can suggest against this scheme. It is really the strongest one I have yet heard. He would either do that or else he would do this, if he is going to make a district system of the entire State which would produce inevitable Democratic districts, he would need to have every one of them perhaps, center in the county of New York. Now, that would produce a gerrymander surely, if thirty-two districts, or fifty districts, all had their starting point in the county of New York, and then radiated out over the State. What sort of a looking representation would that make? Oh, no, I do not suppose the opposition here would undertake to say that we ought to destroy our district system representation. Then when you do come back to the principle of representation, by preserving county lines, you must necessarily produce some inequalities, and you have to begin at one end of the State or the other. Suppose you began this apportionment at the west end of the State instead of the east end. You would have to carve it up by counties if you retain this principle; and you may come east from the western part of the State carving by counties, carving up the northern section of the counties until you come to the county of New York. Carving that up into sections of twelve under the present apportionment, or seven under the last one, and then carving up Long Island in the same way — you still have the difficulty of undertaking to preserve county lines in the formation of districts, and you run the risk all the while of having some of these districts Republican, and you take your chance, as

you undertake to carve up the State in this manner, beginning at either end of the State; or you might begin at the middle and go around toward each end, you would still produce the same result, not necessarily politically, but you would get a result which would in some instances produce just the result which the apportionment of 1879, the apportionment of 1846, the apportionment of 1821, the apportionment of 1892, and the proposed apportionment of 1894 would produce. There would be inequalities under the best of conditions. And if we undertook to abolish county lines, where would we be? Where would we begin? Which end of the State would we begin at? And would you carve up the State into square districts or oblong districts, or circular districts? What sort of districts would you make in order to get 115,817 citizens within each district? How would you work that out, if you undertook to abolish county lines and worked it out on the plan suggested by the gentleman from Ulster and that has been suggested by one or two other Democrats in this Convention? I say it is practically impossible to work it out from that line upon any reasonable basis; and I do not suppose the Democrats in this Convention wish to take that course at all. If they do not, I do not quite understand why they keep making suggestions upon that line. If they do, then they ought to propose amendments here to this proposed scheme; and I was quite surprised to hear the leader of the Democrats in this Convention say that no amendment should be proposed. If they think this bill is wrong, are they not under political and moral obligations to suggest amendments to it? Are they willing to go to the people of the State and say, "We sat in the Constitutional Convention and saw a scheme prepared and put through that Convention which we believed to be wrong, but we made no objection to it?" Do they expect to appeal to the independent conservative vote of the State upon a position of that sort? I have not come here upon any such narrow partisan basis as that. I did not come here to make a Republican Constitution, nor a Democratic Constitution. I came here, so far as I was concerned, and within the spirit of the oath of office which I took, to discharge the duty of a delegate to the best of my ability, to make a Constitution for the entire people of the State. That is what I am trying to do, so far as my individual effort and influence may conserve to that result in this scheme of apportionment or any other thing that I may do in this Convention. If I were in the minority of this Convention, I do not think I would sit by quietly and see our Democratic friends put through a scheme which I objected to without making some suggestions or amendment to it.

I cannot understand the policy nor the motive nor the patriotism which induces my Democratic friends to sit here quietly and say, "We won't offer any amendments whatever to this scheme." If this is wrong, it ought to be amended; it may be amended by Republicans, it ought to be amended by the Democrats, or any person in the Convention.

Mr. Veeder — Will the gentleman permit an interruption?

Mr. Lincoln — No.

Mr. Veeder — I want to say to him that it is pure fiction he is stating now about the position of the Democrats. No Democrat has authorized him to say it.

Mr. Lincoln — The gentleman from Kings will probably have an opportunity to address the Convention later. I am simply quoting from the delegate who has been put forward, as I understand, as the leader of the Democratic party in this debate. If he does not speak for his party he ought to be corrected by his party. Let them take care of him. (Applause.)

Mr. Veeder — I offer an apology. I thought the gentleman said I might interrupt him.

Mr. Lincoln — On account of the scarcity of the time ——

Mr. Veeder — I beg your pardon; I thought you said I might interrupt you.

Mr. Lincoln — I accept your apology.

Mr. Lincoln — I do not think, Mr. Chairman, I will prolong this debate further now. I may not speak again upon this subject, but I have given this question a good deal of attention during the summer and have spent considerable time in making figures and calculations, and trying to produce an equitable result, a result which would permit me to go to my constituents, regardless of their party affiliations, which would permit me to say to my Democratic neighbors as well as my Republican neighbors, "We have given an apportionment which we believe produces greater equality of representation than the State of New York has ever seen before, or than any other State has been able to produce in its Constitution, and we commend it to your consideration." And I appeal now, not only to Republicans, but to Democrats; not as Republicans, not as Democrats, but as patriots, and as citizens of this great State, to assist us in putting into our Constitution, these rules which we believe will produce equitable results in the future, and which will prevent any party, no matter which, from accomplishing the inequitable results which have been accomplished in the past in the way of legislative appor-

tionment. Let us rise above partisanship, and put into our Constitution these provisions, which, I believe, as I suggested last night, will ultimately be incorporated into the Constitutions of other States; and if you will read the Constitution of Illinois, if you will read the Constitution of Maryland, of Pennsylvania, of Missouri, and see the efforts that they have made, by the establishment, not of three ratios, but of four and five ratios, to accomplish precisely the result that we do here with three, you will see that we have reached a simple solution of this entire problem, and one which the people of this State will be glad to use if they have the opportunity, ten years from now, or when the next enumeration and apportionment are made. (Applause.)

Mr. Peck — Mr. Chairman, I shall occupy the attention of the committee on this subject but a very short time. I can add very little to the figures which have been produced here to show the inequality, the injustice, the partisanship of the proposed gerrymander, but before I go further I wish to say with regard to the eminent gentleman who has preceded me, that there is no man in this Convention to whom I will yield in my admiration for his great ability and sincerity. (Applause.) And I congratulate him that he will be able to return to his constituents, both Republican and Democratic, and state to them that on principles the most just, the most equitable, the fairest of which he can conceive, he has been able to double their representation in the Legislature. It is one of those cases in which justice is blind. The gentleman cannot see any injustice in an apportionment in which seventy-two districts contain 267,000 surplus representation over seventy-two others. He cannot see the injustice of fifteen Senate districts with 350,000. The gentleman who spoke last night thinks he made a mistake in stating these figures, and stated them at 260,000. They are 350,000 more than fifteen other Senate districts. And now, approaching this subject in a little different way from that which has been adopted by any of the other gentlemen who have preceded me, I wish to say that in my remarks I do not intend to be personal at all. I simply will have to use the names of individuals for the purpose of stating the point. One evening after we had had several hearings in our committee — we were fifteen Democrats and one soldier, a veteran not merely of many battles martial, but also political — there lounged into the committee room with what appeared to me most ostentatious indifference and carelessness, the majority of that committee. The subject was broached, "Why cannot we just as well to-night as any time fix the numbers that we will have in our Legislature?" Now, that was a subject that the people of this State have been considering

on all sides, and with the members of this Convention, and we have had placed on the files many different propositions as to the proper number that should be the aggregate in the Senate and Assembly — and naturally we suppose that there would be some discussion on that matter; and to our surprise somebody made a motion that it be fifty and one hundred and fifty, changing the rate of representation between the Senate and Assembly from what it had been throughout its entire history. Well, I think one of our gentlemen — I am not sure but two — voted for that before the motion was put, and the others came in perfectly unanimous. Well, now, what did that mean? That was one of those things that some of us thought a little curious, and we began to look for developments. It did have an element of fun in it. In fact, during the discussion of the subject in our committee, it was quite the habit of one of the ablest members of it to go and put his back to the window and a newspaper between himself and the rest of the committee, and I always thought he was laughing. It was the funniest thing I ever saw to see the majority of that committee gather around this board; and what it meant I never knew until the proposed apportionment was brought in one evening by a gentleman who said that he had been perfectly overcome with surprise at the equality that fifty and one hundred and fifty produced in representation, and it was wonderful how soon the majority of that committee agreed with him. As a copy was furnished to the rest of us, I put mine in my pocket and went down to the hotel, and I began to see what was the matter. One of the committee had asked, when that came in, about Assemblymen. Said he, "How does that effect Orange county?" "Well," the reply was made, "how many Assemblymen have you now?" "Two." "Oh, well, you have got two under the new apportionment." He settled back in his chair perfectly satisfied; but, mind you, gentlemen, an Assemblyman to-day is a one hundred and twenty-eighth part of the Legislature. An Assemblyman under this apportionment is a one hundred and fiftieth part of the Legislature. So that when he had settled back in his chair he had substantially yielded, in the proportionate representation of his constituents, the difference between two one hundred and twenty-eighths, and two one hundred and fiftieths. That is, he had surrendered that. But let me say this for the rural districts. This apportionment is gotten up for the benefit of the rural counties as against the cities. The cities are all homogeneous; the people are all homogeneous; they do not need so many representatives, because one representative represents the whole city just as much as another. That is what we are told. And, therefore, we do not need it, and these rural counties

must be taken care of. Well, they have been taken care of. Forty-six counties in this State lose representation under this apportionment. Which are they? Is it Erie, or Buffalo? Oh, our chairman, probably the most arduous and extensive laborer we have had in behalf of the proposed Constitution on this floor, was on the committee from Erie. It does not come from there. Which then? Monroe, Rochester? That doesn't lose anything. Utica? No, no, that does not lose anything. New York? No, that doesn't lose anything. Kings? No; that doesn't lose anything. Which have lost? Forty-six counties have lost. After the statement I have made do you think it is the rural counties? I can tell you which they are. Albany loses, but that is Democratic; that does not count. Allegany loses the difference between 128 and 150 of the representation in the Legislature; has just so much less influence. Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Dutchess, Essex, Franklin, Fulton and Hamilton, Genesee, Greene, Herkimer, Lewis, Livingston, Madison, Montgomery, Ontario, Orange, Orleans, Oswego, Otsego, Putnam, Queens, Rensselaer — I was on the committee, too (laughter) — Richmond, Rockland, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Wayne, Wyoming, Yates and Washington. Every one of those counties loses in its proportional representation in the Legislature, and every one of them, I think, but one or two, might be called a rural county. We begin to get down to the unanimity, the perfect unanimity, with which the majority of this committee acted, and we find how it is that we have to have three ratios to get up an Assembly. Well, we had a representative from New York, who was somewhat criticised last evening by one of the gentlemen who spoke upon our side of this question, if we have a side, and it was said that he would have to go back to his constituents and say that his city had to have more voters for an Assemblyman than any other part of the State. I think that is hardly fair, because he can go and say, in the face and eyes of the rural counties, he has come back to them with the same apportionment of representation in a Legislature of 150 that they had in a Legislature of 128. So that it seems to me that while he might be criticised on the one hand, he could justify himself at the expense of the rural counties on the other. We had a soldier there to represent Kings, and he looked at it in the same way. He can go back and say: "Yes, I did it, but I tell you I had to keep dark in the face and eyes of the rural counties of the State of New York. I have kept the proportionate representation of Kings county exactly the same under a representation of 150 as it was under 128, under the terrible

gerrymander of 1892, and nobody suspected; they didn't know how I did it. I got it though; it is here." Well, now, they have gained a little; they have gained proportionately, but who gained actually? That is the interesting part of this.

Now I want to tell you who the members of the committee from the majority were, because that goes to point this thing a little, and while I do not say there is anything like dishonesty in it, do not say but what they were perfectly innocent about it — perhaps they did not even suspect it themselves — as I have seen the bland face with which they have argued some of these propositions, I do not believe they know it. I do not believe they know how they pulled the wool over the eyes of some of their conferres of this committee and over the eyes of some of the rural counties, as they believe. I am willing to believe they do not know it. The first one that makes an actual gain is the county of Erie. It is not a very large gain. It is almost a third. But, then, that does not count for much in this apportionment the way this thing has been cut up in our committee. I do not mean that. I mean in the result reached. That is an urban county, would you not call it? Buffalo is a dominating factor of Erie county. Buffalo is a city and getting to be a very large one, and growing so that I would not call that a rural county.

Then comes Broome county. That is increased in its representation by this proposed apportionment about eighty-two or eighty-three per cent. That has a large city in it — Binghamton. That is not a rural county in the sense that we are talking of rural counties here.

Then comes Cattaraugus. Well, now, that is a rural county. But Cattaraugus is the county of the gentleman who had a great deal to do with the getting up of this apportionment, and who has been able in such an amiable and kind manner to instruct us as to the beauties and benefits of it and how perfectly fair it is, that we should be perfectly just and fair, and he has got very nearly a hundred per cent increase in Cattaraugus. I suppose it is entirely accidental.

Then comes Jefferson. I think we had a member on that committee that was somewhat active from Jefferson. He ought to have an increase. He deserves an increase. He has worked hard here, and I do not begrudge him the increase so long as he gets it from the rural counties, and if they are willing to present that to him I am perfectly willing to confirm their desire. He gets an increase of nearly a hundred per cent in the representation in this new Legislature over the present Legislature. I should call Jefferson also an urban county. I believe the gentleman comes from a city himself.

Then comes Monroe. Now, Monroe did not have a representative on the committee and Monroe only gets about thirty per cent increase, but it does get an increase, and Monroe is an urban county, and gets this increase, whatever it is, from the rural counties. I am not interested particularly in what might be called absolutely rural counties, and if they are satisfied, I do not know that I ought to complain; but certainly I am not justifying this apportionment as a measure on behalf of rural counties.

Then we have Oneida. Oh! He kept very dark; there was not a word said of this in the committee. Now, I call Oneida a Republican county. I know that Utica cannot be said to be pent up any longer. I never heard of Rome howling up there. They get about forty-odd per cent increase. Did they get it out of the urban counties? Oh, no. It comes from the rural districts, and if you are willing to surrender it to them, all right; that is your business, not mine.

Then comes Onondaga. We had a representative from that locality on our committee, and that I should call an urban county, with the city of Syracuse in it, and that gets an increase of about twenty-nine or thirty per cent on its representation in the proposed Legislature over and above that of the present Legislature. I do not know but they are entitled to it; but as it does not come out of me in any way, I do not feel that I ought to urge very strongly the injustice of it. I do not feel that I could urge the rural counties to grant this, but I suppose if I should they would not do it, because I am a Democrat, you know. But, at the same time, I think that you people should look this question over a little. Then we have St. Lawrence, with Ogdensburg and Canton and Gouverneur, and all those centers of population, and they get an increase. It is the last county in the State. After traveling over it, and seeing the large mining and manufacturing and quarrying operations that are going on there, I should not think of calling it a specially rural county; but if they are a rural county, why, they have the advantage of it themselves, and all the rest of the rural counties contribute to increase their proportionate representation in the Legislature.

Now, that leaves all the counties that have an increase except two, Cayuga and Suffolk; and these three members of the majority of the committee lose, they help to make up to these urban counties the loss which the country counties or rural counties have. And Orange. Now, why Orange should have no gain when there was a gain in St. Lawrence and St. Lawrence did not have any member of the committee, I do not know. I think, perhaps, the representative from Orange voted too soon (laughter), and the same might be said, perhaps, of the member from Steuben. He

always sat down at the end of the table from me. I do not know but he was too far off out of ear-shot. He certainly is a man of great acuteness and ability. He has shown it in a great many ways, and if these gentlemen did with their fine fingers pull down any wool over his eyes I shall be very much surprised. I do not believe it. He has had some reason for giving up part of his representation in the Legislature for the benefit of the urban counties; what it is I do not know. But it does seem to me that so long as Suffolk was increased and did not have any representative on the committee, they might better put in Steuben instead of Suffolk. I do not know how their minds operate about that.

And then Delaware. Let me see about Delaware. We had a representative from Delaware. He has gone home sick. I do not know whether this is the occasion of it. Delaware has a population of 45,000 and Cayuga a population of 62,000. Well, now, as between 45,000 and 62,000 in this apportionment, that is a very small figure, and why they did not give him a representative in addition instead of Cayuga is one of the problems of this apportionment which I have been unable to solve.

I think, therefore, gentlemen, that you will see that the difference between 150 and 128 does not matter to New York, or Kings, or Buffalo, or Rochester, or Syracuse, or Utica, or these other cities that I have mentioned, Watertown, or Ogdensburg, if it is a city — I do not know. Still we can see a reason why this thing has been done, unconsciously operating, perhaps, while they were sleeping, unknown to themselves how their minds got into this condition. But this is the practical working out of the problem.

Now, we would have had a great deal better apportionment, as has been shown here, if we should take forty as the Senate, but a great deal better still with our present representation of thirty-two and 128, and I am inclined to think that if sufficient time is taken by this Convention to study this question the result will be that we will get back into the old paths and select our Legislature as it has been selected during the time that we have been progressing so fast, as the history of the State of New York shows that we have progressed, and during the time when the statute books of the State of New York exhibit such growth in the philosophy of government, in humanitarianism, in the justice which appertains to man's relation to his fellow-man, as I am proud to say and proud to believe the statute books of the State of New York contain.

Mr. Gilbert — Mr. Chairman, I had not intended to say anything and I now do it in a sort of parenthetic way. It is sometimes worth

while to stop and see how far we have got along, to see where we are and then take a fresh start. I have listened to the speech of the very able member from the county of Rensselaer and it is chiefly with reference to his speech that I rise to say anything. A better tribute to the fairness of the proposed apportionment, it would be difficult for any body on either side of the House to make. (Laughter.)

Now, Mr. Chairman, confessedly the strength of the Republican party is in the rural districts, the rural counties. Confessedly the strength of the Democratic party is in the urban counties. If I am mistaken I want to be corrected, for I hold that it often happens in debate that words are wasted by not bringing the matter down to a few simple propositions to be controverted, if they can be controverted. Otherwise they stand as uncontroverted propositions on which conclusions — not guess work — can be based.

Mr. Peck — I would like to interrupt the gentleman.

Mr. Gilbert — I think I won't yield now, because the gentleman has alread made such a good argument that I do not want him to mar its beauty. It is complete. Now, Mr. Chairman, here is a proposed apportionment submitted by what we call a Republican Convention. I do not like to call it so. I have protested all along against calling it by any partisan name. I have insisted all the time that we were here upon the common footing of a common citizenship, with a common purpose to promote the welfare of the great State in which we all have a common interest and a common glory. Mr. Chairman, this Convention, with its Republican majority, has submitted a proposition which confessedly is in the interest of the Democratic portion of the State. In other words, impelled by the spirit of fairness which has pervaded it from the day of its birth until now, the Republican party takes from its own political strength and adds to the political strength of the Democratic party. That is the situation. I shall not elaborate it. It speaks for itself.

Now, Mr. Chairman, I come from one of these rural counties which make somewhat of a sacrifice as stated by my friend, Mr. Peck, and make it to those great urban counties. I do it with some reluctance upon the principles of apportionment which have prevailed in this State hitherto and which it is not now proposed to displace by any other. I yield somewhat reluctantly to this proposition because I think the cities of this State have an undue preponderance in the Legislature. I do not say that they have too much upon a purely numerical basis. But numbers are not the only things to be considered in making a just and right apportionment.

Territory has something to do with it. We have not recognized it except within county and town lines. We have not hitherto recognized it, but I believe, Mr. Chairman, that the time will come when another element will have to be taken into the account. I cannot look with complacency upon the fact that a little territory in the southern part of the State is likely to have in the near future a preponderance in the legislation of this State. I do not propose now to do more than call attention to this subject, reserving its discussion to some other occasion. So far as this apportionment is concerned, we accept the proposition that the number of citizens in connection with county and town lines constitute the basis upon whcih an apportionment is to be made.

Mr. Chairman, after hearing the argument of the gentleman from Rensselaer, it seems to me that we must be about ready to report this proposed amendment favorably to the Convention and recommend its adoption. If there is no objection I will now make that motion. (Laughter.) It seems to me we are all one about this.

The Chairman — The Chair will state that the time allotted to the gentlemen who are opposed to the report of the committee is by no means exhausted, and it is altogether probable that some gentlemen representing that side desire to be heard.

Mr. Gilbert — Mr. Chairman, inasmuch as objection is made, I withdraw the motion.

Mr. Osborn — Mr. Chairman, I would like to ask the gentleman a question. He has, I think, misconceived the argument of the gentleman who preceded him, and I would like to ask him if he has figured out the politics of the districts which get the additional twenty-two Assemblymen.

Mr. Gilbert — Mr. Chairman, I would say in reply to that question that, ignoring all political lines in considering the matter of this apportionment, I have not made any computation politically. (Laughter.)

Mr. Osborn — Mr. Chairman, I beg leave to state the names of those counties. They are Broome, Cattaraugus, Cayuga, Chautauqua, Dutchess, Erie, Jefferson, Oneida, Onondaga, Oswego, Niagara and Suffolk. The net results, Mr. Chairman, on the figures given on the Assembly by Mr. Brown, are that Republican counties get thirteen out of the twenty-two, and Democratic counties get nine out of the twenty-two. So that in stating that the changes are going to the Republican strongholds from the Democratic strongholds and taken from the Republican rural districts, Mr. Gilbert is mistaken. The point is that, as between the rural Republican districts

and the urban Republican districts, the urban Republican districts have come out ahead.

Mr. Gilbert — Mr. Chairman, I simply say that I was not making any independent statements in regard to the matter; I was simply basing my argument on the statements of the gentleman from Rensselaer.

Mr. E. R. Brown — Mr. Chairman, some curiosity has been expressed by the gentlemen of the minority as to where we learned that one hundred and fifty and fifty would be the best numbers. I desire to read to them a little clipping from Madison, in the Federalist:

"However small the republic may be, the representatives may be raised to a certain number in order to guard against the cabals of a few, and however large it may be they must be limited to a certain number, in order to guard against the confusion of a multitude. It must be confessed that in this, as in most other cases, there is a mean on both sides of which inconveniences will be found to lie. By enlarging too much the number of electors you render the representative too little acquainted with all their local circumstances and lesser interests, as by reducing it too much you render him unduly attached to these."

Now, Mr. Chairman, nothing thus far in this debate has been said in regard to the effect that the increase in the Legislature would have upon the facility for doing business in that body. The committee did not feel at liberty to make a large increase, for fear that it would make the body inefficient. They did not feel at liberty to leave the representation as it stands to-day, for the reason that there is not a fair representation for the various counties of the State.

We have been treated this morning to a very airy and playful treatment of this bill by the gentleman from Rensselaer, and I cannot think that the references made to our committee by innuendo, not by charge, were intended for anything more than by-play, in the total absence of argument on his part to convince this body or to satisfy the people of the State that there was a single item of jobbery in this bill.

It is a very pitiable spectacle, Mr. Chairman, to find gentlemen like the gentleman from Rensselaer bemoaning the decrease in representation of thirty-seven Republican counties throughout this State in the Assembly. It is sad. And to think, too, that the Republican majority upon that committee should have been a party to reducing this Republican representation. But it made me grieve still more,

Mr. Chairman, when I looked upon the map and found that under the present apportionment there are in the Eighteenth Senate District, where the gentleman resides, 165,669 inhabitants, and in the Twenty-first Senate District, which adjoins his district, 229,005 people. If you take the county of Washington, which adjoins the county of Rensselaer, off from the Twenty-first District, it will still leave the Twenty-first District above the ratio, 183,861. It would raise the Eighteenth District, in which my friend resides, to 210,813, but it would cease to be a pocket borough for the junior member of the United States Senate, who resides in the Eighteenth District.

I must express my sympathy, too, for the gentleman from Ulster. He comes from the Seventeenth District, composed of the counties of Sullivan, Ulster, Greene and Schoharie, a district intended to be Democratic and below the ratio. Any change in the apportionment would undoubtedly be disagreeable to him. But I think the most grievous attitude that any gentleman has been called upon to assume here is that of the gentleman from Putnam. His Assemblyman represents 13,000 people. He said, in relation to the gentleman upon this committee from New York city (Mr. Root), that if he had been in his place, no matter what the political complexion of New York might be, he would have seen that it did not lose its proportion of representation. And I suppose that the gentleman from Putnam would be earnest in preserving its present representation to the county of Putnam.

Mr. Osborn — Mr. Chairman, may I ask the gentleman a question?

The Chairman — Will the gentleman from Jefferson give way for a question?

Mr. Brown — I do so with great pleasure.

Mr. Osborn — Is he aware of the fact that Putnam is the banner Republican county of this State; that there has been but one Democratic Assemblyman returned from there in over twenty years?

Mr. Brown — Mr. Chairman, what I referred to was the criticism that the gentleman from Putnam passed upon Mr. Root, of New York, for allowing a decrease in the representation of New York, notwithstanding New York county was a Democratic county, and I suppose the gentleman, although he is a Democrat representing a Republican county, would like to have its representation remain where it is upon the same principle.

Now, Mr. Chairman, here are three gentlemen, from Rensselaer, from Putnam, from Ulster, criticising the report of this committee

because it has done wrong to New York. How much wrong? According to their thinking the one-thirty-sixth part of the representation which New York city is entitled to is taken away from it. Why, Mr. Chairman, more than half the counties in the State vary more than one-thirty-sixth from the standard of absolute equality. The district which the gentleman from Putnam represents varies about three hundred per cent from the standard of equality on the representation in the Assembly. And is it a matter for this Convention to treat with seriousness that the representation from the city of New York varies less than three per cent from absolute equality and absolute justice? Is that what we have three days of debate set apart for; for the correction of errors which fall within three per cent of ideal equality? It has been truly said that New York could only have eleven Senators, on the basis of the census of 1880. She would only have ten Senators on the basis of the electors voting in 1892.

But, without pressing that point further, let me say that no Democratic member of this committee has ever proposed a change in the districts which are recommended by this committee for the purpose of obtaining a greater degree of equality. There is not a single change upon this map which can be suggested by any member of this body which will produce a greater equality of representation in the Senate districts in the State of New York. No such amendment was ever offered in committee, no such amendment will ever be offered upon this floor. Not one single district has been constructed for political purposes, not one single district can be changed one iota without detracting from the degree of equality which at present exists in the scheme proposed by the committee. The average variation under our proposed apportionment is, in spite of all that the committee can do, on account of the difficulty arising from county lines, 8.89 per cent. It averages 10,288 variation in each district. In 1846, under the apportionment which was adopted in this State, the average variation was 8,325 upon a ratio of 80,000, a variation as against our 8.89 per cent of 10.22 per cent. Under the apportionment of 1892 the variation in the districts of the State was 18,277 on the average, a variation of ten per cent.

Now, as the figures increase, as the districts enlarge, greater actual differences may exist in representation and not so large in percentage. And it actually happened in the apportionment which those gentlemen made in 1892 that they put the county of Washington deliberately in the Twenty-first District to increase the inequality, that they put the county of Yates in the Twenty-sixth district instead of the Twenty-seventh to unnecessarily increase that

inequality, and the variation was only ten per cent. We heard a paltry, a begging, explanation from the gentleman from Ulster to the effect that his conscience was controlled, harnessed into line by those bulldozing Democrats from Albany who now have one Senator on 156,000 when the ratio was 180,000, and in the Assembly by the Members of Assembly from that county, which gets four Members of Assembly, when it is entitled on the ratio to only three members.

But, Mr. Chairman, was it the delegates from Albany who compelled the gentleman to put the county of Yates into the Twenty-sixth District instead of the Twenty-seventh? Was it the delegates from Albany who compelled the gentleman to put Washington county into the Twenty-first District instead of the Eighteenth? It bears upon its face from beginning to end the deliberate purpose on the part of the majority of that Legislature to disregard the representation of the great rural counties of the State to so arrange as to give absolute control to the party which they represented. And, while I do not claim to be free from partisanship, free from interest in the success of my party, I desire now to challenge any gentleman upon this floor to suggest one single change in this proposed apportionment which will give a greater degree of equality.

The gentleman has seen fit to lightly ridicule the motives of the members of this committee, as though the majority members had sat down and deliberately constructed districts for their own purposes. Why, Mr. Chairman, look over this list, look over this measure and see where there is anything made up by any member of this committee for the purpose of favoring himself beyond others. Was any member of this committee from the county of Cayuga or the county of Seneca, the smallest Senate district in the State? Was any gentleman on this committee from the county of Monroe, having the two smallest Senate districts in the State, from an urban county? Not at all. Was there an increased representation allowed to any county represented upon that committee which is not proper, which is not just? Not at all. Is there any harm done to any county because it is a Democratic county? Not at all. Why, Mr. Chairman, Onondaga county has 142,000 in her senatorial district. Is not Onondaga Republican? Monroe county, with her 180,000 people, only has four Assemblymen. Is not Monroe a Republican county? What mean the paltry criticisms on this apportionment bill? They mean absolutely nothing except this, that the minority upon this floor to justify themselves in the eyes of their earnest partisans who have sent them here feel bound, notwith-

standing the justice of this bill, to throw themselves into opposition to it for the purpose of making political capital for their party and for themselves. (Applause.)

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

Mr. Brown — Certainly.

Mr. Bush — I would like to ask the gentleman to explain to this Convention, if he will, why he does not apply the rules to prevent gerrymandering in the cities to this present apportionment, in other words, why he does not apply the rule that the Senate districts should not differ from each other more than the population of any dividing line in the present apportionment?

Mr. Brown — I shall be pleased, Mr. Chairman, to do so. I attempted to do so yesterday. The purpose of this bill is to prevent the enormous inequalities which have heretofore existed, inequalities to which I called the attention of this committee, ranging from forty to fifty and one hundred and forty and one hundred and fifty per cent from the standard, one from one another. I cited the illustration in New York city of two districts side by side, one of which had 105,000, the other of which had 241,000. I stated to the committee, too, that the Committee on Legislative Organization did not deem it of such great importance to limit the variation to 1,000 or 1,500. Suppose it was 2,500 in districts of 100,000 or 200,000 each. That was not important. But unless some rule was laid down to prevent inequalities we would have the enormous inequalities which we now have, and the most convenient rule that the committe could find was that as to blocks. We could not apply it so far as blocks were concerned at this time because we did not have a block census. That was the first reason why we could not apply it — the second reason why we could not apply it, as I understand it — I may be wrong about it, if I am wrong I trust that part of the amendment will be corrected when it is reached — was that in the city of Brooklyn, to which the gentleman refers, both the Democratic and Republican members of this body from that city preferred that the division should be made as equally as possible, preserving ward lines.

Now, Mr. Chairman, if the Democratic members of Brooklyn, or the Democratic members of this House, desire to have ward lines disregarded in the city of Brooklyn, the Republican members of this body stand ready to grant it to them, and to make these districts so that they shall not vary five per cent nor two per cent the one from the other. If they are dissatisfied with that, we stand quite

ready to correct it. I supposed that it gave better satisfaction and substantial equality as it is.

Mr. Bush — Mr. Chairman, I did not propose to speak again on this subject until the termination of this debate, but the gentleman from Jefferson (Mr. Brown) has made so many specious arguments and debated the points in this bill so adroitly that I cannot allow the Convention to forget, while his remarks are fresh in their minds, a few facts. The gentleman is an adroit politician. His work and his speech here upon this question show it. He said that no one could show a fairer apportionment and leave a less unrepresented fraction. I insist that this division of fifty and 150 is the one which gives the greatest unrepresented fractions of any number that he can take. Not only that, but he knows it. We refused to offer an amendment for the very reason that so long as the divisor of fifty and 150 is maintained amendments are useless, because no amendments will be adopted by this Convention but what would still leave these inequalities.

Now, if you divide the Senate on a basis of forty and the House on a basis of 160 you can divide this State up into Senate districts and have a surplus of only 68,000 unrepresented population in the whole State. But the trouble with this divisor is that it will give twenty Democratic districts and twenty Republican districts. We have such an apportionment right here, all worked out. We will present it in time. It will be presented here by a gentleman, and if they will accept it, we will offer it with this, and it leaves only 68,000 unrepresented population. We dare you to accept it.

Mr. Vedder — Without looking at it?

Mr. Bush — No, we will show it to you. Then you can accept it, and if it produces the results I state, will you accept it? You know you won't. It would not be giving you the political advantage you want. Now, you can talk here until this ceiling falls about the fairness of this apportionment, and any man who will examine it will see that there was no other argument used but the fact that it would give Republican results, and I defy any one of you to take this bill up and debate it judicially.

Gentlemen, discuss the apportionment of 1892. If that was wrong that does not justify this being wrong. You claim you are better men than we were. You have greater morality than we; you are not a low and corrupt Legislature as we were, according to your arguments. You are a greater and holier set of men. Prove then by your works that you are. I am sick and tired of the argument that this apportionment helps Democratic districts against

Republican districts. The gentleman, Mr. Gilbert, had the facetiousness to state to this Convention that of the twenty-two additional Members of Assembly which it gives, thirteen are Republicans and nine are Democrats. It takes away Democratic representation and gives it to Republican candidates who are not entitled to it. The gentleman has a great deal to say about these small counties like Putnam, for instance, with only 13,000 population. But, Mr. Chairman, every one of those small counties in the State of New York, with the exception of two, returned a Republican member to this body. And he talks as though that was some Democratic benefit. The very fact that he takes in the first place the principle that one Member of Assembly should go to each one of these small counties as in favor of the Republican party, and no one ever had the temerity to deny that heretofore. He talks about fair representation of the electorate, and in the very next breath shows you that a county with 13,000 population gets a Member of Assembly, and it takes 40,000 population on an average in the great city of New York to get a Member of Assembly, and then he tells you about the equality of the electorate. I never heard of such a thing in my life brought before a set of men assumed to have good sense.

Now, I do not deny that it would be bad policy — it would defeat the article to consolidate the counties — if you attempt to take from these counties their Members of Assembly. We do not ask that. But it is absurd to take that as a basis and talk about equality of the electorate, and give that as a reason why taxation should bear no proportional representation. I wish to have the Convention bear in mind the facts and the real objections to this apportionment, and again I wish to repeat that the basis of fifty and 150, no matter what the gentlemen on the other side may say, the sole purpose of using that as a divisor was the simple reason that that of all other divisors gave Republican results. Sixty will not give it, forty will not give it, thirty-two will not give it, but fifty will, and that is the reason they adopted it. The idea of reading from Madison, in the Federalist, to uphold a divisor of fifty and 150 instead of forty and 160 is absurd; it is laughable. You could apply that extract from Madison to any divisor you might choose, all the way from thirty-two to 100, on the basis of the argument that in 1831 thirty-two Senators were proper. To-day it would take about 200 Senators to keep in line with that. It would take in reality about one hundred and sixty Senators.

Mr. Vedder — Will the gentleman permit me to ask him a question?

Mr. Bush — Very gladly.

Mr. Vedder — The gentleman says he has an apportionment upon the basis of forty and 160, which leaves only 68,000, I believe, unrepresented?

Mr. Bush — Unrepresented.

Mr. Vedder — Now, we are not here as partisans, as I understand it, in this Convention, but simply as citizens, and what is fairest will be best. Will the gentleman, when the committee rise at one o'clock, present that apportionment, showing what it claims it does, and have it printed, so that we may select the best? I would like to see it myself.

Mr. Bush — Does the gentleman speak for his party or as an individual?

Mr. Vedder — I think I speak, when I say we want to do the best for the people of the State and want to get the best and fairest apportionment, for the whole party, if there is a party here.

Mr. Bush — I presume the gentleman thinks that what is the best thing for the people of the State is a Republican Senate and Assembly. On that basis he would not accept ours.

Mr. Dickey — May I ask the gentleman from Ulster a question?

Mr. Bush — Certainly.

Mr. Dickey — I would like to know what lot and part the gentleman had in making the apportionment of 1892, whether he was not the leader of the Democrats in making that apportionment?

Mr. Bush — I will say for the information of the gentleman that the man who got up that — there were several individuals who assisted in making up that apportionment; no one man did it. I introduced it in this body.

Mr. Speer — Mr. Chairman, this proposition should be entitled "Proposed constitutional amendment to disfranchise the Democrats of the State of New York and to guarantee a Republican majority of the Legislature for twenty years." If this decree of your Republican caucus is incorporated in the Constitution the voters of the State who are not Republicans may as well give up forever the hope of having an effective voice in the government of the State, for there will be none other than Republican Legislatures as long as this Constitution lasts.

The proposition reported by your Committee on Apportionment increases the Senate from thirty-two to fifty members and apportions the districts so that thirty-two will be Republican and eighteen Democratic, according to the approved estimates of the experts of

your Republican majority, as published in the New York Press, a Republican organ. The Assembly is increased from 128 to 150. Of this 150, ninety-one are to be Republicans and fifty-nine Democrats. Each House will be Republican by over three-fifths. This apportionment is of such a nature that should the Democrats carry the State by a majority of 120,000 they would not be able to control both Houses of the Legislature. Should the Republicans entirely disband their organization in the three great cities of the State, and should the Republican party collapse in every county where its organization is not now controlled by Mr. Platt, Mr. Platt could continue to elect from the counties which he does control a majority of both Houses of the Legislature, and the dictates of the Republican machine under his able and skillful leadership would be the sole representative of "The people of the State of New York, in Senate and Assembly assembled."

For the purpose of protecting the minority and of limiting the partisanship of the majority, Constitutions have been devised. The vitality of a Constitution consists in its statement of principles which shall be a protection to every citizen, and which in this protection shall enfold all the principles of American institutions and all the guarantees which are due to individual liberty, personal freedom, and equality before the law.

Further than this a Constitution should not go. If it steps over these bounds it defeats not only its purpose but itself, for no Constitution with a proposition like this of yours which outrages these principles and surrenders these guarantees will ever be accepted by the people. I believe in honest partisanship. I believe in responsible party government. The Legislature should express the will of the majority party. The executive should be one who will carry out the principles of the party on whose platform he was elected. But there are limits to partisanship. There are two sacred places which politics should not enter. One is the courts, the halls of justice; and the other is the Constitution, the fundamental and organic law, the written protection to the rights and liberties of all citizens, the majority and the minority alike. Any proposition which seeks to make partisan the judiciary or which puts the brand of disfranchisement as you propose to do upon hundreds of thousands of citizens of the State of New York, will meet with the condemnation of the people in 1894 as it did in 1867.

What this Convention should do in regard to the apportionment is to lay down its principles clearly, well defined, and so expressed that they can readily be enforced in the courts. It should no more define the Senate and Assembly districts than it should undertake

to tinker the Revised Statutes or to prepare its sovereign editions of the session laws. About the principles on which an apportionment should be based there is common assent between the people of the State. It should be specified in such manner and with such penalties and provisions that any one aggrieved can have his remedy in the courts of the State, that the political divisions of the State shall be compact, convenient, equal in population and so arranged that the majority of the people shall have easy opportunity of controlling its legislative branch. I do not coincide with these distinguished members of the Convention who fear the people. The people are the bulwark, the foundation and the strength of this republic. Their majority should have an easy, plain, convenient way of controlling the legislative and the executive branches of the government. However it may be in this Convention, the people in the State believe in majority rule without an educational, property or religious qualification for voters or candidates.

An opportunity was offered to this Convention, a great opportunity, which would have brought distinction and honor to its members, to put in the legislative article of the Constitution such provisions as would kill gerrymandering in the State of New York. You confess in your report your abject failure to do this. Instead, you have exercised your ingenuity in making the worst gerrymander you could. Compare this apportionment proposed here to-day with the apportionment made by the last Democratic Legislature. For ten years prior to 1892 the Democratic party had carried the State by majorities reaching 50,000. Year after year the people of the State expressed at the polls their desire to have their government conducted according to Democratic principles. During all that time not once were the people able to carry out their will and to have a legislative branch which would co-operate with the executive. Not until the Republicans, by their own violation of the law, disqualified and prevented their own candidates from being legally elected was it possible for the Democrats to make an apportionment which for six years had been delayed and virtually refused by the Republican Legislatures.

This apportionment was made on the lines of principle, which are accepted by the people of the State. Its fairness, its justice are no better shown than by the fact that when the Republicans carried the State last fall, although by a majority one-half that which the Democrats had for a series of years, they elected a majority of both Houses of the Legislature. The apportionment made by the Democratic party was so just and equal, so free from gerrymander, so fair, clean and honest that it was prompt to respond to the expressed

wishes of the people, and a comparatively small majority of the people were able to assume at once control of the whole legislative branch of the government.

We challenge you to make an apportionment as fair and just. We defy you so to apportion the districts of the State that a numerical majority of the people shall control both Houses of the legislative branch of the government. You have made an apportionment which will require over 120,000 majority to overturn. You dare not make a fair and just apportionment, because you know the majority of the people of this State are not Republicans. They do not believe in Republican principles, and should you make an apportionment which would enable the majority of the people to express their will the reins of the government will speedily be taken from your hands.

Let us examine in detail what this proposition of yours does. First, it shirks the provisions of the present Constitution, which says, in article 3, section 4, "An enumeration of the inhabitants of the State shall be taken, under the direction of the Legislature, in the year one thousand eight hundred and fifty-five, and at the end of every ten years thereafter; and the said districts shall be so altered by the Legislature at the first session after the return of every enumeration." The mandate of the present Constitution requires the taking of an enumeration next year. Your provision shirks the obligations of the present Constitution. You refuse to take an enumeration until five years after the beginning of the next century. Why is this done? Is it because, in the main, the population in the Democratic sections of the State has increased and the population in the Republican sections has diminished? Is it because such enumeration would increase the representation of New York, Brooklyn, Buffalo and Rochester? Why shirk this provision for an enumeration? Are you afraid of the results? Would the enormity of your wrong to the cities of the State be too apparent should the figures up to date be presented to the public?

Then you adopt the English idea, the plan on which members of Parliament were elected in England's most corrupt days, of giving representation to counties irrespective of the population. What is there sacred about county lines that you should so insist upon them in your proposition and report. The county of Putnam has a population of 13,325, a third of the number to entitle it to a Member of Assembly, still you give Putnam county an Assemblyman. Is this because Putnam county is Republican? Schuyler county has 16,326 population, less than half the ratio you have fixed of 38,606. It is to have an Assemblyman because Schuyler county

is Republican? Tioga county has a third less than the ratio. Is an Assemblyman given it because it is the birthplace of Thomas C. Platt? These and the other counties which are not entitled to an Assemblyman and to which you have given one, will return their thanks to you in continued Republican majorities.

You refuse to give home rule to the great cities of the State. You treat New York city as a serf and vassal of the Legislature. You bind the cities of the State with the chains of your political interference, and then you take the little Republican counties, with their small and decreasing populations, several of them not large enough to have an Assemblyman if two of them should be combined, and exalt them into sovereignties. And then you declare:

"The rule regarding county lines makes inequality as between the rural counties of the State and the city counties of the State inevitable."

Why inevitable? Because you deliberately make it so. You also say in your report:

"The principal difficulty in reaching absolute equality arises here also from regarding county lines as controlling."

Why regard them as controlling? You talk as though you were acting as a ward convention controlled by somebody. Why not treat every county as a territorial division for purposes of convenience solely, and then apportion the Assemblymen according to the population? But if you are going to recognize the county as a unit, a sovereign part of the State indivisible and with inalienable rights, why not grant the same rights to the great counties of the State; to New York, Kings, Erie and Monroe, to counties to which you have given more than one Senator? Why not decide that in those counties also the vote shall be taken as a unit and the Senators and the Members of the Assembly shall be elected from the county and not from the district? Be consistent on at least one page of your report.

You seek to appeal to prejudice to array the rural counties of the State against the cities. You aim at arousing the agricultural interests against the commercial and industrial. What an appeal! What a spectacle you are making not only to the residents of the cities, whom you chain hand and foot, but to the rural counties, whom you ask to vent on the cities the prejudice which you seek to arouse. Let us analyze this work of adroit partisanship which you have devised. You take the State Senators of 1892, with the citizen population of the State, 5,790,865, and with fifty Senate districts make your ratio 115,817. On the basis of last fall's vote, it

will require 28,926 Democrats to elect a Democratic State Senator and only 17,062 Republicans to elect a Republican State Senator. Three Republicans will have as much representation as five Democrats. Such an apportionment is a work of art. It was done by a cunning juggling with ratios and a legerdemain of averages.

At whose request did you make this partisan apportionment? Who demanded it? From what source other than that of your party organization did the petition come to make an apportionment of any kind? You have had petitions on woman's suffrage by the thousands. You have had petitions from the great labor organizations of the State to act in their interest and not in the interest of corporations. You have had petitions from other interests of the State to amend the Constitution in their behalf. None of these petitions have you regarded. None of these requests have you heeded. The petitions of the people and their expressed will have been neglected by you consistently and steadily. You now propose something which no one anticipated and which no one demands except the extreme partisans of your own political faith.

Taking your own figures as printed in your report, Document No. 65, let us see where are the districts which have more than the ratio and where are the districts which have less. In Kings county you have 58,264 citizens left over, enough to be entitled to another Senator, a robbery of one Democratic Senator in addition to your gerrymander of the Brooklyn district. In every New York city district you have exceeded the ratio and disfranchised 34,160 citizens. In Westchester county you have exceeded the ratio 13,407. In these three counties alone, all of them Democratic, your excess is over 100,000.

Not only do you make this disfranchisement of the great cities a fact in your apportionment, but you insert it as a special clause in your proposed Constitution. You specifically say that no representation shall be given to major ratios in New York and Brooklyn, although you provide for such representation in the other counties of the State. That is the meaning of the provision in section 4 of your article which says: "Nor shall an additional Senator be apportioned to any county on less than the full ratio when the average number of inhabitants, excluding aliens in the districts in such county, would not otherwise be one-tenth more than the ratio." In other words, New York and Brooklyn are forever to have less representation than that to which they are entitled, unless they have exactly another full ratio.

Let us go up the State. Albany is a Democratic county. It has now one Senator. You increase the Senate more than half without

giving Albany an additional representative. This is the grossest piece of individual injustice in the State. You exceed the ratio in Albany county 40,931. Across the river is Rensselaer county, another Democratic county, where you also exceed the ratio. The Democrats carried these two counties last fall by increased majorities, and you punish the voters of these counties by depriving them of the representation which is their due.

In these five Democratic counties you disfranchise over 150,000 citizens on the basis of the enumeration of 1892. If an enumeration of the citizens of these counties were to be taken to-day I could confront you with the detailed figures to show how your apportionment disfranchises over half a million American citizens in these Democratic counties. Let us now examine what districts fall below the ratio. There is the county of Monroe, a strong Republican county. You have given to it two Senators, both Republicans, and increased its representation, although it is 50,404 short. There is the county of Erie. You have gerrymandered it so that instead of one Democratic and one Republican district, as now, you have carved out two Republican and one Democratic districts, and given it a representation as much as it would be entitled to had it 42,730 more citizens.

Many other districts are away below the ratio. It is needless to give their politics. The fact that you have given them grossly disproportionate representation shows that they are Republican. Delaware, Chenango and Sullivan, 2,263; Clinton, Essex and Warren, 11,050; Otsego and Herkimer, 20,186; Jefferson and Lewis, 20,158; Cayuga and Seneca, 24,310; Tompkins, Schuyler and Chemung, 20,487; Steuben and Yates, 14,101; Orleans and Wayne, 22,305; Oswego and Madison, 5,120; Allegany, Livingston and Wyoming, 7,472.

You have taken Madison county from Otsego and Herkimer, making them minus over 20,000, to put it with Oswego, and still make a depleted district. You have added Jefferson to Lewis and made another district minus over 20,000, instead of putting Jefferson and Oswego together. You have taken Seneca to add it to Cayuga, making a district minus over 20,000, and then left the counties with which Seneca naturally belongs in a district over 20,000 minus. Can this change have been because Seneca occasionally gives a Democratic majority, and it would not be safe to put it in a district where there was already one Democratic county? You have put Ontario and Wayne together, making a district over 22,000

minus, and then linked Yates and Steuben making another district minus over 14000.

Thus, in that part of the State where you roll up your great majorities, you have carved out three Senate districts more than the population warrants, although these counties are so situated, contiguous, compact and easily divided, that you could have made the districts all Republican, as you have them now, but equal in population, up to the ratio and three Republican districts less. Justice, fairness and equality might readily have been complied with, only you would have three Senators less in these central counties than you have laid out.

Then you go on with that adroit cunning which is not born of open, manly partisanship, but of that sneaking, double-plated hypocrisy which you have manifested throughout this Convention to say that the total plus variation is 257,254, and that the average is less than 8,000.

You plume yourself on this as a mark of modesty that you did not disfranchise more voters. Why do you not add that almost all of this disfranchisement of over a quarter of a million citizens is in the few Democratic counties of the State, and that you have cunningly kept the average down by making a few surpluses, such as 1,887, 415, 1,388 and 3,100 in Republican districts. Why not be manly and open about it and say that your surplus in the three strongest Democratic counties of the State is over 150,000, or an average of over 50,000 to the county, seven times as large as the deceiving statement which you make?

You say that the total minus variation is 257,196, divided among seventeen districts, an average minus variation of 15,128. Why not add that not one of these districts is a Democratic district, and that every one of the seventeen is composed of Republican counties, giving them a representation equivalent to 257,196 more population? In this way you make a difference of four Senators, stealing two from Democratic counties and giving them to Republican counties. You get five Senators by gerrymandering. You may find voters in your own party who will approve of that, but these four Senators you simply steal. Who do you expect will approve this bare-faced theft?

But when we come to the Assembly districts this juggling with ratios, these misleading statements about averages, the whole absurdity of this report, are, if possible, more evident. You make up averages as you make up your Senate district in New York of millionaires and paupers, of big figures and ciphers. You might as well take two men, one seven feet high and the other five feet high,

and say their average height is six feet, and that both of them are tall, as to make the statements you do. You might as well take a man worth a million dollars and a man worth nothing, and say their average wealth is five hundred thousand dollars, and both of them are rich, as to make the averages which you do, running over the pages of figures which you have in your report in the belief that no one in the State will analyze them, and that the people will be deluded into accepting conclusions at which you have so adroitly and with such partisan intent arrived.

You propose to have 150 Assemblymen, and to make the ratio 38,606. Then you apply your county rule; this sovereignty of counties, this English importation, this sanctity of county representation, something which was never heard of in the days when the counties were laid out simply as a convenient form of dividing equally the population of the State for purposes of local government. Under this county rule you allot thirty-six Assemblymen to a population little larger than the present city of Brooklyn, to which you give twenty-one. You say that this county rule gives an average population to the district of 36,280, or only 2,000 less than the ratio. There are two counties which have less than half the ratio, Putnam and Schuyler, both Republican. Their population is 13,325 and 16,326. There are eight counties having less than 30,000, Yates, Warren, Orleans, Lewis, Tioga, Cortland, Seneca and Schoharie, only two of which the Democrats every carry. There are eleven other counties having less than the ratio, Chenango, Essex, Franklin, Genesee, Greene, Livingston, Rockland, Schenectady, Sullivan, Wyoming and Tompkins, only three of which the Democrats ever carry. Twenty-one counties are below the ratio, and only fifteen above. The counties above the ratio are double, treble and quadruple the population of those below. What justice is this to the counties of Chemung, Richmond and Clinton, which frequently elect Democratic Assemblymen, which have between them more than a major ratio of disfranchised citizens? How beautifully you have drawn the lines so as to make your discriminations. Then take the counties to which you have given two Assemblymen, thirteen in all. How singular it is that every one of these counties is Republican, and that only four out of the thirteen have two full ratios. Here you cunningly say that the average population is 35,572 to the Assemblyman, equivalent to 71,144 to the county. Broome county falls 15,621 below its proper ratio. Cattaraugus, 17,512; Cayuga, 16,633; Jefferson, 10,867; Niagara, 18,051; Oswego, 8,189; Suffolk, 18,340. Suffolk has gone Republican for the last few years, and its citizens may thank its Republican majority for

the fact that it has got one Assemblyman for half a ratio. But why do you not give Orange county, with its 93,271 citizens, the three Assemblymen to which it is entitled according to your scheme? Was it because you can so divide Orange county that with two Assemblymen both will be Republican, while with three, one would be Democratic?

It is when you come to the counties of the State largest in population, where the Democrats are in the majority, that you manifest your greatest partisanship. The citizen population of New York city was 1,425,984 in 1892. Your ratio is 38,606. According to your ratio you should give New York thirty-seven Assemblymen. You give it only thirty-five, a robbery of two. The population of Kings county is 868,983. You give it twenty-one Assemblymen. You should give it twenty-three; another robbery of two. In order to make this rule work you have had to be unjust to one of your own counties, the county of Monroe, so that although it is entitled to five Assemblymen, you give it only four, and the curious anomaly is presented of Albany county, Democratic, with four Assemblymen and one Senator, and Monroe county, Republican, with four Assemblymen and two Senators.

This shows how your theories of averages work. You have one theory for the Senate and an opposite theory for the Assembly. You have devised a scheme to have one Senator to three Assemblymen. Albany has four Assemblymen and Monroe four. That makes eight. Eight Assemblymen are entitled to three Senators, so you give Democratic Albany one Senator, and Republican Monroe two Senators, thereby fulfilling all the requirements of your ratio and your averages. It must have taken clever, adroit and unscrupulous figurers to do this work. I cannot believe it was done by any member of the Convention. It is too adroit, too cunning and too deceitful to have been the work of any member of this honorable body. We heard that the calculations were made by a man with a history, who revives an ancient issue which will never be old as long as American history lasts and a sense of justice and of honesty exists in the American breast. I refer to the man who was editor of the New York Times in November, 1876, and who, when the Republican managers had given up the election, and were about to acknowledge the defeat of Rutherford B. Hayes, hastened in a cab to the Fifth Avenue Hotel, and, awakening Mr. Chandler, now Senator from the State of New Hampshire, showed him how the great fraud of 1876 might be accomplished, and a man with a blot on his title sit in the chair of the President of the United States. The manner in which that job was done showed the competency of its author for

any small task like this. Any man who could manipulate the returns of Louisiana, who could create its fraudulent returning board, who could so handle the votes of Florida and South Carolina as to reverse the true result in those States, must find the manipulation of an apportionment of one State a very petty and simple affair. This man has been in consultation with your leaders. He was their honored guest. To him I give the credit for this wonderful system of ratios, this misleading business of minus and plus quantities, of major and minor remainders which has worked out such a copper-fastened Republican majority in both Houses.

But this is the Empire State, the State of New York, the State of our homes, our interests, the State of which we are citizens. Its citizens will not submit to the repetition in our State of what this man in 1876 did in three. This work of his, his skillful handicraft which you have indorsed, must be submitted to the people with the trade-mark of the author of the fraud of '76 stamped upon it.

Before I close, I desire to call the attention of the members of the Convention, other than those from the city of New York, to the Fifteenth Senate District as it is laid out on pages 5 and 6 of your proposed amendment. This is the district over which you spent so many days and nights, for which you delayed the presentation of your report, in order that you might have at least one Republican Senate district in the great city of New York.

It may have often caused wonderment to you Republicans who came here as delegates from your districts, nominated by a convention that knew that your nomination meant an election, and elected by your constituents as their deliberate choice, that the Republicans of New York city do not poll more votes and elect more candidates. You did not come here through any accident of politics, through the chance of a complicated ballot law. You were not nominated with derision at a State convention which had no expectation of electing you. Your candidacy was not a joke, but real and earnest. You are the kind of Republicans whom every honest Democrat respects, because you represent principles and convictions.

This is the first time you have ever had an intimate experience and close contact with such pre-eminent leaders of the Republican party of the city of New York as there are in this Convention. Their conduct here should drive away your wonder. There are in this Convention three delegates-at-large from the city of New York, all Republicans. Two of them reside, and, when they condescend to vote at all, vote in the district of which I have the honor to be one of the representatives. One of the delegates-at-large, Mr. Lauterbach, we honor as a man and we respect as a political

foe. The other two have directed the work of this Convention. I am proud that such an honor has befallen two of my constituents. For years they have taken an active part in politics, not only in one senatorial district, but throughout the city of New York. They have preached the doctrines of class distinction, religious intoleration and contempt for the mass of the people.

The greater their political activity, the higher has been the Democratic majority. The more speeches they make, the more districts the Democrats carry. We should be sorry to part with them, so entrancing is their eloquence, so superior is their ability and so beautiful is their attire. "They are as wise as they are beautiful." But the Democratic majority in New York city is so great that they might be spared for a few years. The county of St. Lawrence, the banner Republican county of the State, might take them to its bosom. The Republicans there would welcome them to the councils of the party. They might ask these distinguished leaders to wear dress suits and preside over their county conventions, as you have here, to direct their political policy, to manage their party affairs, and I would predict that within five years St. Lawrence would give a Democratic majority. To be a Republican in New York city is a fashionable fad, an affectation of the clubs. Your party includes the dude statesmen, the butterflies of politics. In the last apportionment they were put together in the so-called millionaires' district, the Twenty-first, otherwise known as the Terrapin or Brown Stone District. This district is good for one or two thousand Republican majority. At the Assembly district convention last fall the delegates who did not appear in dress suits were in the majority. They nominated Otto Irving Wise, the son of a distinguished Hebrew rabbi, for the Assembly. The members of the Union League Club would no more consent to be represented by a Hebrew in the Assembly than they would permit a Hebrew to join their club, so they bolted their own party candidate, regularly nominated, and ran another candidate, a man who belongs to all the clubs. The high-toned Republican candidate was third at the polls, but he polled enough votes to lose the district to the Republicans, and in the last Legislature the Terrapin district was represented by a Democrat.

With the aid of the author of the fraud of 1876, you have devised a wonderful Senate district in New York city. It begins on Fourteenth street, across from Theis's Garden, which may be familiar to some of you who have seen the sights of New York. It crosses Fourteenth street to Seventh avenue, making a corner at a notorious hotel. It goes up Seventh avenue to Soubrette's Row, and

there it turns over to Eighth. Up Eighth avenue to Ninety-seventh street, across to Fifth avenue into Lexington avenue, back to Twenty-third street, east to Third avenue, back to Irving Place, and to its beginning. There never was a district laid out which better illustrates the elements which make up the Republican party in the city of New York. It makes another turn to take in the disreputable neighborhood on the west side. Within its bounds are all the fashionable clubs. It includes the famous Tenderloin, with its abodes of sin and shame. In it are the Goulds, the Astors, the Vanderbilts, the Rockefellers of the Standard Oil Company, one of whose able counsel is President of this Convention, the owners of the trusts, the monopolies, who have enriched themselves through Republican legislation at the expense of the people (and who are largely represented by their counsel in this Convention), the gambling houses, the dance halls, the places of all-night resort. It is a district of millionaires and criminals, of the dudes of the Fifth avenue clubs, and the gamblers on the side streets, the brown-stone blocks of the millionaires and the homes of vice at their back doors. Here is where you have gone for your majority; not to the homes of honest workingmen, not to the dwellings of toil; not to the districts where the bone and sinew of the city reside, but to this neighborhood of immense wealth and gilded vice. You have even made a turn in order to take in the Tenderloin district, for its election districts are Republican. You have made another turn to take in Soubrette's Row. You have made a further twist to take in Gramercy Park, for there the millionaires live and they are Republicans. It is significant that in the city of New York the only districts which the Republicans have ever been able to carry have been either the palaces of the rich or the abodes of vice. The old Eighth District, which gave Harrison his banner majority in New York city, included the worst part of the Bowery and the adjacent dives. When a Democratic police commission and Democratic officials closed these dives and purified the Bowery, the district became Democratic. Another banner Republican district was the old Seventh, where "The" Allen was a Republican leader, and dives abounded. When this district was purified, and vice was driven from it, it also became Democratic.

The Tenderloin district alone remains, and places where Dr. Parkhurst made his excursions, the election districts of which roll up their Republican majorities year by year, and you have made your Senate district Republican by this combination of the millionaire and the man who lives on the wages of sin and shame. The recent proceedings of this Convention are a grievous blow to those dele-

gates, of whom I am one, who were ambitious to be members of this body, the highest body in the State, believing that its proceedings would be dignified, that its conclusions would be honorable, and that the people of the State would gladly accept them, thereby conferring distinction upon every man who participated in such a glorious work. This is the first elective office I have ever held, the only one for which I have ever been a candidate. I had looked forward to this body with proud anticipation. Now that your actions have branded with shame the work of this Convention I want to repudiate and denounce it both to you and to the people. I want to clear my skirts of the failure and the shame of this proposed Constitution. I want to keep myself out of the mire.

It is with no expectation of deterring you from the crime you seek to commit on the voters of the State that I make this statement. It is that the people of the State may know what they have to expect when they elect a Republican majority of any body, even such a distinguished Republican majority as we have here. It is that the people of the State may know that even its organic law, the charter of their rights and liberties, has become the plaything alike of the corporations which control the actions of some members of this Convention and the partisanship which dominates the majority.

Mr. Barrow — Mr. Chairman, there has evidently been, as it seems to me, from the initiation of an apportionment scheme to be presented to the people by this Convention, on the part of the minority on the floor of this Convention, a purpose preconceived to represent the majority as attempting a gerrymandering scheme. That was announced before any scheme was ever brought into this Convention, and before anything had come from the committee except a general plan not containing any apportionment whatever. It was heralded broadcast throughout the State that the Republicans in this Convention intended to submit a scheme of that character. It has been charged in this morning's local paper, with which paper, I understand, the last speaker is in some way connected, that the plan now under consideration by this Convention was a plan devised by New York politicians.

As a member of the Committee upon Apportionment, I desire to say that nothing could be further from the truth than that statement. It is true that various plans were submited to the committee by different members upon this floor, and that plan came before the committee which was the work, we may say, perhaps, of Republican politicians of the city of New York. It was the scheme of what is known as the Republican Club of New York. But, sir, that scheme did not meet with favor in this committee. The scheme which met

with favor in this committee did not emanate from politicians. It was a scheme which emanated, I believe, from a masterly study of the situation and a masterly consideration of all the circumstances attending this question by two of the most eminent men upon the floor of this Convention, against whom I do not think it is possible to charge partisanship at all. The purpose of these gentlemen was in the first place to present a scheme which would in all the future apportionments of this State prevent the system which had too long existed, of gerrymandering the State. And, it seems to me, that the work of these gentlemen, as presented to this committee, was a work which has that purpose in view, and not only that, but which will accomplish it. I went into that committee, sir, to assist in making, if I could, in some way, a fair and honest apportionment. I believed it was the duty of this Convention, in view of the apportionment which was made in 1892, to submit to the people a new apportionment, and I believe that every gentleman of the majority of that committee was actuated with the same purpose. Why should there not be submitted, why should we not submit a new apportionment? Is it anything new for a Constitutional Convention to do this thing? Was it not done in 1821, in 1846, and was it not done in 1867?

There exists upon this occasion, it seems to me, a great excuse, if an excuse is needed, for an apportionment at this time. The minority upon the floor of this Convention seem to be possessed with the idea that it is utterly impossible for any body of men in a Convention of this character to present a scheme of apportionment which is fair and honest.

Now, I think the reason for this is, that they judge others altogether too much by themselves. And I think we have shown, and conclusively shown, that the scheme which we have presented is in all respects honest and fair. Gentlemen come here, as did the last speaker, and take certain counties which are Democratic and show plusses, large plusses which are unavoidable. They could do the same thing if they were upon this side, by selecting various Senate districts which show large plusses upon the Republican side. Take, for instance, the city of New York. The entire plusses of the city of New York amount to 34,000, and the average is only 2,848. Now, if you take the argument which the minority make here, and make selections of the character which they make, there are the three districts, the Thirty-sixth, the Twenty-eighth and the Fiftieth, which are Republican, and you find the plusses amount to 59,874. That is to say, while in nine districts in New York city the plusses amount to only 26,000, in three Republican districts made up by this partisan

committee they amount to 59,874. This might have been avoided, possibly, by the committee, and yet I do not see how it could have been done. It could not have been avoided at all if you recognize the county unit. Albany county is entitled under the county unit and under the ratio that we have here to one Senator. It is not entitled to two, and under this ratio two could not have been given to it. Onondaga, a Republican district, is entitled to much more than one. It reaches well up to the population of Albany county, and yet we have made no difference and could make no difference between the two counties.

Now, take Cayuga and Seneca. Cayuga and Seneca constitute the smallest senatorial district. But what other county, if we recognize the county unit, could be attached to those counties and make the representation more fair? The difficulty is that in making these divisions we have to take the county unit, and I want to say here that it is the county unity which I believe in. I do not think, Mr. Chairman, that we have gone too far. I think that we have not gone far enough. The county unit has been recognized in this State since 1821. The last gentleman upon the floor asks why do we give to Putnam a Member of Assembly. Why not ask, why did the Democratic party, in the Legislature of 1892, give to Putnam a Member of Assembly? It has always been done. The gentleman, himself from Putnam, when asked if he had any objection to giving Putnam a Member of Assembly, suggested that Putnam was a Republican county. I suppose that made all the difference in the world with him, but that does not make any difference with me. Whether it is a Republican county or a Democratic county, it is entitled to its one Assemblyman.

Now, I say that this committee, in my judgment, has not gone quite far enough in recognizing the territorial idea. The time is coming very speedily, and perhaps it will have arrived when an enumeration shall be taken in 1905, when Brooklyn and New York will be entitled to Senators who will be a majority of all the Senators of the State, and when that time comes, New York, or Greater New York, will be able to dominate the State, and whether it will or not is not a question here. The fact that it will have the power to do so will raise a serious question of representation. The question will then come, sir, whether, under this system of ours, we have not disfranchised, absolutely disfranchised the State of New York, outside of the great city.

Now, sir, it seems to me that this Convention, sitting at this time with this prospect in view, might well have gone further and provided for a contingency like this. The provision which they have

made in this scheme of apportionment is of minor importance in that respect. It does provide, it is true, substantially that in those weaker districts they shall have an additional Senator upon a half ratio instead of a full ratio, as required in the large cities. That, to a certain extent, meets my objection. But, sir, I still think it doesn't go far enough. I believe that these weak country districts have as great interests to protect, and as great rights of personal liberty and of property, as the great city of New York. I do not want to be unfair to the great city of New York, but I do not believe, sir, that this Convention, or any Convention, could go so far with any scheme which shall result in the disfranchisement of any part of the State.

Now, Mr. Chairman, I desire to say briefly in answer to the gentleman from Rensselaer, who has spoken about the action of this committee, and what occurred in its sessions, that when this proposition now before the Convention was presented, it was thoroughly canvassed, that no vote was taken upon this fifty and 150 of Senators and Members of Assembly, respectively, until after a fair and full discussion of that subject.

The Chairman — Mr. Barrow will please continue his remarks at three o'clock.

The hour of one o'clock having arrived, the Convention took a recess until three o'clock.

AFTERNOON SESSION.

Wednesday Afternoon, September 5, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, at the Capitol of New York, Wednesday afternoon, September 5, 1894.

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

Mr. Cornwell — Mr. President, I respectfully ask the attention of the Convention to a memorial and petition which I hold in my hand, and which I have been requested to present for the consideration of the Convention.

This memorial and petition represents the federated body of representatives of the farmers of the State, which includes the Grange, patrons of industry, clubs, leagues, and alliances, comprising a membership of over 60,000 of our fellow-citizens and representing the entire agricultural interests of the State of New York. It is a short communication, and will take but little of the valuable time of the Convention, and I respectfully move that the same be read and also

printed, and placed upon the desks of the members. Coming to us at it does from so large a body of the citizenship, the bone and sinew of the State, I sincerely hope and trust there will be no objection.

The President — The Secretary will read the memorial.

The Secretary read the memorial.

The President — This petition, under the orders of the Convention, will be printed and placed on the files of members.

Mr. Cookinham — Mr. President, I ask the privileges of this floor be extended to the Hon. Samuel F. Hunt, presiding judge of the Superior Court, of Cincinnati, Ohio.

The President put the question on granting the privileges of the floor, as requested, and it was determined in the affirmative.

The Convention resolved itself into Committee of the Whole on general order No. 74, Mr. Durfee in the chair.

The Chairman — Mr. Barrow has the floor.

Mr. Barrow — Mr. Chairman, when the Convention adjourned I had substantially concluded all I desired to say upon this matter. I was referring, however, to some of the procedure before the committee from which this report emanated, in view of certain remarks which had been made by the gentleman from Rensselaer (Mr. Peck) as to what had occurred before the committee, and I wish especially to call the attention of the Convention to the fact that in this committee this proposed apportionment was very thoroughly discussed and occasionally amendments were there offered by the minority. I think I can recall two or three occasions of that character, but as soon as it became evident in the committee that an amendment proposed by one of the minority was likely to be accepted by the committee it was quickly withdrawn, and upon one occasion the majority put into this proposed amendment a proposition which was suggested by the minority. The reason of this action on the part of the minority was, as I understood it, that they did not wish to take any responsibility for any measure that might be presented to this Convention, and I understand that to be their position now. They do not wish to be responsible for this or for any system of apportionment. They accept the present apportionment as being just and they do not care to put into the Constitution any provision which shall in the future prevent gerrymandering. Now, Mr. Chairman, I am very glad, indeed, to accommodate these gentlemen. I do not ask them to become responsible for this measure. I think the committee by whom it was reported is quite ready and willing

to take all the responsibility for it. But I do not hesitate to say, as I said when the article relating to cities was before this Convention, and it was proposed that there should be a committee to see if a compromise could not be arranged between the minority and the majority upon that occasion, that as I was willing that a compromise should be attempted, because I believed that one might be effected that would be acceptable to both parties, so, now, I would be willing to enter into any scheme or plan of apportionment with the minority upon this floor which might result in a fair and correct apportionment, if this is unfair, recognizing, however, the principle of territorial representation, and, also, in some way providing that, in the future, no gerrymander of the State should be possible. I am not greatly wedded to this plan, because, as I have said, I do not think it goes far enough, but I am willing, sir, to take full responsibility for it, and vote for it, as far as it goes. The gentleman who last spoke upon this subject, and who seemed to be afraid that somebody was going to be besmirched by this proposition, is entitled to no credit for it, and, sir, I am very glad that it was not besmirched by his defense of it.

Now, Mr. Chairman, the principle of our adversaries, as I understand it, the principle upon which they desire an apportionment is, that the great center of population, the two great cities of this State, which are growing so rapidly, shall not only retain their supremacy, but that by and by they shall obtain such an absolute supremacy that it can never be overthrown. Then, sir, in the city of New York and Brooklyn they will have home rule, only they will get it from Albany, and, therefore, perhaps, they do not wish it from this Convention.

A gentleman whose eloquence we have all delighted to listen to on this floor, Mr. Jenks, from Brooklyn, upon a recent occasion quoted from Tennyson the lines:

"And along the dusky highway, near and nearer dawn,
Sees in heaven the light of London flaring like a dreary dawn."

And I think that unless we adopt the provisions of this proposition, unless we go still further with it, some day the rural population, so-called, of the State of New York will, as they are drawn nearer and nearer to the great city of New York, see, not only the flaring of a dreary dawn, but will appreciate the realization of it. (Applause.)

Mr. William Sullivan — Mr. Chairman, my text is taken from the book of faith of the dominant party, as quoted by the sage of Little Valley, Mr. Lincoln, namely, "We must not do anything which has

the appearance of unfairness." The full significance and meaning of this text, to my mind, is that the Republican members of this Convention are determined to make the Legislature Republican for the next twenty years by means of an unjust and unfair reapportionment. Although a member of the Committee on Legislative Organization, I had no opportunity to read either the proposed amendment, or the report accompanying it until after the report had been submitted to this House. Neither myself nor any of my colleagues in the minority had an opportunity to read either of them before they had been submitted to this body.

The first thought that struck me on reading the report was the plausibility of the reason assigned for increasing the members of the Legislature. It was, of course, necessary to allege some reason for passing this nefarious partisan measure. It is said that it is more difficult for those who are actuated by corrupt and selfish motives to control a large body than a small one. I was very much surprised that the majority members of the committee were willing to thus put on record an admission which reflects upon their own party. For more than twenty years the Republican party, with one or two exceptions, has been in the majority in the Legislature, and I did not, in my innocence, suspect that the Republican members of the committee would admit that it was at all necessary to guard and watch a Republican Legislature, so as to prevent it from going astray; from falling an easy victim to those gentlemen who, as has been stated on this floor by one of the members of the majority, constitute the third house, the lobby. I have not myself any particular experience whatever in politics, but if I can rely on the information received from those who have, or claim to have, experience in practical politics, I believe it is easier, much easier, to manipulate a large body than to manipulate a small one.

It is more difficult to control a majority consisting of twenty-six members than it is to control a majority consisting of seventeen members. Caucus is King! Will an increase of the members of a legislative body lessen the tendency to log-rolling, corruption and jobbery? Would an increase of the members of the Legislature weaken the power and influence of the trusts and corporations in procuring or preventing legislation? Now, let us look at the political side of the question. What political necessity is there, even from a partisan standpoint, for increasing the members of the Legislature? So far as the power of the dominant party is concerned, it is no more difficult to control a majority of fifty or 150 members than it is to control a majority of thirty-two or 128 members, when the number of legislators in Senate and Assembly was fixed at

thirty-two and 128, respectively. We are told that the population of the State has increased since 1821 nearly five times, and that, therefore, the representation of the people in both branches of the Legislature ought to be correspondingly increased. If this argument be carried to its logical conclusion, then the Members of Assembly ought to be increased to 640 and the members of the Senate to 160. And, furthermore, if there is any force in the reason alleged for the proposed increase of members of the Legislature, why not increase members of the Senate so as to make that body as large as the Assembly? If the argument be sound at all, then both Houses, each being elected by the people, should be numerically equal. The population of the State had increased during the interval between 1821, and yet the Constitution of 1846 did not increase the members of the Legislature. The Constitution of 1846 had a mission. It was called into existence for the express purpose of making the government of this State more democratic, and of abolishing the oligarchical, monarchical and aristocratic institutions which had theretofore existed in this State. Even that Convention did not deem it necessary to increase the members of the Legislature, although, as I have said, the population had increased since the last Convention of 1821.

Now, sir, the greatest tribute that can be paid to the memorable, historic body of men, who framed the Constitution of 1846 is, that it is conceded on all hands, by Republicans and Democrats alike, that no change should be made in the organic law which they framed unless absolutely required by an overpowering necessity. There was also a Constitutional Convention held in 1867-68, and I am glad to see that some of the members of that Convention are also members of this body. That was a Republican Convention, and what did it do? The population of the State had greatly increased from 1821 to 1846. Now, the Constitutional Convention of 1867-68 did not increase the Senate, but it did increase the Assembly to 139. The people rejected the Constitution submitted to them by that Convention. The principle of popular representation does not require that the number of representatives in the Legislature should be increased merely because the population has increased. An increased population simply requires an increase of the ratio of population.

I shall endeavor to confine myself to a brief discussion of the fundamental principles which, as it seems to me, ought to be observed in the framing of the organic law. In the first place, I contend, and strenuously urge before the able constitutional lawyers in this body, that it is a wrong principle to embody a mere

legislative enactment in the organic law. The organic law should contain only certain broad general principles for the guidance of the Legislature and the other departments of government. If, however, you put in the Constitution provisions of a merely legislative character, you thereby deprive the judicial department of its appropriate jurisdiction. However loose or unintelligible of mysteries your legislative enactments may be, by making them a part of the Constitution you thereby render it impossible for the judiciary or any other authority to correct or remedy the mischief you have done. Now, an apportionment act is a legislative measure pure and simple, and so should be passed by the Legislature and not by a Constitutional Convention. Believing that an apportionment act has no proper place in the organic law, I am for this and other reasons, opposed to the proposed amendment of the present Constitution. My contention may appear to be rather a bold and shortened proposition, but I confidently assert that it rests not only on sound principles, but is supported by the constitutional history of this State. I call attention, Mr. Chairman, to the proceedings of the Constitutional Convention of 1846. Prior to that time the State was divided into eight Senate districts, four Senators being elected from each district. The Constitution of 1846 changed that system and created in its stead the present single district system. Hence, the necessity of a direct senatorial apportionment by the Constitution itself. In 1846 New York was the only county entitled to more than one Senator. The Constitution did not itself divide the county into senatorial districts. It allowed the board of supervisors to perform that duty. Nor did it directly apportion Members of Assembly among the several counties of the State. It distinctly declared that the Legislature was the proper body to discharge that important duty after an enumeration of the inhabitants of the State. The Constitutional Convention of 1867-68, contrary to the precedent laid down in the Convention of 1846, passed a direct apportionment measure, creating both senatorial and Assembly districts. What, sir, did the people say to that? Why, they rejected at the polls the Constitution submitted to them by that Convention, and so the rejected Constitution of 1867-1868 cannot be cited as a precedent in defense of what is here proposed to be done. Why not allow the Legislature to discharge its appropriate function in this respect? Why distrust the Legislature? According to the British Constitution, the House of Commons, the direct representative of the people, is the only proper body to make an apportionment.

Again, referring to the Constitution of 1846, we find the principle laid down that a fair and just apportionment requires that an enu-

meration of the State should first be taken. Now, the measure here proposed is a clear violation of this principle, because it declares that an enumeration of the inhabitants of the State shall not first be taken, but that the apportionment shall be based, not on the present population, but on the population existing three years ago. I am opposed to the proposed amendment for the further reason, that it does not honestly and fairly apply the principle therein set forth. It has been conclusively shown by the gentlemen who have preceded me on this side of the House, that, contrary to its own provision, the proposed amendment discriminates unfairly and unjustly against the urban districts in favor of the rural districts. Now, there is no power in the measure that can correct that injustice as there would be if the Legislature were allowed to pass an apportionment bill.

Now, another principle is involved in this measure. It has been alluded to time and time again. It is a principle that sooner or later, in my opinion, will be carried into full effect by the people of this State. I allude to the principle of popular representation. And, sir, is it not a most pitiable spectacle to witness that in the compromise between that great fundamental principle, which is making such progress in Europe, and a principle which is feudal in its origin and spirit, the rankest, most flagrant injustice should not be wiped out? If the principle of locality representation be continued, then I say that the principle should not be carried so far as to do violence to the principle of popular representation. The statesmen who framed the Constitution of 1846 did not carry the principle of territorial representation to such an extent as to materially affect the principle of popular representation. The Constitution which they framed contained provisions recognizing both principles, and lending them instead of borrowing them. In England one hundred years ago the principle of territorial representation had almost full sway. Since then, however, there have been many extensions of the principle of popular representation, so that now the House of Commons represents the people and not "rotten boroughs."

The principle of territorial representation was a tradition inherited by those who framed the early Constitution, and it does not behoove us at the present day to cling so tenaciously to a principle which is gradually being discarded by all the progressive governments of Europe. There is no disposition at this time on the part of the people to do away altogether with locality representation, but I submit, sir, that what the gentlemen on the other side of the House are pleased to call the sense of locality should be subordinated to the principle of popular representation. The paramount

object of the Legislature is to represent men as such, and not as owners of property in any particular locality. Why not rise above the level of partisanship? and if public sentiment does not demand the abolition of locality representation as a political factor, let it remain, but do not allow it to clash with the great principle of popular sovereignty to the detriment of the latter. Let us be loyal to a principle which is making so much progress on the other side of the Atlantic. But, Mr. Chairman, are the members of the majority party in this Convention loyal even to the principle of locality representation, by which they mean, as they term it, the sense of locality. Why, sir, what sense of locality is there in common between a resident of Stapleton and Richmond county and a resident of Montauk Point, Suffolk county? There are two ways of going from Richmond county to Suffolk county, one by land and the other by water. If you go by land you must first take the ferry to New York, go from New York to Kings county, travel through Kings county to Queens, and from Queens to Suffolk, so that you have to pass through three counties if you want to go from one county to the other county composing the First Senatorial District. And if you wish to travel by water you may go from Richmond county to Suffolk county by way of the Atlantic ocean or by way of Long Island sound. How can you say that these counties are contiguous and that the district which they compose consists of compact inhabitants?

Now, sir, it will be answered that the Constitution of 1846 made Richmond, Suffolk and Queens one senatorial district, but the reason of that was that the county of Kings was then only entitled to one Senator so that Richmond could not be joined with Kings in the formation of senatorial districts, nor could it have been joined with New York, because the Constitution did not make any direct apportionment with reference to New York.

The Convention of 1846 was not only Democratic in the broad sense of the term, but it was also Democratic in a partisan sense. It recognized the principle of local self-government; it recognized the principle that the people in their respective localities are more competent to manage their own local affairs than any central authority would be. As I have already said it permitted the board of supervisors of the several counties the power to apportion their respective counties into as many Assembly districts as they are respectively entitled to Members of Assembly, and it even allowed the board of supervisors of New York to divide the county into as many Senate districts as it was entitled to Senators. It did not declare, as this proposed amendment does, that Richmond county

should never be joined either with Kings or New York county in the formation of a Senate district.

Well, the gentleman introduced this amendment just for this body to say that Richmond county must for all time be joined with Suffolk county in the formation of a Senate district. The amendment, before it was altered by the Committee on Legislative Organization, contained a provision that Richmond county might be joined with any part of Long Island in the formation of a Senate district, but the committee struck that provision out and inserted the present provision, which is to the effect that no county entitled to more than one Senator shall be divided except for the purpose of creating Senate districts within the county. This, of course, makes it impossible to join Richmond county with any part of Kings or New York county for the purpose of forming a Senate district. Now, what is the political exigency which calls for such an unusual provision? The Constitution of 1846, it must be remembered, prohibits the division of any county in the formation of a Senate district unless the county is entitled to more than one Senator, so if a county be entitled to more than one Senator it may be divided into as many districts as it is entitled to Senators, and if need be an adjoining county may be annexed to it as part of one of its senatorial districts. In such a case its unrepresented fraction could be added to the population of the adjoining county for the purpose of making another Senate district. At the present time Richmond county and a part of the county of Kings constitute a Senate district. Is not that constitutional? If not constitutional, would it not have been brought before the courts by those who contested inch by inch the apportionment tax of 1892? So, if a county entitled to more than one Senator has an unrepresented fraction, there is no constitutional prohibition against adding to it an adjoining county, so as to form a Senate district. True, the adjoining county cannot be dismembered uder the present Constitution, but it may be added to a contiguous county which is divided into two or more Senate districts.

Now, the amendment as first proposed, expressly stated that no county should be divided in the formation of a Senate district, except for the purpose of creating districts within that county; so that it would be absolutely impossible, if this amendment be adopted, to have Richmond county ever join either New York or Kings county for the purpose of forming a Senate district.

Now, gentlemen, what becomes of your sense of locality? Richmond county constitutes a part of what will be very soon, I hope, the Greater New York. Is it to be written in the organic law that, although Richmond county is to be an integral part of the "Greater

New York," it can never be joined to any other part of the metropolis in the formation of a Senate district? It would be like saying that one part of the city of New York should never be joined with any other part of the city for the purpose of making a Senate district. Now, the effect of the proposed prohibition is to deprive the county of Kings of one additional Senator. To accomplish this purpose are you, gentlemen of the majority, willing to insert in the Constitution a prohibitory clause which has never before found any place in the Constitution? Why do you not put in your Constitution a clause to the effect that the Greater New York be joined with Erie county in the formation of a political division of the State? This proposed amendment does another act of injustice. Now, for the first time in the constitutional history of this State, you attempt to deprive a board of supervisors of the power of apportioning its county into as many Assembly districts as it was entitled to Members of Assembly. The proposed amendment prescribes that in the county of Kings the board of supervisors and the common council must meet in joint session and divide the county of Kings into Assembly districts. If you read the first part of section 4 you will see that it is admitted that in every county having a board of supervisors the apportionment of the county into Assembly districts should be done by the board of supervisors. In the city of New York, which has no board of supervisors at all, the common council is, of course, the proper authority to divide the county into Assembly districts. The latter part of the section, however, excepts the county of Kings from the operation of the constitutional provision relating to the class of counties to which it belongs, although the county of Kings will have a board of supervisors until six months after the division of the county into Assembly districts under the proposed constitutional amendment; yet the board of supervisors is not to be permitted to do what every other board of supervisors in the State is entitled to do. Now, the reason of this discrimination against Kings county is that the board of supervisors at the present time is Republican, if you count the three independent Democrats who are members of the board. These independent Democrats generally act with the Republican party in local matters, but, of course, it is not to be expected that they would act with the Republican party in the matter of apportionment. Not only this, but next fall we will have an election in the even wards and, independent of these three independent Democrats, the board will, in all probability, be Democratic in 1895.

Now, I will say in passing that there has been delay in annexing all the towns of the county to the city of Brooklyn. One town is

left out, has been left out for the purpose of continuing the board of supervisors a year longer, the object being to keep in office Republican spoilsmen and the supervisor-at-large. The board of aldermen is three-fourths Republican. If that body and the board of supervisors sit in joint session, no matter what the result of the election may be next fall, the majority of the joint board will be Republican. Now, I ask you gentlemen who have been clamoring for home rule for cities, who have been insisting on the right of cities to manage their own municipal affairs and who believe that elections in cities ought to be separate from State and national offices so that local politics, municipal concerns, municipal interests may not clash with matters purely political, what do you think of the spirit manifested in this amendment which seeks to take political advantage of the fact that thousands of Democrats in Brooklyn last fall, of which I was one, voted to elect a Republican ticket, the effect of which was to put the Republican party in control of the common council. I believe then as I believe now, that matters pertaining to the municipalities should be considered independently of matters political in their nature and character. I voted in the committee with my friend Colonel Morton and I am proud to say that my colleague, Mr. Schumaker, also voted with us, in favor of biennial elections and that having been beaten by Republican votes, Mr. Schumaker and myself voted in favor of having Members of the Assembly elected for two years, so as to co-operate with the Cities Committee in giving to the cities some measure of home rule. I then believed in the sincerity of the dominant party in this Convention who promised to give some measure of home rule to cities. Republicans are in the majority in this Convention, and I cannot disclaim responsibility for failure in this respect. Now, how do you treat the independent citizens of Brooklyn who, disregarding all partisan considerations voted for the members of the common council on the reform ticket. Now, is it right to take advantage of the fact that they put the Republican party in power? Do you not, by the action you here propose, make it impossible for the Democrats in Brooklyn to help elect Republicans without incurring the risk of the Republican party taking advantage of the victory won from them so as to secure a purely party result? Now, that is the situation and that is the position you place us in. Now, I tell you gentlemen, we will have something to say in Brooklyn if you pass this measure. If you submit this proposed amendment to the people you will enable us to solidify the Democratic party in this State. I do not believe that this nefarious partisan measure can be improved by amendments of particular parts of it. The only amendment

I would propose to it is an amendment to it as a whole by which those principles of constitutional law to which I have referred would be recognized and respected and the principle of popular sovereignty would not be subordinated to the decayed and discarded principle of locality representation.

If you submit it to the people, the Democratic party will appeal to them to vindicate and stand up for principles which animate the political life of every progressive government and discard principles which are being discarded by European governments. (Applause.)

Mr. Morton — Mr. Chairman, in the bill of the play upon which the curtain is now up and which is to remain up for three days, I understand it is now my cue. I do not intend, sir, to address myself to an historical or philosophical ——

Mr. W. Sullivan — If Colonel Morton will permit me, I will say one thing which I omitted to say in reference to Kings county.

The Chairman — Will Mr. Morton give way?

Mr. Morton — I give way.

Mr. W. Sullivan — In reference to Kings county, Colonel Morton made a motion — I think it is important that this Convention should understand it — made a motion submitting the matter of Kings county to the members of that committee representing Kings county, two of whom were Democrats and one Republican. I had never known Colonel Morton until I came to this Convention. I have learned to respect him and I do respect him from the bottom of my heart. He and Mr. Schumaker had known each other for years before they attended here and when that proposition was made by him it was voted down.

Mr. Morton — Mr. Chairman, I did not intend to occupy any of the remaining time which has been assigned to the discussion of this question by reviewing, historically and philosophically, the principles that are involved in representation. After the presentation of that branch of the subject before this Convention by the gentleman from Cattaraugus (Mr. Lincoln), and, after the application of the principle evolved by him upon this subject, so ably and with such force and detail by the gentleman from Jefferson (Mr. Brown), it would be presumption on my part to say anything. After the very graceful compliments that have been paid to me by my colleague (Mr. Sullivan), I can do no less in following his example in opening his remarks than take a text as he did. I shall take my text from one of the lay preachers of the world, a man from the first living in a country poor and desolate, from which my ancestral

progenitors also came. His name as a preacher, sir, stands high upon the roll of fame. The text I select from his work is:

"The best laid schemes of mice and men
Gang aft a-gley."

I want to refer in this connection to the history of this Convention itself, to its genesis. The first act of the Legislature calling this Convention into being provided that its delegates should be elected upon the single district plan. It also provided that there should be a general representation from the State of thirty delegates. It further provided that one-half of that number should represent one of the great political parties of this State, and that the other half should represent the other political party of the State. It had some other liberal provisions within itself for still further minority representation, and, even more, that there should be representation in that Convention of persons who are not recognized by the Constitution or by the laws as eligible to sit in the councils of the State, or even to exercise the privilege of voting as citizens at the ballot-box, and in such form the first bill calling this Convention together passed both Houses of the Legislature. By one of the subterranean passages which reaches from one co-ordinate branch of this government to the other, the bill was withdrawn, it having been discovered by the sage statesman at the head of the executive department of the State that the provision securing equal representation of the two parties and the delegates at large had become unconstitutional. Notwithstanding other constitutional conventions, and constitutional commissions, and other agencies of government that were unknown to the Constitution itself, had been made for the purpose of revising and amending the Constitution, and that it had become firmly established in the legislative policy of the State, that equal representation, minority representation, or whatever it might be called, was a legal proposition, and had been practiced in various directions in the State, it was discovered on this occasion that it was unconstitutional, although, as I said before, that principle had been carried out in other experiments in this direction.

Another bill was framed, and in that bill the principle of Assembly district representation was abandoned, and the provision that delegates should be elected by Senate districts, and that the delegates-at-large should be voted for by the body of the people, and in this form this Convention was elected and is here assembled.

Now, sir, I say this text might be applicable here, and after the manner of the preacher it might be occasionally repeated in the course of these remarks:

"The best laid schemes of mice and men
Gang aft a-gley."

The plan was well contrived, swollen in the pride and vanity of their majority of 1892 in the Legislature; although it only amounted, as the gentleman from Ulster, Mr. Bush, says, to two, this majority in the Assembly were so swollen by the thought that they might do some great deed, and secure, once for all, the ascendency of their party in the government of this State, and notwithstanding they had in the Legislature, and in the executive of the State, steadfastly refused, year after year, an enumeration of the State as required by the Constitution, and under various pretenses had delayed an enumeration of the people, having now arrived at control of the legislative and executive branches of the government, they thought it was safe to proceed. Immediately after the assembling of the Legislature in 1892, a bill for the enumeration of the inhabitants of the State was put through the Legislature. In the midst of winter notwithstanding the fact known of all men that such a season was the most unsuitable, and the most unpropitious for doing such work, they sent throughout the counties, towns, villages and hamlets of this State their enumerators, to do what? To count noses. Why was the census enumeration of that year confined to a mere count of noses? Had there ever been a census taken in the State of New York, or in any other State, had there ever been a census taken in the United States that was merely a count of polls? Hastily performing the service they put forth what is called the return of the enumeration. I ask any delegate to this Convention to turn to Senate document for 1892, No. 60, which contains this enumeration by election districts throughout the State, and I ask any man here if it is not within his own knowledge and experience as confined to his own election district, where he might be supposed from the limit of territory to be reasonably well acquainted with it, and all the people in it, if he is willing to say that the enumeration as there set forth is a true enumeration of the people of his election district? Why, sir, in the election district in which I reside, in the city of Brooklyn, the fifth district of the Twenty-fifth Ward, a very small district, casting about three hundred votes, and having a population of about fifteen hundred persons, I know every house. I know the head of every family that resides in that district. I know nearly every man who resides within that district, and I find in this document No. 60, when I turn to the fifth district of the Twenty-fifth Ward of Brooklyn, that there are so many citizens; that the total inhabitants are so many; that the total citizen population is so many; and that the alien population is so many; and the alien popu-

lation is set down for that district as one person. I know of my own knowledge that my very next-door neighbor, the house next to the one in which I live, contained at one time, and contains now, two families of aliens which number nine persons living in one house. I know of several colonies of aliens who then, and now dwell in the neighborhood. I know property owners in my immediate vicinity, people I meet every day, who I am well acquainted with, who had not lived in the country three months at the time this enumeration was made, and are still residents in that district. I know that many of my colleagues on this floor from the city of Brooklyn can testify in this regard the same as I do. I believe the census of 1892 was a fraud; that it was deliberately contrived and perpetrated for the purpose of fraud and for no other purpose.

Now, Mr. Chairman and gentlemen, you will pardon me. I am not trained in the subtleties of the law. I am one of the delegates to this Convention that escaped the meshes of the judges and lawyers of low and high degree who took possession of this Convention from the start. I am a layman. I do not claim the advantage of education or of training in the subtleties of logic, or of law, but I trust I am endowed with a sufficient amount of common sense. I believe that I am honest enough, and I know that I have the courage to stand here and tell the story of this wrong as it appears to me. (Applause.)

Having made this enumeration, for the purpose of making this parallel complete, I wish to call the attention of this Convention to the record of the Legislature of 1892. An honored member of this Convention, the chosen leader of the forces of the opposition in this debate, was the leader of the forces in the lower house of the Legislature of that year. They completed their enumeration in the dead waste of the winter months. They completed their work in the Legislature, but had not been able, owing to the limits of the Constitution, to make any use of this enumeration, because the Constitution says that the Legislature shall not make an apportionment until the first session after the enumeration. To one, sir, not trained in the subtleties of the law, that would plainly say, the first session of the Legislature held after an enumeration would mean, just as its words imply; that by the Legislature next to be elected and convened, this duty should be discharged. But these gentlemen, these constitutional lawyers in charge of the constitutional consciences of their Democratic confreres in the Legislature, induced the executive of this State to call a special session of the same Legislature which had ordered and made the enumeration, and, pursuant to his proclamation, I find by the Journal of the House that at 8:30 o'clock

on the evening of April twenty-fifth, the Legislature convened in extraordinary session. I find that a very brief message from the Governor was read to each House, and that in a short time afterward, the session having been duly opened with prayer, they took a recess until eleven o'clock of the same night. At the meeting of the Legislature at the dead hour of the night, or as the poet says, "In the dead waste and middle of the night," the message of his excellency, the Governor was read in which he says: "It is now the duty of the law-making power to apportion Members of Assembly among the counties in proportion to the number of their respective inhabitants, excluding aliens, and to so alter the existing Senate districts that each will contain, as nearly as may be, an equal number of inhabitants."

"The performance of that duty in a manner satisfactory to the people of the State is not without difficulty, but personal and political considerations should be subordinated as much as possible to the purpose of securing for each locality its fair proportion of representation. The task is rendered the more difficult by reason of the fact that the existing apportionment was not only unfair at the time of its enactment, but has become more and more unfair with the changes of population. Under a fair division of Members of Assembly, therefore, some counties must make sacrifices and suffer a reduction in their representation. But such sacrifices should be made willingly, and I trust the Legislature will approach its task with a conciliatory disposition, but determined to discharge its duty impartially and to heed the demand of the people for a fairer system of legislative representation."

The usual formalities of legislation were indulged in, and as I said, having rested from their labors for a short time, they again met at eleven o'clock the same night, and on motion — the Journal reads this way:

"Mr. Bush, introduced a bill entitled 'An act to organize the Senate districts and for the apportionment of the Members of Assembly of this State (int. No. 1).'"

"On motion of Mr. Bush, said bill was ordered printed, and referred to the Committee of the Whole House."

"On motion of Mr. Bush, the House adjourned until to-morrow morning at eleven o'clock."

"Tuesday morning at eleven o'clock, the House met pursuant to adjournment. Prayer was offered by the Rev. Isaac Newton Phelps, and Mr. Husted called for the reading of the Journal. The Journal having been read the same was approved. Leave of absence

was granted to Messrs. Palmer and Gallagher on account of sickness. On motion of Mr. Bush, the House took a recess until two o'clock."

"Two o'clock P. M. the House again met. On motion of Mr. Bush the House took a recess until six o'clock."

"Six o'clock P. M. the House again met. Indefinite leave of absence was granted to Mr. Wells on account of sickness in his family. Mr. Bush moved a call of the members of the House. The Speaker put the question whether the House would agree to said motion, and it was determined in the affirmative. By direction of the Speaker, the Clerk called the roll, when the following members responded. The Clerk furnished a list of absentees to the Sergeant-at-Arms. Mr. Bush moved that further proceedings under the call of the House be suspended."

It is not necessary for me to read these parliamentary details. The bill was read and Mr. Deyo and others moved sundry amendments, all of which were voted down. So on it goes with sparring on the part of the members of the minority of the House; all suggestions were promptly negatived by a party vote. Then there came the scene which was so graphically described by a member of this Convention, Mr. Bush. Whether the Mr. Bush that is mentioned in these proceedings is the same Mr. Bush that is a member of this Convention, I do not undertake to say. I believe he is. I am not disposed to enter into a controversy with Mr. Bush, or any other gentleman upon the floor of this Convention. I believe Mr. Bush to be an honorable man, more honorable in a parliamentary sense, after having heard him say here yesterday in that spirit of open confession which is good for every soul, whether it be Democratic or not, that the majority of which he was the leader permitted themselves to be coerced by the delegates from the county of Albany, and he, the leader of his party in the Assembly in 1892, the leader of the forces of his party on this floor in this controversy, admitted that they were compelled to do a wrong at the instance of their own party, and proceeded to justify and excuse the yielding to the demand for the wrong, by saying that the Republican minority who sat here bound hand and foot and gagged by throwing upon them the responsibilities of failing to get a more desirable apportionment, because they did not come to his rescue.

The proceedings went on at this session. Various offers were made to amend, and finally under the operation of the previous question, the bill went to a vote and it was passed.

All these proceedings, Mr. Chairman, and gentlemen of Con-

vention, took place (without occupying your time with the details) between the hours of assembling at 8.30 o'clock on the evening of April twenty-fifth, and nine o'clock on the evening of the twenty-sixth, just twenty-four hours and thirty minutes, as I reckon it, when the Journal says: "The hour of nine o'clock P. M. having arrived, Mr. Speaker declared the House adjourned *sine die*."

Now, Mr. Chairman, much has been said here about the secrecy and the mystery that was going on in the Committee on Legislative Organization in regard to this matter. The files upon your desks show that this amendment was printed and placed there on August ninth. Every principle involved in it, every detail of the application of that principle, and the duties prescribed to the Legislature, and to boards of supervisors in this State, have been in plain English print upon these desks for four weeks, nearly All the details that are necessary to be known, with the exception of the division of the city of New York, and the county of Kings, of Erie, and of Monroe, have been here upon your files since August ninth. There has not been a t crossed nor an i dotted. For myself, after the very handsome tribute that has been paid to me, to my conduct as a member of the committee, perhaps I should not say, but I will say to the members, that at no time has there been a single feature of the proposed apportionment in reference to the county of Kings, there has not been an hour during that time but that the maps, and the tables and figures, that were in my possession, or in the possession of any other member of the committee, were at the free disposal of every member of the delegation, without regard to his political antecedents. I have consulted most freely with them all, and gave them my ideas of what an apportionment should be. More than six weeks ago the identical principle embodied in this bill was printed in every Brooklyn paper. So far as Kings county is concerned, no one will gainsay what I here say upon that subject. I say nothing about the city of New York. The city of New York is represented upon this floor, and is able to answer for itself. I should have deemed it impertinent upon my part to have manifested any impatience or anxiety in reference to New York, Erie or Monroe counties upon this subject, and so far as the action of the committee has been concerned, there has been an attempt made here to create an impression of something secret or mysterious. Every member of this committee will bear me out in saying that if there was a majority member upon the committee that was impatient and anxious to proceed with business, it was myself. I will say that this provision with reference to the two-year term for the Assemblymen, and the biennial session of the Legislature, was

enforced by me, not so much because of the merits of the proposition, but the persistency with which I advocated it was a piece of strategy on my part, which I thought was necessary in order to bring that matter in harmony with that principle which I have made just as honest efforts in obtaining, home rule in the cities of the State. The idea that has been brought up here by several delegates, that the ways of this committee were dark and mysterious, I cannot think is seriously made. I am sure that so far as one of the committee is concerned, Mr. Peck, that in exposing the secrets of the committee here, he meant to be facetious. The impression has been sought to be created that the matter contained in the report was unknown. That statement is misleading. I say, as a member of the majority, that all the matters contained in the report were proposed in the committee and voted upon by aye and no vote in every instance, and that the votes were there recorded to serve as a basis for the chairman of the committee to prepare his report, and, as a matter of fact, in the committee, the chairman proposed to read his report in the presence of the minority, and the minority said it was useless to do so. Therefore, I want the gentlemen to understand that there have been no secret machinations about it, and no disposition whatever to conceal the principle in its detail or in its application.

Now, Mr. Chairman, I believe that the enumeration made by the Legislature of 1892, followed as it was by an apportionment of the State, not only violated every provision, every precedent, outraged the minority party, if you please, in the State, but also outraged its own party. The real secret, the real motive, which led to the uprising of the people in 1893, and which turned "the best laid schemes of mice and men a-gley," with regard to this Convention. Why, sir, in the county of Kings in the fall of 1892, that county gave to Grover Cleveland 29,500 majority, and they had succeeded by the gerrymander in returning seventeen of the eighteen members of Assembly from that county, and the board of supervisors and the board of aldermen in that city, the instruments of that infamous transaction, were responsible for that uprising. The board of aldermen at that time consisted of fifteen Democrats and four Republicans. One morning suddenly, without notice and with no warning, as though a bolt had fallen from the clear sky, a proposition was introduced into the board of aldermen, dividing the largest Republican ward in the city of Brooklyn. Until that time it had never been dreamed in the history of that city that a board of aldermen had a right to divide a ward. Under the first charter of the city of Brooklyn, down to that hour, the wards of the city of Brooklyn

had been constituted by statute, and the common council had no power to divide a ward except by provisions of general law. In the face of this they had surreptitiously incorporated into an act of the Legislature a provision for dividing a ward in the city of Brooklyn. There was no reason under the sun for it, except the request of ambitious politicians. The Democratic majority in that board of aldermen consented to dismember that ward. The people were up in arms at once, and although it might seem a very trifling thing, it created more public manifestation of indignation among the people, and in the public press than any act ever before perpetrated in the city of Brooklyn. It was an act that did not affect banks or corporations, but it affected the people. It affected parties, it affected 80,000 Republicans.

I will give way, Mr. Chairman, if the time for adjournment has come.

Second Vice-President Steele resumed the chair.

The President *pro tempore* — The Convention stands in recess until eight o'clock.

EVENING SESSION.

Wednesday Evening, September 5, 1894.

The Constitutional Convention met in the Assembly Chamber, in the Capitol, at Albany, September 5, 1894, at 8 P. M.

Second Vice-President Steele called the Convention to order.

Mr. McArthur — I ask to be excused from attendance to-morrow.

The President *pro tempore* put the question on granting leave of absence to Mr. McArthur for to-morrow, and it was determined in the affirmative.

Mr. Meyenborg — Mr. President, I ask to be excused from attendance on Saturday.

The President *pro tempore* put the question on granting leave of absence to Mr. Meyenborg for Saturday, and it was determined in the affirmative.

Mr. J. Johnson — Mr. President, I ask to be excused from attendance on Saturday.

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

Mr. Peabody — Mr. President, I have a telegram announcing the death of a dear friend, and the funeral will be on Friday. I ask to be excused from attendance on that day.

The President *pro tempore* put the question on excusing Mr. Peabody, and he was so excused.

Mr. Tibbetts — I desire to be excused from attendance on Saturday of this week.

The President *pro tempore* put the question on excusing Mr. Tibbetts, and he was so excused.

Mr. Baker — I rise for information. I would like to know whether or not the amendments or any part of this apportionment scheme is to be voted on before Friday?

The Chairman — The Chair is unable to state in reference to that.

Mr. Bowers — I was requested by Mr. Durnin to ask leave of absence for him this morning, and I was unable to bring it up at that time. I, therefore, ask the Convention to grant Mr. Durnin's request for leave of absence to-day.

The President *pro tempore* put the question on excusing Mr. Durnin, and he was so excused.

Mr. Turner — Mr. Porter is called out of town through the sickness of his wife, and he requests me to ask that he be excused from attendance in consequence of that.

The President *pro tempore* put the question on granting leave of absence to Mr. Porter, and he was so excused.

Mr. Manley — Mr. Chairman, I am compelled to ask to be excused from attendance on next Monday.

The President *pro tempore* put the question on granting leave of absence to Mr. Manley, and he was excused.

Mr. Titus — Mr. President, I ask to be excused from attendance on Saturday afternoon.

The President *pro tempore* put the question on excusing Mr. Titus, and it was determined in the affirmative.

Mr. Moore — I have discovered it will be necessary for me to go to Utica on Saturday, and I ask to be excused from attendance on that day.

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

The President *pro tempore* — The Convention will now reconvene in Committee of the Whole on general order No. 74, and Mr. Davies, of Oneida, will please take the chair.

Mr. Davies took the Chair, and the Convention resolved itself into Committee of the Whole on general order No. 74.

The Chairman — The Convention is now in Committee of the

Whole on general order No. 74, and Mr. Morton, of Brooklyn, has the floor.

Mr. Morton — Mr. Chairman and gentlemen. When we intermitted the labors of the afternoon I had about completed an attempt to draw the first parallel showing the action of the New York Legislature in making the last apportionment for the Senate and Assembly of the State. I have not the power, even if I had the disposition, to take the apportionment rag off the Bush upon which it will ever hang. I think it has so inextricably tangled the Bush of that occasion that the rag will hang to it so long as the record of the New York Legislature shall be extant. Twenty-four hours and thirty minutes of the extraordinary "next session of the Legislature," at which the whole business of apportionment the Senate and Assembly districts of the State of New York was completed, needs no further comment at my hands. Inflated with the confidence, which the apparent success of that session of the Legislature has met with, one of the bodies upon which was devolved, by their action, the actual work of reforming the Assembly districts, to wit, the board of supervisors of Kings county, undertook their work. As I was saying, the charter of the city of Brooklyn — one of the most noble municipal monuments ever erected in this or any other State, the handiwork of one of the masters of municipal law, and one of the most distinguished Democrats among all the distinguished Democrats which this State has produced, Henry C. Murphy, a citizen of whom Brooklyn was ever proud, a man who, scarcely before he had reached the constitutional age of eligibility to the highest office in the land, came within one vote, in the Democratic convention held in Baltimore in 1844, of securing the highest prize at the hands of that distinguished body, a prize that carried the man who finally secured it into the Presidency of the United States — one of the features of that charter was that the wards of the city of Brooklyn were established as towns of the State. This board of supervisors hastened to do the work imposed upon it by this extraordinary session of the Legislature, and, advised by a legal luminary, whose light shines in this Convention, as well as in the city of Brooklyn (Mr. Meyenborg), they undertook the work. They found in this charter that the Constitution had imposed upon the board of supervisors, through a general law of the State, the power to divide a town. The common council, without warning and without a single citizen outside of their own cabal being aware of their intention, met in the Brooklyn City Hall, and divided the wards, for the first time in the history of that municipality. It appeared subsequently, that in some mysterious way,

some provision had been engrafted upon the statute books whereby they were allowed to do this thing. Another light of the bar in that city (Mr. Jenks), a man of undisputed knowledge and power in the law, counseled this board of aldermen that, the wards of the city not being towns, they had a right to divide them. The other legal luminary that I referred to, one of the Antiphili, as I may call him, of the legal fraternity, in political respects, in the city of Brooklyn, counseled the board of supervisors that, these wards being towns, they might divide them; and so between the two the wards were divided. I shall not dwell upon the particulars of that transaction. When it became known in the city of Brooklyn that this thing had been done, it aroused a storm of indignation irrespective of party, and the people uttered their protests against it. The honored mayor of the city (Mr. Boody), a most excellent man, an accomplished scholar, a man who had been diverted from his true mission in life, after having been elected to Congress, and who was compelled by the force of political circumstances to relinquish the ambition of his life, became the mayor of the city, opened the doors of the municipal chamber and gave a hearing to the people. By his side during that hearing, stood one of the legal Antiphili (Mr. Jenks), to whom I referred. The mayor heard the arguments with patient attention, and, with the politeness so characteristic of him, after the hearing, suavely and benevolently consoled this assemblage of citizens with the assurance that he would refer the matter to the counsel to the corporation, and if he pronounced the proceedings legal he saw no reason why he, as mayor, should interfere. Thus we had the board of supervisors gerrymandering the wards in the city on the ground that they were towns, and we had the common council gerrymandering the towns on the ground that they were wards, and between the two the most infamous and indefensible as well as unprofitable gerrymander ever undertaken was accomplished. I shame to say that *particeps criminis* — I believe that is the correct legal term — in that transaction were Republicans. The result of it was a political revolt in the city of Brooklyn. In the Assembly district where I live, and which is now included in the Senate district which I in part here represent, and which gave a Republican majority of more than 4,000 upon a normal vote, the people revolted against the agencies employed in that piece of business. An honest, able and an honored man (Arnold H. Wagner) was nominated by the men who had brought about this disgraceful thing to represent that district in the Assembly, but the honest Republicans of the district saw to it that he did not reap the reward

which he might otherwise have been entitled to, and a Democrat was elected. That gave the honest men of all parties in the city of Brooklyn courage to rise in revolt against the bosses of both parties, and thus was inaugurated the political revolution which eventually swept over this whole State, and the Democratic majority of the year before in Kings county of 29,500 for Grover Cleveland was turned into a majority for Colonel John Palmer, who now occupies the office of Secretary of State of New York. For the first time in the history of the county of Kings since the formation of the Republican party it gave a majority with one single exception, for a Democratic candidate upon the general ticket, that exception being in 1872, when that other Democrat (General John A. Dix), revolting at the injustice of his own party, washing his hands of it, bore the standard of the Republican party, and was elected Governor of this State. That is the only exception, when the county of Kings, by a 600 Republican majority for General John A. Dix, showed by those, and by intervening incidents which I might mention, that the people of the county of Kings, irrespective of party, when appealed to in an honest way, will always assert their own integrity and the majesty of that county. Sir, that is a county rightly named. Its name is Kings, and it is inhabited largely by kings, men who do not bow the knee or the head to despots or to autocrats. Every agent, every man, that took part in that despicable transaction has met with the political fate which he deserved. The mayor, the supervisor-at-large, the counsel that gave the legal advice, the aldermen, the supervisors, the Members of Assembly, the Senators, the machine politicians of the Republican party, and the bosses who stood by that infamous transaction, were all relegated, at the first opportunity, to the political obscurity which their acts deserved. I say nothing against the personal character of any of these men; they were simply the agents of a corrupt and vicious system. I do say, however, that encouraged by the action of the extra session of the Legislature that was held within these walls, feeling that they had the power of the Democracy of the State of New York and of the law behind them, and that they might with impunity do these things, they committed this outrage upon the people. They divided the county of Kings into eighteen Assembly districts. There are from 70,000 to 80,000 Republicans in the county, and from 90,000 to 100,000 Democrats. No one disputes that Kings is a Democratic county. I want any man here, any Democrat, to stand up and give a reason why two parties that stand in the relation to each other as eight to ten should be ignored in any plan of apportionment in a matter of repre-

sentation in the councils of the State. I claim that any apportionment that is made, of necessity, and in common honesty, should give to the minority their fair proportionate share of representation, and that no gerrymander, no matter upon what basis it may be made, can justify any legislative body in burying and assigning to absolute nothingness a fair proportion of the citizens of any locality.

Mr. Chairman, I have advocated, in another place within my sphere of membership in this Convention, the idea of minority representation. I believe in it, and I deeply regret that this Convention will not receive and apply it in some degree, or, at least, give to the people of the State an opportunity to test this great principle; for I believe if it were adopted and engrafted in our Constitution, that much of the injustice that men feel when they are made to suffer from the despotism of a mere majority would be removed, and that the character of both parties would be elevated. I live in a Senate district in which this board of supervisors, and the board of aldermen have projected into it, and extended out of it, no less than six separate Assembly districts. It does not contain within its boundary a single Assembly district intact, and I say, that strongly Republican district has been purposely, ingeniously, and wickedly handicapped in order that its due proportion — which they could not deprive the people of in the Senate by any ingenuity no matter how acute — was offset and nullified by this method of dividing that district into Assembly districts. Not only did they do wrong to their political adversaries, but they committed an outrage upon their own party. In apportioning the Senate districts they practiced the same wrong, so that in many of them there is not a single Assembly district intact within the boundaries of a Senate district. Now, sir, this apportionment bill presented by this committee, among other things, attempted to correct that evil, and, following the example of the Convention of 1846, which is held in such veneration by my esteemed friend, Mr. Sullivan, in the last hour before its adjournment made an attempt to prevent such a thing, when upon the motion of that distinguished lawyer and great Democrat, Charles O'Connor, after the Constitution had been adopted by the solemn votes of the delegates, and the last act of enrollment and superscription was about to be performed, he arose and moved to reconsider one of the articles on legislative powers in order that he might place therein a provision that would prevent what these latter-day Democrats in the county of Kings and elsewhere have perpetrated upon the people of this State, namely, an amendment providing that in the formation of Senate districts, the power to form them having been devolved upon the board of super-

visors of the county of New York, no Assembly district could be divided in forming a Senate district. That amendment was accepted by that Convention. This is a principle, sir, that is so self-evident that I doubt whether the Democrats themselves will fail to accept it. Whatever authority there may be in precedents, it has the precedents of some of the greatest States of the Union, and it is one of the features of this apportionment of which this committee is justly proud. This apportionment of these Assembly districts that I have spoken of was contested at law. The distinguished counsel that appeared for the contestants (Mr. Jesse Johnson) is also, along with the Antiphili that I have spoken of, a member of this Convention. That contest was taken into court, and it went up to the Court of Appeals, but in the meantime this revolution of the city had gone on because the decision of the question in the courts could not be reached pending the election. Upon the bench of the Court of Appeals sat a distinguished man (Judge Maynard), who, having been placed there as a reward for his fidelity and legal services to the Democratic party, and for other public services, which, under other circumstances, I have no doubt would have commended him for the place, Judge Maynard, and that court, decided unanimously that the apportionment which these gentlemen made was illegal and void. The usual tedious delays ensued. Another case was made, and it went up again to the Court of Appeals. In the meantime this same board of supervisors proceeded the second time, and I must say they improved upon their own example; for, instead of giving to the Republican party two of these eighteen districts, having been put to so much trouble and shame, they compensated themselves, as it were, by giving us on the second apportionment one district. Then came the election of 1893, the result of which I will briefly state. The result of that election was, that a Democratic majority of 29,500 disappeared, and in its place was erected a majority of 7,500 for the Republican candidate for Secretary of State. The mayor of the city of Brooklyn, Mr. Boody, a candidate who deserved a better fate, was swept overboard with a majority against him of 31,000, and the five Senate districts which they had taken so much pains to erect disappeared, and only one Democrat among them graces the Senate Chamber of the State. I do not claim that this was a purely Republican victory. I give all honor to the honest and independent Democrats of the city of Brooklyn, who came up to the polls and completed the revolution which I have so feebly attempted to portray. Gentlemen, this is not a political question in its party sense. It is a political question in the larger sense. And I would be ashamed of my citizenship,

and ashamed of being a delegate here, if I were so small-minded as to attribute to the Republican party, or to its representatives upon this floor, any more than their fair share of the credit for producing that result. "The best laid schemes of mice and men gang aft a-gley."

The Constitutional Convention which they hoped to control they lost; the Legislature with which they expected to make fast the moorings of Tammany, and of the Brooklyn ring, broke loose, and upon the desolate sands of Coney Island and the shores of Gowanus Bay to-day lie the bones of the martyrs. There lies the wreck of the hulk. I tell you, gentlemen, both Democrats and Republicans, if you give to the people of this State a fair and honest apportionment scheme, such as I believe this is, an honest vote and fair count, it will be sustained at the polls. I do not wish to occupy any more time, but I do want to say one word with reference to the statement of my friend, Mr. Sullivan, as to the board of supervisors having devolved upon them the power to make these subsidiary divisions of Assembly districts. The Constitution of 1846 devolved upon the supervisors of the city of New York the power to make Senate districts. At that time there was a legislative commission, that is, a commission created by the Legislature and elected by the people, sitting in the city of New York for the purpose of revising the charter of the city. Their session was concurrent with that of the Constitutional Convention. When they came to change the "ride and tie" system of the State, and adopt in its place the single representative and single district system, it was found that it was impossible for that Convention to divide the city of New York into senatorial districts, for the reason that among the most important objects of that Convention was the division of the city into wards. The whole political system was in process of evolution, and, as stated by the distinguished chairman of the committee in the debates which I have before me, the reason was given that because the Constitutional Convention could not tell what the wards of the city were, or might be, under the action of that charter commission, when they were established, that in this single case of the city of New York, the board of supervisors should make these districts. Thus the feature of constitutional apportionment found its way into existence. At that time New York was the only county in the State that had more than one Senator. Now, in this Constitution, we propose to devolve the same power upon the board of supervisors and the common council of Brooklyn, and authorize them to divide the Assembly districts in the county of Kings. You will pardon me, gentlemen, when I say that the county of Kings is

undergoing a transition. All the territory of the county is practically within the limits of the city. Three towns of the county were united with the city at the last session of the Legislature, and an act was also passed annexing the fourth and last remaining town; but, for reasons of economy and for certain business reasons relating purely to the necessary business affairs of the city of Brooklyn and the county of Kings, it was thought wise not to be too precipitate, but to give a little time before the last remaining town should be brought into the city, and, therefore, the town of Flatlands, with a population of 4,000, is not to take its place within the limits of the city of Brooklyn until the 1st of January, 1896. That town has a supervisor. Now, we have in Brooklyn a board of supervisors consisting of thirty-two members, elected in the odd and even wards in alternating years. The majority that I said was swept away by the splendid Republican majority that I have named, also passed a verdict of condemnation upon one-half of that board of supervisors, sixteen in number. I ask any gentleman here, what is the responsibility of that board of supervisors under these circumstances? I also call your attention to the Constitution of this board. It is that one supervisor, representing 4,000 people in the town of Flatlands, is in a position to represent 1,000,000 of people in the county of Kings in a matter of such importance as the apportionment of twenty-one Assemblymen, not only to that county, but to the State, when compared with a representative from a ward in the city numbering 60,000 people. I can state briefly here that a majority of that board, to wit, seventeen members, represent to-day in round numbers 250,000 people; while the minority of that board, fifteen in number, represent 580,000 people. So, that, as a representative body, for a purpose of such great importance as this is, they are unfitted for it in their Constitution, and a proper respect for the condition of things and a proper regard for not improbable contingencies admonishes this Convention not to devolve that high duty upon a board so constituted. On the other hand, the board of aldermen of the city of Brooklyn has just been elected by the people. It is a body more representative than the board of supervisors. Seven of its nineteen members are elected at large by the whole city; the other twelve are elected in their districts. This wave of popular indignation that stirred the Democracy to its very depths would never consent that this moribund board of supervisors, repudiated by the people, this board who have attempted to keep themselves in office by all the tricks known to expert politicians, should be given power over an important matter of this kind. I feel proud to stand here to-night and commend the work of this committee, and I ask

this Convention to indorse especially this proposition that the board of supervisors and the board of aldermen in the county of Kings shall jointly do this work. I wish now to read a very few words on this subject and refer again to the distinguished Democrat whose name I have mentioned, and I ask attention to the exact parallel that is presented in this case with the Convention of 1846.

"Mr. Murphy said there were, in his mind, innumerable objections to the sending this matter to the supervisors to make the division. But, supposing it to be the sense of the House that the decision should not be made here, or by the Legislature, but by some local power, he had submitted this resolution to obviate existing objections while it carried out the views of the Convention."

The resolution he referred to was a resolution providing for the election of commissioners by a vote of the people in that city to do this work.

"His objection to the board of supervisors was two-fold. In the first place, those boards had not been elected with reference to this subject. It was proposed to put upon them a duty for which they were not originally designed; in other words, the people have had no opportunity of selecting their agents to carry out this object. But, in addition, in many counties of the State, there are gross inequalities in the representation in the board of supervisors. It was so where he lived, in the city of Brooklyn, which elected six supervisors, while the other six were elected by the other towns in the county, Brooklyn at the same time embracing nine-tenths of the population of the county. Now, if they adopted his amendment they would give a fair representation to every portion of the county in the body to divide the county into election districts, and thus very serious evils will be avoided."

I do not, as I stated in my opening, undertake to discuss the general principles involved in this bill. They have been most ably presented by Mr. Lincoln, and the application of them will be found most powerfully stated by Mr. Brown, and I leave to some one who may follow me the ethics of the subject, again recalling to you the words of the text with which I started: "The best laid schemes of mice and men gang aft a-gley." It has been so in the case of the Democratic party, and it will be so ever in the case of men who undertake to do wrong. Mr. Chairman, I have lived in the city of Brooklyn for forty years, ever since it was chartered as a consolidated city. I have seen periodically these apportionments and these divisions made in that city. I have myself profited by the errors of my opponents. I have had the honor to represent a Democratic constituency in the halls of the Legislature where their

normal majority in the district was 2,000, but where, not content with such a majority, they used it like brutes upon their adversaries, and like tyrants among their friends; and periodically nearly half the time, the people would break out in open revolt and elect a Republican to the Legislature. The kindness with which I have been treated here personally by my Democratic colleagues affords me the most intense satisfaction. I feel prouder of it than of any other thing aside from being a delegate here. I have never by any word or act impugned the honor or integrity of them as men and citizens. I simply hold them to be fundamentally wrong in their conception of political duty. I consider them the most egregious blunderers in political work and practice. In saying this I mean no personal offense, but I do mean to say, that every apportionment made in the city of Brooklyn by them, has been followed by a revolution amongst their own people, and that it is their own fault that Republicans have succeeded in having representation from that city in the Assembly. Now, sir, I will quote another text from one of my favorite writers, which I think I can apply here both to my political friends and to those of the other side. I do not expect when they shall address this Convention that they will spare me. They all know I am a plain, blunt man. I am not gifted with any of the graces of oratory. I only seek to know how to discern, and to tell the truth. Therefore, when they, ornaments of the bar, jurists, lawyers and practical orators, when they speak of me, they shall "speak of me as I am, nothing extenuate, nor set down aught in malice."

Mr. Bowers — Mr. Chairman, it was the manifest duty of this Convention to present a proposed amendment to the Constitution of the State on the question of legislative apportionment, which should deal with no partisan question and should not have its emanation in any political surroundings. It was our plain duty to present to the people of the State a plan of present and future apportionment, which should prevent the wrongs that have been done in the past and should do credit to this Convention. We are supposed to be engaged in the work of so amending the Constitution as best to preserve the rights of the whole people, and we are not gathered together for the purpose of increasing the strength or power of any political party.

I have heard much talk during the past day and a half in that direction — that the present proposed amendment, known as general order No. 74, introduced by Mr. Brown, did not seek to accomplish any partisan purpose. I had hoped, Mr. Chairman, that the gentlemen who fathered this bill and who have brought it thus far

along on its journey would have been satisfied, in this Convention, to have laid down general rules for future apportionments, and not introduce, as introduce almost of necessity they must, the political element, by seeking to make a direct apportionment here.

Sir, in 1895, it is the right of the people of this State to have another census taken and a new apportionment, and the first step that this Convention proposes to take by this bill is to deprive the people of the State of that right and postpone it until 1905. Why is this done? Is it done because of a desire to harmonize interests here, and to assist in the making of a Constitution which shall become the organic law of the State? Do not the members of this Convention know perfectly well that we could have agreed, without the slightest difficulty in the world, upon principles to apply to the apportionment of the State if this political bias were not introduced into the bill? That, sir, is the first departure from the rights of the people.

When the delegates to this Convention were elected, I venture to say that few people in the State had in mind the fact that any effort would be made to reapportion the State. They had the wrongs of the past fresh in mind. They knew they were entitled to another census in 1895. What the people expected at the hands of this Convention was a set of rules for the guidance of the next apportionment, and not partisan work. I have heard very much so far in this debate of the partisan character of the last apportionment in 1892. We were told in the opening speech of the chairman of the vention. We have been told from start to finish that because that wrong the people demanded that it should be righted by a new apportionment being now made. We have heard that in every speech which has been made upon the majority side in this Convention. We have been told from start to finish that because that was a wrongful apportionment it was the right and duty of this Convention to make a worse one. Is that right? Assume that it was wrong, assume that injustice was done at some point, and yet I venture to say to you, Mr. Chairman, and to my associates in this Convention, that if a wrong was done that is no excuse for our now doing a greater wrong.

If we cannot in this body rise above partisan consideration, if we cannot here and at this time come up to the position of making rules for future apportionments, or even, if need be, an apportionment, on a basis that shall be satisfactory to all parties, then indeed it must be conceded that this Convention is partisan, and, if partisan, a failure. I cannot, however, pass over the charges upon and the assaults that have been made concerning the apportionment of 1892

without a word. You have already been shown that a change of 20,000 votes in this State gave the Legislature to the party who did not make that apportionment. Is it the only apportionment that has ever been made that has been criticised? In 1875, there should have been an apportionment, and there was none, and it was not made until 1879. And why? Because the party then in control of the State would not make it; and when they did make it, they did to a two-fold —nay more to a four-fold extent — every one of the acts that is criticised in the apportionment of 1892.

You have but to turn back to the pages of political history and the files of the Executive Chamber to find the wrongs that were done then. So evil were they that when the apportionment of 1892 was made this state of affairs was in existence. Single Assembly districts in several counties had a larger population than the three districts of St. Lawrence county combined. That county had a citizen population of 80,679, with three Members of Assembly, under that apportionment. The Eighth District of the county of Kings had 128,000 citizen population; the Twelfth District, 132,000. In New York the Twenty-second District had 157,000; the Twenty-third, 138,000, and the Twenty-fourth, 145,000. Such were the evils of an apportionment made in 1879, under which we were working in 1892. St. Lawrence had three Members of Assembly for 80,679, while there were at least twelve districts in the State having but one Assemblyman each and with a larger representative population! Nay, more. In the election of 1891, the defeated candidate in the Eleventh Kings District received 11,284 votes, being 141 more than were cast for the three members elected in St. Lawrence county. That was what resulted from that apportionment. Let us see what was its record at the time, 1879. The county of New York, by any proposition, by the mere application of the ordinary rules of arithmetic, by the application of the principles of law which were brought to our attention by the gentleman from Buffalo, Mr. Becker, was entitled to twenty-six Members of Assembly, and was given twenty-four. The county of Kings was entitled to thirteen and was given twelve.

So gross were the wrongs of that character in that act that we find Governor Robinson, then the executive of this State, in his memorandum, in which he refused to approve, and yet was compelled not to veto, the bill, using this language:

"In the distribution of Members of Assembly, the bill is still further from meeting the requirements of the Constitution. I find that Cattaraugus county" — (the same old county that gets to the front again to-day) — "with 45,737 inhabitants, has two members,

while Suffolk, with 50,330 inhabitants, is given but one. Orange, with 82,225, has but two members, while St. Lawrence, with 78,000, gets three."

And while, Mr. Chairman, I do not for a moment, nor did the gentleman from Ulster, Mr. Bush, pretend to say but that it would have been a just arithmetical proposition to have given St. Lawrence two in 1892, yet it seems to me in a certain sense it was retributive justice that if there was wrong to be done in any county, she for a brief period should suffer.

"Nor can I understand," says the executive, "the philosophy which gives to the latter county, with 78,000 inhabitants, the same representation as Monroe, which exceeds it in population by nearly 50,000."

I bring these matters to the attention of this Convention, because I want to relieve your minds of the proposition that you have any justification for now apportioning the State because you do not like the apportionment of 1892. Had the Republican party done its duty the apportionment that was made by the Democrats in 1892 would have been made by the Republicans years earlier. It is a matter of common notoriety and common scandal that the Republicans would not obey the Constitution and apportion the State.

Mr. Chairman and gentlemen, it has been the conceded rule in this State since 1801 that there should be thirty-two Senators, and since 1821 that there should be one hundred and twenty-eight Members of Assembly, and the proportion of four to one has stood from that day to this. It is proposed now not only to change the number of Senators and the number of Assemblymen, but to change the proportion. And why? What reasons are we given? Why some one suggested that it would be more difficult to improperly influence a larger body of men than a smaller body. Does any one believe that is the reason? Can the human mind accept it, even when it comes from such guileless individuals as the majority of the members of the Committee on Legislative Apportionment? It seems to me, at the outset, that it is the duty of these gentlemen who father this measure to show good reason for the change. Is there any difficulty, if this Convention feels that wrong was done in 1892, in righting it now? Assuming that you will not agree with me that we should rise to the height of making no direct apportionment here, but merely lay down rules, let me tell you that you can take the ratio which is produced by a division by thirty-two and one hundred and twenty-eight, and make an apportionment in this State so that no man can tell who will carry the Senate or the Assembly. Would not that be a boon to the people of the State?

If you want to correct those supposed wrongs of 1892, which you talk so much about, correct them like men, but do not make them the excuse for this most extraordinary proposition which has already in some of its parts been shown to be ridiculous and is most evil in its whole effect.

Why were the numbers fifty and one hundred and fifty selected? Mr. Brown made some reference to history of ancient date, when he told us that there was a period in the history of this State away back, when some such arrangement was made as to the number of Senators and Assemblymen. Well, if it was tried and found wanting, and the change has stood for well-nigh seventy-five years — I would not be much out of the way if I said for well-nigh a century, certainly if I said for all the years of the material growth and prosperity of this State, why go back? Why, if there were reasons for increasing the membership of the two houses, did these gentlemen depart from the established proportions of four to one?

What was the objection, Mr. Chairman, to the figures of forty and one hundred and sixty which would have been the natural figures, if such an increase was to be had? I have already stated to you that a division could be made on a perfect equality upon the basis of thirty-two and one hundred and twenty-eight, if men were fair minded and wanted to do it. But, if they do not, and they wish to make it on a larger scale, and yet are willing to be fair minded, why do they not take the basis of forty for the Senate and one hundred and sixty for the Assembly? Conceding, for the sake of argument, that it was wise to put all of the extra expense upon the people of the State, by an increase in the number of their Senators and Assemblymen, why, I ask in all sincerity, should we make this change in the proportion of the two houses, which has existed for seventy-five years? Some of us have been at some pains, Mr. Chairman, to look into this question, and we have looked at the basis of a division of the State with forty Senators and one hundred and sixty Members of Assembly, and the result is this, and ——

I beg you will do me the favor, if you will not hear the details, to at least listen to the result so that I may compare its extreme fairness in its every aspect with the present proposed constitutional amendment. The counties of Queens and Suffolk would form a district. The county of Kings would have six districts. New York, with Richmond, would have ten; or, if gentlemen object to putting Richmond with New York, it could be put with Westchester, which would have one and precisely the same result as to the number in these Democratic counties would be reached; the ratio, on the basis of forty Senators, would be 144,972. And you will

presently see why that ratio was not taken by the chairman of the Committee on Legislative Apportionment. You will then follow along with Columbia, Dutchess and Putnam; then with Sullivan, Orange and Rockland; then Ulster, Schoharie and Greene; then Hamilton and Fulton, Montgomery and Otsego; then Rensselaer, Albany, each by itself, and Saratoga, Washington and Schenectady; Delaware, Madison and Chenango; then Franklin, Clinton, Essex and Warren; then St. Lawrence and Herkimer; Oneida and Lewis; Oswego and Jefferson; Tompkins, Tioga, Cortland and Broome; then Onondaga; then Wayne, Seneca and Cayuga; Steuben, Schuyler and Chemung; Allegany, Livingston, Ontario and Yates; then Monroe; then Niagara, Orleans, Genesee and Wyoming; Chautauqua and Cattaraugus, and Erie with two. These, sir, will be the results that will be reached. You will find a surplus in Democratic districts, or an unrepresented population of 82,000 and a minus of 39,000. Taking one from the other it would make a Democratic loss of 42,525. You would find a surplus of unrepresented people in the Republican column of 65,000 and of minus 108,000, making the Republican column minus or over represented 42,000 — the whole being slightly in favor of that party, but on so close a basis that the gentleman from Ulster, Mr. Bush, was entirely right in saying that if you go through with it on that basis, which you could do if you wanted to, there would be a loss at any point of only 40,000 to either party in the whole State. What is yet more extraordinary upon any fair division, taking such a one as I have made, the result would be that the Senate would stand politically divided twenty to twenty, with a possibility of one or two districts on either side being in doubt. Would not that be a more handsome apportionment for this Constitutional Convention to make?

I shall not take up your time by reading the result of 160 members of the Assembly, but it is sufficient to say that it would bring additional membership to many of the rural counties which do not now get any increase and yet would result in leaving the Assembly in doubt as between the two political parties.

So much, Mr. Chairman, for the natural basis that would have been taken had this committee been seeking to do the fair thing of which they have talked so much. Permit me now to contrast that list with the list which results from fifty Senators and 150 Assemblymen. The result of that is, that when you have gotten through with the minus and the surplus, when you have added up the Democratic surplus and the Democratic minus, and the Republican surplus and the Republican minus, you find these figures: that the Republicans are over represented to the extent of 130,348,

and the Democrats are unrepresented to the extent of 131,287. What a marvelous difference in the mere question of representation between the two sets of figures. And, while passing, permit me to say to you, gentlemen, that this new proposition of Mr. Brown, spoken of in such kindly language by so many members of this body, whom I personally esteem as high-minded gentlemen, is infinitely worse in its results in that regard, as well as in many other respects, to this much-abused apportionment of 1892. The apportionment of 1892 gives a Democratic minus of 116,000 and a Republican surplus of 102,000, the variation being 218,000; while these honorable high-minded gentlemen, acting in a Constitutional Convention supposed to be a non-partisan body and not hampered but helped by their political associates, make a variation of 261,000. I am dumb with amazement at the pretended honesty of such an apportionment.

More than this, let us try now to find out the political result of this basis of fifty. You will bear with me if I trespass a little upon your time with figures. We have to deal with them. With fifty as a basis you get the surplus and minus numbers of which I have spoken and you get this political result: the First District consists of the counties of Suffolk and Richmond; averaging the votes of the years 1884, 1888, 1892 and 1893, this is a Democratic district; and the same may be said of Queens, and the same of Westchester; I pass for the present the cities of Brooklyn and New York. Orange and Rockland are Republican. So are Dutchess, Columbia and Putnam. Ulster and Green are Democratic. Delaware, Chenango and Sullivan are Republican. Montgomery, Fulton and Hamilton and Schoharie are Republican. Saratoga, Schenectady and Washington are Republican. Both Albany and Rensselaer are Democratic. Clinton, Essex and Warren are Republican. So is St. Lawrence and Franklin, Otsego and Herkimer the same; Oneida the same. Jefferson and Lewis are in the same category; Onondaga, Republican; Oswego and Madison, Broome, Cortland and Tioga, Cayuga and Seneca, Chemung, Tompkins, and Schuyler, Steuben and Yates, Ontario and Wayne, Niagara, Genesee and Orleans, Allegany, Livingston and Wyoming are all Republican districts; and Monroe comes in with two, of which I will have something to say in a moment, both of which are Republican. Erie is given three, and, on the vote of 1892, as we are given it by the other side, would elect two Republican and one Democratic Senators.

And now we come to the beautiful City of Churches, from which we have heard in the first evening hour. It is concededly a Demo-

cratic city. It has been so conceded on the floor of this Convention this night. Yet, Mr. Chairman, if you will average the votes of the years 1891, 1892 and 1893 -- 1892 and 1893 both being exceptional years, the one in favor of the Democrats and the other in favor of the Republicans — you will find that the Republicans have so divided that county in this apportionment that they will carry four districts, and the Democrats only three. It is a very cunning piece of work thus to make four Republican districts out of a Democratic county. I concede the ability of the gentlemen; I deny their political integrity.

In New York, the city where a great Democratic majority is always to be relied upon, our friend, the enemy, had a pretty hard piece of work in working out Republican districts. Twelve Senators are allowed to it, naturally Democratic, every one. How could the work be done that should deprive that county of its just representation. They figured and they figured and they figured. The Convention was kept waiting to get returns from the Republican county committee of Erie as to those districts. We are still waiting to hear from the Republican committee of Monroe as to the division to be made there, and we had various lights of the Republican party up from New York to meet and instruct the committee. Well, Mr. Chairman, they worked it with so much astuteness that they have made two Republican districts on the basis of the vote of 1893, and it is the only vote on which we can count in New York, by reason of the enormous changes which take place every year in its election districts.

The result of the whole is that the committee have devised a scheme which gives out of the fifty Senators, thirty to the Republicans and twenty to the Democrats, and their Assembly division is just as bad. But what is more, Mr. Chairman, there does not live a man who can make a fair division on the basis of fifty without dividing counties. If you start at forty you will find Erie county — the home of the chairman of the Committee on Legislative Apportionment, who came here with a record and a character second to none, who has declaimed about the frauds and evils of others all through this Convention — with only two Senators. Let us see what he did with his own county in this matter. Surely he would not select a figure which would be to the benefit of his own county over all the other counties in the State. At forty the ratio is 144,972, and Erie would get two, with a remainder of 14,000, and she could not work in for three on that. At forty-one she would have a surplus of 22,000, against a quotient of 141,000, and that would not do. At forty-two she would have a surplus of

28,000 against 138,000, and she would not get in. At forty-three, 35,000 against 134,000, and could not get in. At forty-four, 41,000 against 131,000, and couldn't get in. At forty-five, 47,000 against 128,000, and could not get in. At forty-six, 52,000 against 125,000, and couldn't get in. At forty-seven 58,000 against 123,000, and couldn't get in. At forty-eight, 61,000 against 120,000, and there she gets in for a third, if they will let her in on getting just over the half ratio. Well, it would not do to take forty-eight. That is too absurd.

So they take fifty, and that lets Buffalo in, to the damage of Albany and the other counties of the State, at what I claim to be a fraudulent and purposely selected fraudulent figure. It does the same good for Monroe. It is very singular, Mr. Chairman and gentlemen, but it is not until you get to forty-eight that they even give Monroe two. Thus you perceive, that the selection of fifty, as the number for the Senate of the State of New York for the future, results in immediately giving an advantage to these two great counties over the rest of the State, and the one especially damaged is the county of Albany. Evidently, the chairman of this committee has taken good care of his own county. I commend him for his skill, but not for his fairness.

Now, this bill having thus dealt with the present apportionment, proceeds to lay down certain rules which these gentlemen tell us are intended to prevent the inequalities and the wrongs in the future that have taken place in the past. I want to say, at the outset, that not only does their apportionment vary at every step from their rules, but they have laid down rules that never can be complied with, and I have no doubt that the intent of the bill is that there shall never be another apportionment of this State until the people rout them out with another Constitutional Convention. They provide that there shall be three ratios in the future for the division of the different counties of the State, or for the apportionment among them of their Members of Assembly. Why is that done? Why, the whole effect of it, as has been conceded on this floor, is to deprive the Democratic counties of representatives in the Assembly and to give them to Republican counties, whether rural or otherwise.

Why do not these gentlemen have the nerve to come out on the floor of this House, and tell us what it means in plain language? When a man demands your property it means only one thing — that he is going to take it if he is strong enough. I do not particularly object to it; I will fight for my rights as best I may. But when a man comes palavering along with a lot of pretenses that he has

some right to another's property, we hesitate and we wonder what character of men they are who do it. Why do not you gentlemen say right out that you propose to give the rural districts of the State increased representation at the expense of the cities, and that you mean to incorporate into our Constitution the provisions of other Constitutions that violate the rights of cities? Come out like men and say, "That is the principle for which we contend."

You have refused home rule to cities; you have vilified race in this Convention and insulted religion, and you propose now to tell the people of the cities that it is only the good people of the rural districts who shall be left with power to govern the great cities. Why don't you come out and say that, if you mean it? Say it if you like, and let us go to the people and fight it out. The rule is that in the Assembly every county shall have one member and the rest shall be fairly divided, and you have no right to break in with two new ratios to effect contrary results. I do not care what your pretense it. And, worse than that, what right have you to say that the great cities of the State shall never get another Senator until they have a full ratio, clothed in language that no man can understand until he has studied it with care, and even then it is largely guess work? Why don't you put it in the bill that New York shall be governed by the rural districts, if you want it put in there? Are you ashamed to use plain language? Are you unwilling that the public should be told what you are driving at? Go to the people on that issue if you want to. Possibly we in New York are to be governed by St. Lawrence county; perhaps we must live under such dominion; but let the people vote on that question with full knowledge of the situation.

Mr. Chairman, there have been complaints made on the floor of this House, from time to time, at the expense of some of the delegates from New York because they are said to be delegates from Tammany Hall. I will tell you where the strength of Tammany Hall is. It may be a good thing for some of you to know. It lies in the fact that Tammany Hall always fights squarely for the interests of the city of New York, and the people are behind her in it. But there are in that great city a large number of gentlemen, for whom the President of our Convention fitly speaks, who openly take the stand that no good thing shall come to New York until Tammany's domination has come to an end; who said that New York should not have a World's Fair, that New York shall not improve its parks, that it shall not clean its streets, and that it shall have nothing more until Tammany Hall is put out of control,

because of the fear that it may bring credit to that organization. And the people of New York decide year after year between the two, and the people decide in favor of Tammany Hall because she fights for the rights of the city in which her representatives have their homes. And do you blame us for it, gentlemen? You fight for your rights. You do not vilify your own counties. Do not blame us if we speak feelingly on this apportionment act, which is aimed directly at the great city of New York and at the great city of Brooklyn.

This work has been done in an exceedingly hasty manner. It has been done in a most extraordinary manner. In all previous Constitutional Conventions the apportionment acts have been introduced at an early stage; they have been considered in committee; the minority members were allowed to see the figures and to know the facts and to understand the work that was about to be done. Why was not that done here? It is true that we saw an amendment introduced by a gentleman named Brown, whom we did not know at the time; in fact, there was no particular reason why we should at that time, and we charged it up along with the other measures that would be dropped into the waste basket, because we had no idea that the sensible people of the State had the slightest thought of increasing the number of Senators or of Assemblymen. And yet, strange to say, that amendment was suddenly, almost in the twinkling of an eye, galvanized into life and brought into this Convention and brought in again with blanks, and the blanks were never correctly filled, and at half-past six o'clock one evening a sub-committee, who had been appointed, worked out the scheme, and the Democratic members of this Convention were told, "There is the work which we shall pass in committee and present to-night."

Now, Mr. Chairman, this division of the city of New York is a most absurd piece of work — the most absurd, I venture to say, in which a body of representative men were ever engaged. Why, sir, it is childlike. Let us deal with it a little and see what they had to work on and see how they guessed at it and see where they have landed. Of course the primary object was to get two or, if possible, three Republican districts in the city. They must work on something, and so they took the census of 1892. And right here, lest I forget it, let me put a pin in on one thing that my friend Mr. Lincoln said to-day about the great fairness of these gentlemen who have taken the 1892 census and not the 1890 census. He said the 1892 census was false and fraudulent, and the 1890 census was all right. Now, I happen to know something about that.

The census of 1890 was a false and fraudulent census, as witness the fight made by the city at the time. A census was taken by the police within a very short period afterward, and it showed that New York had been grossly cheated, and the police census showed the result that you would have expected was natural to fit in with the census taken in 1892. We made a protest. Perhaps the gentleman from Cattaraugus will listen to this little tale, because these are facts. We found in the Second Ward of the city of New York — the smallest ward in the city — the census which he speaks of as honest returned nine hundred and twenty-nine people as living there, and the police census returned over fourteen hundred, quite a difference. Now, that was an easy district to deal with, so we set out and got affidavits proving that the fourteen hundred people did live in that district, not only at the time the police census was taken, but also when this dishonest governmental census was taken. We showed that out of three or four hundred houses in which people had lived for years, there were over one hundred at which a census taker had never even called. We went down to Washington with that proof, and we had an argument there of four or five days. The proof was perfectly convincing. Why, down in that district the people know each other. There is very little change. There were a few lodging houses, it is true, but our affidavits covered them perfectly. What proved it still better was that when you take the lodging houses, of which Mr. Brown complains — and somehow or other I fancy these gentlemen from Cattaraugus, when they go down to New York, must stop at these lodgings houses, because they seem to know so much about them — we found that Brown was there at the time the police took the census, and we found that Lincoln was there, too, and pretty generally we found that the same old Brown and Lincoln stopped there right along, and all the changes were explained. That was the situation of affairs, with the most absolute proof of the fraud of 1890; but, of course, in accordance with the usual custom of the Republican majority in the House of Representatives at that time, they conceded the fraud, but they said it was a little inconvenient to change things; it would be too much trouble to take that census over again, and we were politely bowed out. I only touch this matter in passing.

Going back now to the city of New York, this was the state of affairs that these gentlemen had to deal with. There had been taken, by the grace of a Republican Legislature, four years after it should have been taken in 1879, a census of the State. I think there were twenty-four Assembly districts in the city of New York. Those Assembly districts change rapidly in their election

districts. There were no maps from 1879 down. In 1879, in the Twenty-second Assembly District, there were thirty-one election districts. In 1891, there were seventy-three. You will, therefore, at once perceive that the maps of 1879, were of no use whatever for serving as a basis for figuring the population in 1892. I asked the gentlemen on the other side who had charge of this matter if they would loan me such data as they had, and they courteously gave me the Assembly map of 1879, which they had altered at great effort in pencil so as to make it conform to the new districts. It was the practical penciling of new maps. They compared those new election districts as they marked them out in pencil on these old maps with the city record of 1891, and thus we were in a position to form some sort of judgment as to the population of the different Assembly districts in the city of New York. But you will perceive from the very statement that I have made, that there was no justification for attempting to make an apportionment of the city on any such set of maps or any such census. If you will take the trouble to read through the unfortunate dilemma into which these gentlemen were thrown, you will notice that they were not only forced to pencil out districts, but they were continually forced to divide their election districts; for instance, the Tenth Senatorial District contains all that part of the Twenty-first Election District of the Fifth Assembly District lying south of Spring street. In that district there are some twelve blocks, and there are five south of Spring street. Will you tell me how they could get at the population of the five except by guess work? And that is what they were forced to do. And so it is through the whole city to the extent of at least fourteen cases. They were compelled to say, "All that part easterly, or all that part southerly, or all that part westerly, or all that part northerly," of certain election districts, and they had to guess right along.

Now, this committee may have gone to New York and looked at the houses and said, "There are more people in that part than there are in this," but in some form or other it was guess work. I will show you some of the curious blunders into which they necessarily fell in the carrying on of this work. They tell us that the Thirteenth Senatorial District shall consist of election districts one to eleven of the Thirteenth Assembly District. Now district eleven in the Thirteenth Assembly District is bounded on the south by Eighteenth street and on the north by Nineteenth street, and on one side by Seventh avenue, and on the other side by Eighth avenue, and is not in this district at all. It has a population of 1,823, and necessarily their figures are away off. Then they say

that the district shall contain election districts one to twenty-two of the Seventh Assembly District. Now, the east half of the Twenty-first Election District of the Seventh Assembly District is not in that district at all. It is over in the proposed Fifteenth Senatorial District. That throws them off 750 there. That district is bounded by Fourteenth and Fifteenth streets and Sixth and Eighth avenues, and they run up Seventh avenue and do not take the part east of Seventh avenue in. And so I might go on through the list.

Then you come down to the Fifteenth District. You will notice that they go into almost every Assembly district in the city of New York and slices off Republican districts here and there in order to work out this gerrymander. It is true that it is skillfully done. It is placed in the center, and the Democratic city is built up around it. So they go on until they get to the last district in the city, and when they get there, No. 21, they say it shall consist of all that part of the county of New York which is included in all the election districts not hereinbefore enumerated in the Twenty-third Assembly District. They then go to work and guess at what is left over. Thus it is that this committee have sought to achieve the result they have brought to your attention here, and it necessarily follows that their figures are erroneous, and that this Constitutional Convention is going before the people with an absolute piece of guesswork as to the population of all the great districts in the metropolis of the State. Gentlemen, is that the kind of careful work that a Constitutional Convention should do? Are our friends who are in the majority on that committee proud of such work? Do they think it is orderly and in accordance with the rules which should govern such a body as this?

And it is here that I must bring the attention of this Convention to another most extraordinary proposition in this measure. It provides among its rules for future apportionment, that no senatorial district shall contain a greater excess in population than an adjoining district in the same county, or than the population of a block therein. Do you know what the population of the blocks in the city of New York are? Has anybody taken the trouble, I wonder, to figure them up? The blocks average 532. Take the first ten districts, which are all that can be taken,, because when you get up into the two higher districts you run into the country. In districts ten to eighteen there are about 2,040 blocks, and the average population to a block is 532. With variations of 4,000 to 5,000, which exist to-day in the proposed senatorial districts in the county of New York, made by these gentlemen, how do they suppose that in the future any other body of men can ever make a division as

close as they require? Have you the right to lay down rules for a future apportionment which you cannot follow yourselves? And is it not a disgrace to any legislative body that it should presume to make an apportionment on guesswork — isn't it a disgrace that these gentlemen should presume to order for the future that which they cannot do now? Do not let the people misunderstand the situation. It is not intended, gentlemen, that there should ever be another apportionment. It is intended that this one now presented shall stand forever, and that none shall be made in the future. I need not refer to the similar discrepancies in Monroe, Erie and Kings counties, but I challenge the possibility of any man being able again to divide the cities of this State in accordance with the rules laid down in this bill.

Now, Mr. Chairman and gentlemen, I have gone over an exceedingly trying subject as hastily as I could, referring, as I have to a certain extent, to figures, and I want to take this occasion to say that there is another course that you could pursue if you wanted to make an honest division. If you insist upon taking the number of fifty, then you must throw away county lines. If you are willing to take away the county lines of Erie, Monroe, New York, Kings, Onondaga and Albany, you can make, even on that basis, a perfectly fair division. In my judgment, if any change is to be made in the principles that have heretofore existed, the change should be in that direction to get absolute equality; and if you want protection against future gerrymanders, let me suggest to these honorable gentlemen that all you have to do is to say that the Legislature shall submit every apportionment to the people, for the people will deal with it squarely. That is all you need as a protection. You can work out any one of those plans which will be fair, and the only one which will be found that is unfair is the one you have selected.

Gentlemen, why has all this been done? Why is it that we find toward the concluding days of this Convention that the people of the great cities are brought face to face with so important a problem as this? Why have you delayed action until the last moment, when you could deprive us of that reasonable time for debate which should have been allowed? Why, just before this question came up, did you permit your President to incite partisan discussion so that we might not be able to gather together and dispose of this subject, as we have of all others, until the last two weeks of this Convention? Why did you not talk with your associates on the committee as to some reasonable method to be proposed to the people of the State? The reason is not hard to learn; it is not difficult to discover. You came to this Convention under the belief that

the Republican party in this State would secure a majority so large at the coming election that you could carry through any Constitution that you proposed, and you thought you could take advantage of the situation and press through an apportionment under the general majority that you hope to receive, which would leave this State yours for all time to come. How is it that you, as individuals, would lend yourselves to such a party doctrine? The more you examine the bill, the more of evil and wrong there is in it. Yet you stand here to-day defending and urging its passage as fair-minded, honorable men. What is the theory which actuates you? I look back at the past history of the Republican party in this nation, and I can perceive grievous wrongs that have been done. I need not recite them here to-night, for I have no wish to arouse undue animosity. I wish only that I could appeal to some of you gentlemen in such a way that it would make you open your eyes to the injustice you are doing, and thus strive to raise you above partisanship. But here we deal with this situation.

We will not go back to 1876, or to 1880, or to 1888, or the wrongs of which we justly can complain that were then done; but I come down to this especial wrong, and I charge you now, in the name of those I represent, with purposely preparing this bill to defraud the great cities of the State of the representation which their population justifies them in demanding. I demand that you go to the public on the issue that you propose to rob them of that representation, and then we will fight it out. Do not cover the issue up, as you are trying to cover it up. Oh, gentlemen, how can you do it! I recollect a short time ago there were some election inspectors on trial in the city of New York for fraudulent work at the polls. They were tried before a Democratic judge and prosecuted by a Democratic district attorney, for we prosecute our wrongdoers, whether Democratic or Republican, and the comment of the judge in that case was: "How is it that men who are otherwise honorable in their public and private relations in life forget the principles of common honesty when dealing with a political situation?"

To any of you gentlemen I would intrust any personal or private matter. How is it that you can come here and press forward such a measure as this, and do it almost as you would perform an act of solemn duty, pretending, in the language that has been used upon the floor of this Convention, that the most fraudulent parts of the scheme constitute its growing glory? And what is our position as members of the minority? We came to you intending to aid in the attempts to amend the Constitution of this State in such manner as to benefit the people as a whole. We worked with you in and

out of season, honestly and well. We were prepared to surrender much. We would willingly have consented to any just principle of apportionment for the future, or to any honest reapportionment, if you had demanded that it should be made. But you of the majority will not have that. You have no completed article yet for fair examination and criticism. It is a hodge-podge from beginning to end. It is a disgrace to the Convention and to its prime movers. I tell you, my associates, that the great cities of this State will never have home rule or home government of any nature if this constitutional provision becomes a law; and, from the day of passing it here until it shall be submitted to the electors at the polls, the last great tribunal of appeal, we of the minority must stand shoulder to shoulder, battling for the liberty of the citizens of the great cities of New York and Brooklyn, battling for the freedom of those cities. (Applause.)

Mr. Dickey — Mr. Chairman, being a member of this Committee on Apportionment and owing to the fact that my county and myself have been made a target in the course of this debate, is my excuse for taking any part whatever in this discussion. A correspondent of the New York Tribune once wrote to the editor of that paper asking whether guano was good to put upon potatoes. The philosopher-editor of that paper replied: "Your taste may be so depraved by chewing tobacco and drinking bad whiskey that you may like guano on your potatoes, but, as for me, I prefer butter and salt."

This Apportionment Committee, Mr. Chairman, supposed when they were preparing this article that they were preparing something that was palatable to all the members of this Convention, including the few Democrats that we have with us. But it seems that it is a nauseous dose, and that you do not quite like it. It grieves us very much that this is so, because we sat up nights burning the midnight oil and trying to make it so that it would be entirely palatable. In fact, as I listened to the debate here and as I study the bill itself, I am thoroughly convinced that in our effort to be fair and just, we stood up so straight that we leaned backward; and, instead of doing any injustice to those who most complain here, we did injustice to the rural communities, including the districts represented on this committee by the Republican members. I could easily demonstate this, and readily too, as I hope to do before I quit the floor. Now, to start with, who named this Apportionment Committee? The President of this Convention, a fair, honorable man. He looked about to see whom he should put upon

this committee who would reflect by their action and their conduct honor upon this Convention and who would be more likely to do the fair and right thing than other men that might have been selected — excluding and excepting, of course, the speaker, who makes no claim for himself whatever. The chairman of this committee is a man noted for his extreme fairness. I remember that I read in all the newspapers that he went about consulting distinguished Democrats in the city of Albany, and in the city of New York, and elsewhere, for the purpose of getting their views, their ideas, and their suggestions, as to what would be fair and right in the make up of this apportionment. Then the originators of this particular scheme that is under consideration here! Why look at them? See who they are? I want to give them full credit for it because the suggestion has been made that outsiders had to do with this particular scheme. Gentlemen, it was the work — and be it said to their honor and credit — it was the work and creation entirely in its general make up of Deacon Lincoln and Class Leader Brown. Who could gaze on the honest and benign countenance of either of those men and not be convinced of his absolute honesty and fairness? I need not refer to the other members of the committee. You know them all. Why here is Farmer Crosby, the very embodiment of fairness and squareness; a man not under the control of anybody. And the other members of the committee have shown by their action, by their votes upon this floor, that they do not wear the collar of anybody, but they are fair, manly, square men, striving always to do the right thing. And they have done the right thing, I submit. This apportionment needs no apology or defense whatever. It is a square, manly, honorable piece of work, and the people of this State will say so when they get a chance to pass their opinion upon it. Why, sir, the members of the committee did not take the pork out of the barrel for themselves, as has been suggested here: on the contrary, individual members of that committee did an injustice to their own districts, and I will demonstrate it. For instance, take Mr. Lincoln, who made the masterly defense of this apportionment on the floor of this Convention last night and this morning. His argument was convincing, and it has not been answered, and it won't be answered by anybody who attempts to speak upon this question. What did he do with his own district? He lives in Cattaraugus county. Chautauqua and Cattaraugus are put together in one senatorial district, and the census in that district shows the population to be 17,767 more than the ratio required for a Senator of the State of New York. So he did that injustice to his own terri-

tory. There are 17,767 citizens in that county, therefore, who have no representation.

The Convention here adjourned until Thursday, September 6, 1894, at 10 A. M.

Thursday Morning, September 6, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, in the Capitol, Albany, N. Y., Thursday, September 6, 1894, at 10 A. M.

President Choate called the Convention to order.

Prayer was offered by the Reverend Water C. Stewart.

On motion of Mr. Schumaker, the reading of the Journal of yesterday was dispensed with.

Mr. Cassidy — Mr. President, I have received a letter from the partner of Mr. Lyon, of Binghamton, stating that Mr. Lyon was threatened with fever, and unable to leave his room, and desiring me to ask that he be excused until he can return.

The President put the question on excusing Mr. Lyon, as requested, and he was so excused.

Mr. Cookinham — Mr. Davies, of Oneida, has been called away for the day, and has asked that I present his request to be excused until to-morrow morning.

The President put the question on excusing Mr. Davies, as requested, and he was so excused.

Mr. Holls — Mr. President, I would move that the privileges of the floor be extended to Mr. Alfred Dolge, of Dolgeville.

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

Mr. Nichols — Mr. President, I offer the following:

The Secretary read the following resolution offered by Mr. Nichols:

That on Tuesday of next week, the Convention enter upon the consideration and disposition of such bills as shall be then on third reading, in the order in which they were sent to a third reading, and that the whole day be devoted thereto, if necessary.

The resolution was referred to the Committee on Rules.

Mr. C. H. Lewis — Mr. President, I desire to be excused for to-morrow and Saturday.

The President put the question on excusing Mr. Lewis, as requested, and he was so excused.

Mr. Pool — Mr. President, I ask to be excused for Saturday and Monday.

The President put the question on excusing Mr. Pool, as requested, and he was so excused.

Mr. Goodelle — I ask that Governor Alvord be excused for the present week.

The President put the question on excusing Governor Alvord, as requested, and he was so excused.

Mr. McKinstry — Mr. President, I move that the privileges of the floor be extended to the Honorable James O. Putnam, of Buffalo, during his stay.

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

The Convention then resolved itself into Committee of the Whole in further consideration of general order No. 74, and Mr. Durfee resumed the chair.

The Chair recognized Mr. Dickey.

Mr. Dickey — Mr. Chairman, when the gavel fell last night I was saying from the standpoint of a Republican member of this committee, how fair and just this apportionment is, and how little the individual members regarded the question of locality in the higher and greater question of how to be fair toward every locality in the State. I cite you, in proof of, and in addition to what I said upon that subject, to the fact that the counties of Orange and Rockland were put together in one senatorial district, making a surplus of voters over the required number, of 8,779, where the average in the city of New York, from which comes so much hue and cry, is only 2,848 in a district. So you see as to my home senatorial district, I consented that there be a surplus of 8,779 as against the average of 2,800 in the city of New York. More than that, the gentleman from New York (Mr. Bowers) says that district is a Republican district. That is not so. Ordinarily it is a Democratic district. The county of Orange is good usually for five or six hundred Republican majority; the county of Rockland from one thousand to twelve hundred Democratic. I acquiesced in the scheme that the Democratic county of Rockland should be joined with the Republican county, putting us in a minority. I did it because it was the proper thing to do. The counties were adjacent and naturally belonged together. It is true that last fall the county

of Orange gave a Republican majority of twenty-five hundred, and the county of Rockland gave less than two hundred Democratic. It is true that my own city of Newburgh, a manufacturing city, worked up as it was, by the interference with the tariff, under which we were prosperous, gave a larger Republican majority than the Democrats had votes, and repeated the dose at this spring election; and while I consented to go into a Democratic district that may at times be Democratic, I am satisfied that the good county of Rockland, under the able leadership of Senator Lexow and General Hedges, will soon become Republican, so that the district at future elections will be a Republican district. How did we treat our friend Bush, who looks so much like Governor Hill, and follows him in his tactics in many respects? We put together Ulster and Greene, and they together only had 415 over the ratio — an adjoining district to my own. Surplus 8,700 in mine; 415 in his; and he comes here and complains. How was it as to the Assembly in Orange county, myself a member of the committee, supposed to have some influence upon it, though my friend, Mr. Peck, seems to imply that I was buncoed by the other members of the committee in regard to Orange county? We have a citizen population of 93,271. The ratio for Assemblymen is 36,606. We were given two Assemblymen, which calls for 77,212 voters. Therefore, in my own county, in the matter of the Assembly, there is a surplus of 16,054. And how did we treat our neighbor across the river, Mr. Osborn, of Putnam county? We gave his county one member with a population of 13,325. Our surplus over and above the two members that we took to Orange was 2,734 more than the entire population of Putnam county. Still, the quiet, scholarly, gentlemanly member from Putnam surprised me by his apparent frenzy in denouncing our plan of apportionment. It must have been quite an effort to work himself up to such a pitch. It was not at all becoming to him. He cannot make himself a violent, ranting Democratic partisan, and he may as well give up the attempt. He is not in that class. And then it was a sight for angels and men to see Delegate Peck weeping over the injustice done to these rural communities, preceded and followed as he was by all the other speakers on his side, claiming that the wrong was done to the Democrats in the large cities, for the benefit of the country.

And then comes Delegate Speer. He is a typical Democrat. With him everything that is Democratic is right, and everything that is Republican is wrong. He goes the whole length. He has made a campaign speech, published in some of the New York

papers in full to-day. He sounds the key-note. He says everything the Democrats have ever done is right, including the apportionment of 1892. It is true he is the only delegate on the floor who has said so, or who has attempted to defend that iniquitous scheme, but he goes the whole length, in fact he goes so far, and did on this floor, to say that this is not a nation. Did we expect in making this apportionment to satisfy Delegate Speer? If we had, I should have been awfully suspicious of it myself. He is an objector, an out and out objector. He complains that with a ratio of 115,817 for each Senator, we do not give Albany, the county where he is now engaged as an editor, a second Senator for its 40,931 votes, as though he expected, or any sane man expected, this committee to give an additional Senator to Albany county with its 40,000 when 115,000 are required. He complains that we give the smaller counties each an Assemblyman, disregarding the fact that this always has been done, that nobody has ever objected to it before, and never will object to giving it to the smaller counties. And this giving to smaller counties each an Assemblyman is the reason why this apportionment may be fully, fair and right and honest in every respect, and why it incidentally may be Republican, because of these smaller counties, twenty-one in number, who fall below the ratio, fifteen of them are Republican and six only Democratic. And in that way the State may go Democratic at times, as it occasionally has in years gone by — not much oftener, certainly not in presidential years, then it has gone Republican — but it may go Democratic 50,000, and a fair scheme of apportionment may make the Legislature Republican because of this fact. We start with the advantage that fifteen of the twenty-one counties are Republican. How is it that the State of Connecticut goes at times Democratic on the State ticket and the Legislature is nearly always Republican? It is because by their system of representation they allow representation for each of the towns of the State, and in that way, more towns being Republican than Democratic, the Legislature becomes Republican when the State may be Democratic. But I was curious when I heard Delegate Speer, with his scathing invective, arraigning us of the majority for this scheme of apportionment, and his praise, by contrast, of the apportionment of 1892, to look him up and see who and what he represented. I heard him say that among his constituents were the three Republican delegates-at-large, Messrs. Choate, Root and Lauterbach. He seemed to be especially proud of that fact. I looked over the returns to see how he came here, what vote was at his back, who and what he represented, particularly as he was elected under this

apportionment of 1892; and I was surprised to find this condition of things. In his district there were cast, altogether, 14,624 votes, Republican, Democratic and scattering; and sixty miles away, up the river, where I hail from, in the Sixteenth Senatorial District, we cast 40,141 votes; and the scheme of apportionment that he praises so highly was that scheme that permitted him to come here with a total vote in his district, the senatorial district, of 14,624. I, myself, received at this election 21,623, 7,000 more than the entire vote of Mr. Speer's district. And in the Twenty-third District, Lewis, Oneida and Otsego, the total vote was 42,211, as against the vote of 14,624 in the Twelfth District. And in the Eleventh District, New York city, the total vote, Republican and Democratic, was only 23,095, and in the Fourteenth District the total vote was only 26,558, against the 40,000 and 42,000 of country districts; and the country districts on an average cast 35,000 votes to send the delegates to this Constitutional Convention. Is it not proved by that very demonstration that the census of 1890 was an unfair and a padded one, taken for a purpose? What stronger or better demonstration could be given of it than the facts that I have now brought to your attention? Because you know, everybody knows, that the voters in New York city are compact; it is easy for them to vote; their polls are near by; they are brought out, and they go out. It is said they vote early and often, but they certainly vote at least once on election day; so we may clearly assume that the 14,000 votes cast in the Twelfth District represent the voting strength of that district more nearly than the 40,000 or 42,000 votes cast in the country districts represent the voting strength of their respective districts. Now, we are all proud of the city of New York, everybody here. We are always glad of an excuse to go there; but we are not so proud of New York that we want any such system of census taking as that. We want the city by the sea to keep, in population, in advance of the city by the lake (Chicago); but, New Yorkers, the next time you take a census and want to keep ahead of Chicago, annex Yonkers, annex Brooklyn, spread out your territory, and get your population in that way, instead of padding your census to make a showing. It is the better, more honorable way in every respect. But we are told, notably by the gentleman from Ulster, who was the originator, if not the originator, the putter-through of the apportionment of 1892, that the people in the rural districts do not know a great deal; that they do not get the newspapers. It is said that it is a dirty bird that fouls its own nest, and as the gentleman comes from the rural districts, I am surprised that he should make any such expression, because he knows to the contrary. He

knows that the rural people are a reading, a thinking, a reflecting, an intelligent people, who are the peers of any others in the State; and you make a mistake, gentlemen of the city of New York, when you consider all of the people from the rural districts as "hayseeds." You were never more mistaken in your lives. I know it is popular for you to so designate them; but there are some things they know that some of you do not know. They know which cow gives the buttermilk, and that is more than a good many of the people from the city know. (Laughter.) But when I heard Mr. Bowers talking about not wanting to be governed by St. Lawrence and Chautauqua counties, I went to my hotel last night and turned to my picture book, because I suspected, from the smartness and brightness of these city members, that many of them came from the country. I looked to see which of them did come from the country, and I was surprised to find that thirteen of the Tammany delegation on this floor were born and bred in the country. As to one or two, whose pictures do not appear in the book, and whose notices are not published, I do not know where they were born, among them, my friend, Mr. Green (A. H.), who sits in front of me. I imagine from his general makeup, his sterling integrity, and his general intellectuality, that he too must have come from the country with the rest. (Laughter.) But let me tell you who these gentlemen are, because I know they will be proud to have the fact brought to your special attention in the way that I am doing. Mr. Wright Holcomb come from Essex county; Mr. De Lancey Nicoll comes from Shelter Island; Mr. John M. Bowers, from Otsego county; Mr. John Bigelow, from Malden-on-the-Hudson. Hon. Elliot Sanford comes from Raynfield, Massachusetts; and Morris Tekulsky came down from Syracuse to New York city. Judge Truax, as might well be imagined, comes from the country, Oneida county. Robert E. Deyo we sent down from Orange county; Mr. Platzek was not born and bred in New York city even. He comes from the rural districts of North Carolina. Mr. Francis Forbes comes from somewhere up in New York State. He does not tell us in his sketch just where, but evidently some place in the State outside of New York city. And Mr. Nelson Smith, who attracts our attention always, who stands for natural rights pure and simple, he comes from Crosby's county, Delaware. And then, imagine my surprise, when I found that the editor of The Argus, Mr. Speer, came from a hamlet called Huntington, in the State of Pennsylvania. And then last, but not least, in this list of thirteen, is Chauncey S. Truax, who also comes from Oneida county. And I am glad that these gentlemen get the recog-

nition they so richly deserve by being sent to represent that great city in this Convention.

But Delegate Bowers denounces us because we did not make an apportionment that would be Democratic or doubtful. We are not here to make a Democratic or a Republican apportionment, but to make a fair and honest one; and if, being fair and honest, it is incidentally Republican, so much the better for the people of this State. He affects to believe that it would be calamitous for the city of New York to live under the rule of St. Lawrence and Cattaraugus. Much better so, that the honest yeomanry of the country should control than that the country should be under the rule of the Pat Divvers and "Sojer" Flynns of New York city. It is time that this ridicule of a man, because he lives in the country, stopped. Mr. Bowers opposes the increase in the number of Senators and members. If I remember rightly, he was an active influential member of the Judiciary Committee, and favored in the committee and on this floor, the increase in New York city and in Brooklyn, of three Supreme Court judges in each district. Where is the consistency in asking for an increase of judges in these two cities, when he opposes any increase in the Legislature, when the number at present is the same as it was when the population of the State was one-fifth of what it now is? If it is right to increase the judges in these localities, and it is right, then it is right to make a moderate increase in the number of Senators and Assemblymen, not in proportion to the increase in population, but a reasonable increase, such as we have suggested, from thirty-two to fifty, and from 128 to 150. There is another feature of this apportionment scheme as proposed that I want to call your attention to, that Mr. Bowers incidentally referred to, because he attacked that feature in it. We have proposed that the census to be taken in 1895 be passed, that it be omitted, and in that way save that much money to the people of the State, because the census of 1892 was so recently taken; but he insists that thousands and hundreds of thousands should be spent by taking a census next year; and presently he and his like will be going to the people and claiming that we have increased the expenses by increasing the number of Senators and Assemblymen, forgetting that he himself, on this floor last night, proposed an amendment of forty Senators and 160 Assemblymen, making the expense exactly the same as it is under our proposal of fifty and 150; and forgetting, too, or ignoring, the additional fact that he is here insisting that we go to this large expense for this unnecessary census in 1895. We will see to it that the whole truth is told on the part of the committee, and if they go to the people on the question

of the increased expense of the additional number of Senators and Assemblymen, we will see that the people hear the other side. But this whole thing is like the cry of "stop thief." It is said to be a trick of the thief who is being pursued, to fall in with the pursuit, and cry, "stop thief," louder than anybody else, and in that way try to escape detection; and if we have done all they claim we have done, which I absolutely deny, it is a case of the pot calling the kettle black. The effort of the Democracy is to raise a cloud of dust in the hope of obscuring and hiding their own acts, and blinding and deceiving the people. Democrats, as individuals, are good citizens, but as a party they are not fit to govern. They originate nothing; they are a party not of construction, but of destruction. They are strong in objecting; and I take it if we had brought in any other apportionment scheme, no matter what it was, that there would have been the same objections that they make to this. I am reminded of a man in our own city who is a constant and a chronic kicker, always finding fault with the way in which primaries are conducted and delegates elected to the several conventions; and one who knew him very well, said of him, that if he were permitted to make up the ticket himself for the primary, and he should start from his house with it already prepared, that he would scratch and change it before he got to the polls. So I think that our Democratic friends, no matter what we presented, would have been found objecting, because that is their stronghold. Their mission is to pull down and destroy. When labor was fully employed and well paid, happy and contented, they agitated the tariff question, and instead of improving matters, they stopped the wheels of industry, reduced wages, and turned busy workers into idle men. They have done mischief enough without further adding to it by destroying this fair, reasonable and honest apportionment. (Applause.)

Mr. Vedder — Mr. Chairman, I offer the following amendment.

The Secretary read the amendment offered by Mr. Vedder in the language following:

"Sec. 4. The Senate districts shall remain as at present constituted, except that after the return of every federal enumeration and census, the Legislature, at the first annual session thereafter, shall add to the representation of any district, a number of Senators such as shall give to such district one Senator for every ratio, which shall be the quotient of the citizen population divided by fifty, and shall alter the division of the districts within the districts hereby established so that each such district shall be as compact in form

as practicable, and shall contain as nearly as may be an equal number of inhabitants, excluding aliens, but each such district shall at all times consist of contiguous territory and shall not contain a greater excess in population over an adjoining district than the population of a town or block adjoining such district.

"Sec. 5. The Members of Assembly shall be apportioned among the several counties of the State by the Legislature as nearly as may be according to the number of their respective inhabitants, excluding aliens, and shall be chosen by single districts. Every county now established and separately organized, or which shall be hereafter organized, shall always be entitled to one Member of Assembly, but no new county shall be hereafter created unless its population shall entitle it to a member.

"The Assembly districts shall remain as at present organized, until after the next federal census and enumeration of the inhabitants of the State.

"The Legislature, at its first session after the return of every such census and enumeration, shall apportion the Members of Assembly among the several counties of the State as follows, to wit — when it shall appear by any enumeration that any county is entitled to a larger number of members than the number now assigned to it, the Legislature shall assign to such county such additional members that its entire representation in the Assembly shall be at the rate of one for every ratio, which shall be the quotient by dividing the citizen population by 150.

"The board of supervisors in such counties as may be entitled under such apportionment to more than one member, except in cities and counties having no board of supervisors, in which cities the common council shall act, shall assemble at such time as the Legislature making the apportionment may prescribe, and divide the county into Assembly districts, each of which districts shall consist of convenient and contiguous territory, equal to the number of Members of Assembly to which such counties shall be entitled, and shall cause to be filed in the office of the Secretary of State and the clerks of their respective counties a description of such districts, specifying the number of each district and the population thereof, according to the last preceding enumeration, as near as can be ascertained, and the apportionment and districts shall remain unaltered until another enumeration and apportionment shall be made, as herein provided. No town shall be divided in the formation of Assembly districts. Nothing in this section shall prevent the division at any time of counties and towns and the erection of new towns and counties by the Legislature."

Mr. Dean — Mr. Chairman, I am a Republican. Because I am a Republican I am opposed to this proposition. I believe that if we concede the necessity of increasing the number of Senators to fifty and the number of Members of Assembly to 150, that this is a fair apportionment. I believe that the gentlemen who have had it under charge have done the very best upon this assumption, that it was necessary to increase the number. I do not agree with the proposition that it is necessary to increase the number of the members of the Legislature of this State. This is the one issue on which the Democratic party of the State of New York can be brought together. Ever since the year 1885 David B. Hill has paraded it, in season and out of season, that the Republican party was unjustly depriving the Democratic party of its just proportion of representation in the State of New York. That issue has been paraded all over this State for the past nine years. Every Democrat in the State believes, conscientiously, that we are trying to deprive that party of something which is its natural right. It does not make any difference what our opinion may be as to the fairness of this proposed apportionment. Conceding that it is fair, and I believe that it is, it still is open to serious objections; it can be paraded by the demagogue on the stump and in the newspapers of this State as an unfair apportionment. Incidents can be cited in which it deals unjustly with numbers; and take it in any light that you please, it is a dangerous thing for the Republican party in this State at this time to undertake. If I were a Democrat, as I am a Republican, I would be very glad to see the majority in this body force this issue on. It would force the Republican party to a defensive campaign, and with the probability of an old man upon the Republican ticket, and the prejudices of the people excited against the man who is prominently influential in the next Republican State Convention, I want to say to you that the Republican party cannot hope to win with this apportionment. It is not a possibility. Gentlemen have expressed themselves upon this floor, in private conversation, announcing that this was a party measure. I want to know by what process of reasoning this has become a party measure. We have been in caucus repeatedly; no man has dared to propose that it be a party measure. The nearest approach to it was the suggestion that we stand by the measure during the first day without proposing amendments. That was done conscientiously by every Republican in this body, and up to the time that Mr. Vedder introduced his amendment, nothing of the kind has come from any Republican. Beyond that, it cannot with fairness and justice to the Republican party be asked that any one should go. We have no right,

Mr. Chairman, in making a Constitution, to assume that the city of New York and the other great cities of this State will be eternally Democratic. There is no possible justification for such a possible assumption. The mere fact that the Democratic party happens to be in the majority in the cities to-day, is no evidence that it will be ten years from now. We have no right to make an apportionment upon any such assumption. Of what party advantage is this? It involves no principle. Concededly it is a mere matter of expediency. The number has been increased, not because there was any demand for it from the people, but because it gave us better representation; purely and simply that the Republican party might have a majority in the Legislature of this State. We might just as well be honest about this. We cannot fool the people. There is not a particle of use to try. It is simply a matter of expediency, and Republican expediency at that. Now, the Democratic party in 1892, undertook to perpetuate itself in power by means of a new apportionment. That apportionment was not fair, and was not honest. What has been the result to the Democratic party? It has lost entire control of the State of New York, not only for the present, but in all probability, if we do not commit this monumental error, for the next ten years. I believe it sincerely. I believe in the integrity, the sense of fairness and justice, of the people of this State. I believe that there are men who believe substantially in the doctrines of the Democratic party who are yet too honorable, too manly and too just to give countenance to any unfair gerrymander of the State of New York. That belief is evidenced by the conduct of the people in the past year, and in the prospects of it in the future. I believe in the largest possible individual responsibility in the representative. It has been stated that this apportionment is necessary for the purpose of restoring the political equilibrium among the smaller counties of the State. Under this proposed amendment, the county of Chautauqua, which I happen to represent in part, would be given an additional Member of Assembly. For my own part, I do not want any such thing. I prefer a strong man, a single representative, of the county of Chautauqua in a Legislature of 128 members, to two namby-pamby, sloppy results of political compromise in a Legislature of 150. (Applause.) The great essential of representative government is a territory well established, with a community of interests, political, social, economic and business. It is useless to contend that a community is not represented simply because it has more people than another county. I undertake to say that a representative who really represents the county of Chautauqua has more influence, more character, more force, in a legislative body of 128

members, than any man from the county of Fulton, or Herkimer, or any of the inferior counties of this State. He carries with him into the legislative body the force, integrity and character of his own district. The mere question of numbers, when the other conditions of representation are fixed and well established, are of the most incidental importance. It has been contended, also, that this is necessary to establish the equilibrium between the great cities of the State and the rural districts. Every writer on economic law holds that the urban and suburban communities must substantially balance. At the present time sixty-one per cent of the population of the State of New York is in the cities. This is an unnatural condition, and the law of reaction has set in toward the smaller communities of the State. The little city of Jamestown, with a population of 20,000 to 25,000, has increased at the rate of seventy per cent for the last two decades. That is an average of seven per cent each year for the last twenty years. That is more than double the increase in the cities either of New York or Brooklyn, if I remember correctly. The tendency of manufacturing institutions is toward the rural districts, with smaller taxes and equally good facilities for shipping. It comes down then, if that is true, to the question of the election of Senators and Members of Congress, and I am not willing at this time to presume that the intelligence of this State, the patriotism and the Republicanism of this State, if it is given a fair opportunity to work out its ultimate destiny, cannot reclaim the Senators of this State, under our present apportionment, or under a fair apportionment which shall be made under the enumeration which will be taken under the Constitution in the year 1895, if we do not interfere to change the natural tendency of events.

There is a feature in this proposed amendment which to my mind is absolutely fatal to it, and that is the provision that controversies over the apportionment of this State shall be turned over to the courts for adjudication. If there is anything in this State which is essential to its standing and character; if there is anything that is necessary for the preservation of human rights and human liberties, it is the absolute integrity of our courts, it is the confidence which the people have in them. If we undertake to introduce into the courts of this State the high-pressure partisan questions which must come when questions of enumeration and apportionment are brought into the courts, we are laying the foundation for distrust on the part of the people, and, in my judgment, we are doing a very serious injury to posterity. Mr. Vedder early in the opening of this Convention, a gentleman for whom I have but little personal regard, I may say — I simply make that

explanation to show that I am not prejudiced in his favor in the matter — introduced into this Convention a proposition looking to the apportionment of this State on a scientific basis; on a basis which should strengthen the Republican party without doing injustice or wrong to any community in the State. It proposed simply to establish arbitrarily the senatorial districts of the State; that when any one of those should go up to the ratio demanding a second Senator, it should be given to it. That would allow the city of New York to increase its representation without taking it away from the rural districts. In my judgment that was the proper solution of this question. Mr. Vedder has already re-introduced that as a substitute to this proposed amendment.

I want to call the attention at this time of the rural Republicans to certain conditions which exist under this proposed amendment. I shall refer specifically to my own district, because I am more familiar with it than with others. The counties of Chautauqua, Cattaraugus and Allegany to-day make up the Thirty-fourth Congressional District. Under this proposed amendment, Cattaraugus and Chautauqua are to constitute the Fiftieth Senatorial District. This leaves Allegany county a member of the Thirty-fourth Congressional District, but it is not a member of the Fiftieth Senatorial District, and Allegany county, not being identified with the political interests of that community, will be eternally shut out from any participation in the congressional affairs of that district. Then the county of Allegany is turned over to a district consisting of Wyoming and Livingston county, and Allegany, Wyoming and Livingston counties are at present members of the Thirtieth Congressional District, and Allegany county is cut off again on that side by having two counties which are part of the Thirtieth Congressional District. It will shut them up in a corner between Cattaraugus and Wyoming. They are politically as dead as though they were sleeping in the tombs of the catacombs. Erie county at present makes up the Thirty-second and Thirty-third Congressional Districts. Under this proposed amendment it is to become the Forty-seventh, Forty-eighth and Forty-ninth Senatorial Districts, leaving one district in the middle which will be crushed out completely in so far as congressional affairs are concerned. No man in the middle district will ever have anything to say about their congressional politics.

I have little more to say. This is purely a matter of expediency and of politics. I ask the rural delegates of this Convention to look over the maps which they will find in their picture books, showing the congressional districts, to compare them with the districts as they are now made up by these gentlemen, who, high-

minded, patriotic in their endeavors, are yet eminently impractical in the domain of practical politics. I ask them to look over these districts and find out how many counties are absolutely disfranchised in the matter of congressional representation. I want them to look over and see what prospect, in their several counties, any of them will ever have of becoming representatives in their districts. I call attention particularly to the district to be made up of Steuben and Yates counties. I want to ask the gentlemen from Yates county if they are ever going to have in the politics of the district, made up in that way, any influence? This, Mr. Chairman, in conclusion, is the one issue on which the Democratic party can carry this State. Every intelligent, practical man in this Convention, if he stops to think of it for a moment, cannot fail to realize that it is the one issue on which every Democrat can be brought into the fold. When the Democratic party is united in the State of New York it is good for at least 20,000 to 50,000 majority, and if we are defeated on this proposed amendment; if we go to the people and are repudiated upon an apportionment made by the Republicans in this Convention, we are as hopelessly dead to a political future as a Digger Indian is to the heaven of the orthodox Indian. I want to call the attention here, at this time, of the gentlemen who are intoxicated by the power which they have in this Convention, by the fact that they outnumber the Democrats here two to one; gentlemen who have grown into impracticability because of the power which they have in favor of this Convention, to the fable of Aesop. It can be found at page 32 of Aesop's Fables, to be had in the State Library: "A dog, crossing a little rivulet with a piece of flesh in his mouth, saw his shadow represented in the clear mirror of the limpid stream, and, believing it to be another dog, who was carrying another piece of flesh, he could not forbear catching at it, but was so far from getting anything by his greedy design, that he dropped the piece he had in his mouth, which immediately sunk to the bottom, and was irrecoverably lost." (Laughter.) If we undertake at this time, simply because we have the power in this Convention, to perpetrate this outrage upon the intelligence of the people of the State of New York; if we undertake to increase, without possible justification, the number of Senators and representatives, increasing the expense to the State in a material degree, we shall have irreparably lost that which we have. We shall not be able to take advantage of the fact that we will probably have the next Legislature, because we won't have it. We won't be in a position to make the enumeration of this State, and an apportionment, in the future, to which we are entirely entitled under the Constitution as it is, and in my judg-

ment it is a very serious mistake for the party to undertake to commit this outrage.

Mr. Maybee — Mr. Chairman, when this Convention assembled last May, a representative assembly of delegates of the imperial commonwealth of the western world, great things were expected as the result of its action. The eyes, not only of this State, but of all the sister States in the great family of States, were turned this way. It was expected that this Convention would range itself in line with the new thought of the new time. It was expected that this Convention would put itself abreast of the broadening and advancing reforms that mark the approaching dawn of the twentieth century. It was confidently hoped and expected that this Convention would give to the State of New York great reforms in the administration of its great cities; great reforms looking to the extension of the right of suffrage, great reforms in the financial administration of State affairs, reforms in taxation, reforms in many of the departments of the State and municipal governments. This was the hope and expectation of all the people of the State. Those expectations, Mr. Chairman, have not been realized. Those hopes have been doomed to disappointment. The work of this Convention is substantially a failure. The people of the State appreciate the fact that it is a failure. Can there be any doubt about it? Look at the attitude of the public press, the great exponent of public sentiment. In all quarters, by the great newspapers of the State, the work of this Convention is already condemned, and in the few instances where it is not condemned, it is damned with faint praise. The Convention has failed to give to the people of the State the great results that were expected from its action. It has failed to give the reforms in municipal administration, in the system of State finance and taxation, in the extension of the suffrage, and in the various directions in which reforms were expected from its action. The disappointment of the people will be expressed at the polls in November, when it will be shown that the work of this Convention is regarded by the people in the light in which the attitude of the public press gives strong evidence that it is regarded. How can it be hoped that the work of this Convention will be ratified at the polls? And it is proposed to crown the failure of this Convention to give the people of the State what they expected of it, what they hoped from it, by a partisan scheme of apportionment. Now, a partisan apportionment by the Legislature is bad enough; a partisan apportionment by an ephemeral and temporary body, elected every one or two years, is bad enough in all conscience; a partisan apportionment, a gerrymander of the senatorial and Assembly districts of

the State, by a Constitutional Convention, supposed to be elevated in its character, non-partisan, is much worse than a partisan apportionment could possibly be by any Legislature. Now, discussion of the evils, of the inequalities, of the defects of the apportionment of 1892 is entirely irrelevant to this debate. Two wrongs never make one right. I admit that the apportionment of 1892 contained inequalities; I admit that there were in it many elements of injustice. The Democratic party has paid the penalty for whatever defects and inequalities existed in that apportionment. But, because the Democratic party in that apportionment was not fair, was not entirely honest, did not do its entire duty to the people of the State, represented by an ephemeral and shifting Legislature, is that any reason why this Constitutional Convention, composed of the best representatives of the people, doing the work of the State for the next twenty or twenty-five years, should surpass the Legislature of 1892 in the partisan character of its apportionment? Unless there is to be a saturnalia of corruption, in which the two great parties shall strive as to which shall achieve a bad pre-eminence, then the defective character of the apportionment of 1892 is no argument in favor of a partisan apportionment now.

I shall not enter into the details of this measure. They have already been sufficiently discussed. This measure upon its face bears evidence of the inequality of the apportionment sought to be made. When the county of Albany, with 156,000 people, only has one Senator, and districts in the western and interior part of the State, with very little more than half the number of people, have one Senator, the inequality of the apportionment is apparent upon its face. Then, too, it severs ties political, business and social, that have existed between the counties of the State for years. It disrupts these ties all over the State for the purpose of making Republican districts. In my own county it associates us with counties that we have never before been associated with in the political history of the State; counties to which we are as foreign, so far as all political, all social, all business relations are concerned, as we are to the Kingdom of Dahomey; and that for the purpose of making a Republican senatorial district that will roll up a majority of 2,000 at an election. Our natural affiliations are with Orange or with Ulster county, and with one of those two counties we ought to have been associated in a senatorial district. But, instead of that, in order to make a sure Republican district, in order to put Sullivan county into a district that will be for all time Republican without exception, it is put in with Delaware and Chenango counties, to which it is entirely foreign, with which it has no affiliations, and

with which it has no connection, business, social or otherwise. But the details of this measure are, to my mind, the minor evil connected with it. The basic idea of the whole scheme, the foundation upon which the whole scheme rests, is the great defect in this measure. It increases the number of Members of Assembly from 128 to 150; it increases the number of Senators from thirty-two to fifty, an increase of forty members of the Legislature, without any reason whatever. Will any gentleman tell me what good reason exists for this large increase in the membership of the Legislature? Has there been anywhere a demand for it? Have the people, by petitions, through the columns of the newspapers, anywhere, made a demand for this increase? What good purpose does it subserve? The purpose of it is political and political only. There is no reason why an Assembly of 150 members will do the business of the State any better, any more satisfactorily, than an Assembly of 128 members. There is no reason why a Senate of fifty members will do the business of the State with any greater satisfaction to the people of the State than a Senate of thirty-two members. It is a recognized principle in political history, which has become axiomatic, that the larger the constituency within a reasonable limit, the better representative will you get. This is not denied by any students of political history. This measure intends to narrow the constituencies, not to broaden them; intends to make them smaller, and not larger; and for a political purpose, and a political purpose only, contravenes the well-known theory of political history and political economy that a large constituency is more apt to return a good member than a small one. Now, the Congress of the United States consists of about 350 members. Those members represent between sixty and seventy millions of people, and yet gentlemen upon the other side of the House say that 128 Members of Assembly are not enough in number to fitly and adequately represent about six millions of people. There is no reason in common sense, there is no reason in expediency, so far as the interests of the people of the State are concerned, that justifies this increase of members of the Legislature. It makes forty additional salaries to pay, an additional expense of $60,000 at every session of the Legislature to come out of the pockets of the taxpayers, in addition to the contingent expenses resulting from the increase, and no reason for it; no reason for it existing in the needs of the State, no reason for it in the needs of any portion of the State, or of any class of people of the State, except the political necessity, that necessitates this increase in order to subserve the purposes of the Republican party. When you go to the people in November with a large increase in the number of judges, which you

have made in the judiciary article, and the attendant salaries to be paid, and then couple it with this increase, without any adequate reason for it that you can explain to the common people, what do you suppose the answer will be? Do you suppose the taxpayers of this State desire to pay a large additional number of Senators and Members of Assembly, when they know that they can do no better work, no more adequately represent the needs of the State or the interests of the State than the present number? This is the principal defect in this scheme. Mere matters of detail are of minor importance. The increase in the number of the Legislature is not needed; it is not wise; there is no portion of the State that demands it. There is no senatorial district of the State that claims that it is not sufficiently represented; there is no senatorial district in the State that has even made an intimation through any channel or by any means or method of expression, that it ought to be changed. There is absolutely no reason for this increase in the number of members of the Legislature. But, of course, it is useless to protest against it. Before this tribunal we plead in vain. Argument is useless, protest is useless, expostulation is useless, remonstrance is useless. The scheme has been agreed upon; it has been consummated; it will go through. Nothing that the minority can say upon this floor will stand in the way of the execution of this unwise and nefarious scheme. But, in my judgment, the people will speak upon it in November; and when, upon election day in November, you face the fires of defeat because you have put this into your proposed Constitution; when, by an avalanche of public indignation, the entire work of this Convention is overwhelmed at the polls, because you have put this into the Constitution, because you have made this unnecessary increase, this uncalled for increase, when the people rebuke your entire work here and say you have been unfaithful public servants, that will be a remonstrance, that will be an argument, that will be an expostulation that you will fully and completely understand.

Mr. Mantanye — Mr. Chairman, I offer an amendment.

The Secretary read the amendment offered by Mr. Mantanye, in the language following:

At the end of line 4, section 2, and page 1, add the following words: "The Legislature elected as provided in this Constitution, shall meet at the Capitol, in the city of Albany, on the first Tuesday after the first Monday in January, 1896, and biennially thereafter, and at such other times as the Governor for good cause may call an extraordinary session, but the call for such extraordinary session shall

specify the matters to be considered, and the business of the session shall be limited to the matters so specified."

Mr. Woodward — Mr. Chairman, I wish to say a few words upon this question. I am somewhat interested. It is an old and trite maxim, "Plain sense but rarely leads astray." Plain sense is common sense. And what is common sense? I would define it as "That faculty that enables a man to see things as they are and prompts to act accordingly." Let us, then, apply a little common sense to this discussion. What is the real objection to this apportionment? Can any one tell from the arguments brought forward against it? The strongest argument against it is that it does a vast amount of injustice to the city of New York and to the Democratic party. And we are told that certain Democrats, its opponents, have got up an apportionment that is the pink of perfection. And they propose to bring it forward at the close of this debate. If it is such a true and perfect work, why, in the name of all that is good and virtuous in Tammany Hall and its minions, have they kept it so long concealed? Why did they not, through their representatives, present it to the Committee on Apportionment? They were represented by several members on this committee, and, if they had not been, they could easily have got it before that committee. Is it like the Grecian horse that was let into the walls of Troy? Does it carry within its bosom treason, strategy and spoils? If so, I do not wonder they keep it concealed, and I bid the members of this Convention beware of it.

The great complaint made of the apportionment is that the Democrats cannot elect, as heretofore, a majority of the Senate and Members of Assembly; that is the colored man that is in the woodpile (laughter); that the Republicans will get the start of Tammany, and that that would be a dire calamity. Surely, Tammany is a great institution, and should be preserved in power. In debates heretofore on cities, we were told that New York city was the best governed city in the world, and one gentleman upon this floor asserted, in proof of this, that he was out late one night, till eleven or twelve o'clock, and walked home in safety. (Laughter and applause.) But he did not tell us how many out late at night were knocked down and robbed in that well-governed city. His eulogy of Tammany was such that I was inclined to advise the members of this Convention living in cities to start a Tammany Hall in each of their respective cities, that they might become as well governed as the city of New York. The only difficulty I thought I should meet with was to make them believe, since the investigations of the Lexow committee, that New York was so well governed. And yet

we are told by the eloquent Mr. Bowers that the enumeration taken of a part of New York city by the United States census takers was shown to be sadly deficient and erroneous by a census taken thereafter by the police of New York. Was it taken by the same police that have been investigated by the Lexow committee? If so, it must have been a very honest and correct census, and the only wonder is that the United States authorities did not correct their census by it. They probably would had the Lexow investigation been had before the police took it.

The ancients cried, "Great is Diana of the Ephesians!" and this Convention might well exclaim, "Great is Tammany of the city of New York!" Surely Tammany ought to rule, not only the city of New York, but also the State and nation. If some of her followers could make the apportionment, I am quite sure she would rule this State, and perhaps might rule the nation. Some of her sons no doubt are anxious to have her do this.

The apportionment of 1892 has been frequently alluded to, and we are told if that was unjust it does not sanction injustice in this. That is true, and I agree to it. Injustice at one time does not sanction wrong and injustice at another. But we are told this apportionment does great injustice to New York. She is only to have twelve Senators, and the population of each senatorial district is immensely large. Let us examine this and see if it is not very much like what Paddy said when he sheared the pig, "Great cry and little wool." How much territory do these twelve Senators that are to be chosen represent? About 30,000 acres. Why, the town of Batavia has 34,560 acres of territory, and it is only one of thirteen towns of Genesee county. Plenty of room for expansion in our town and county. And we are not decreasing in population, yet our whole county is not one-third of the territory that forms senatorial district No. 45. Plenty of room for expansion in Orleans county, and in the still larger county of Niagara. Batavia has nearly doubled its population within the last five years, and we expect soon to become a populous city. So of Albion, Medina, Lockport and Niagara Falls. Plenty of room for expansion, whereas there is little or none in New York city. Shall a little garden patch like New York govern a great State? (Great laughter.) This city is allowed twelve Senators. How many do Tammany and its advocates ask?

But complaint is made because so large a population is allotted to each senatorial district in New York. This is declared to be an awful injustice, and it is charged that the committee have done this because New York is Democratic and that the committee com-

mitted the "unpardonable sin" when they did it. And one eloquent gentleman from there says he has not fallen into any false pretenses; but the old saying is that denying before you are accused is a sure sign of guilt. Whether it is applicable to his case or not I shall not attempt to say.

I live in the senatorial district No. 45, which embraces Genesee, Orleans and Niagara counties. The population of this district is 120,227. This is a Republican district, and myself and my associates from those counties are satisfied with this apportionment. Compare this population with the senatorial districts of New York city. There are but two that have a larger population. No. 14 exceeds it by twenty-one, and No. 12 by a little over 2,000. All the rest have a less population. No. 13, 2,716 less; No. 19, 1,750 less; No. 20, 2,928 less; No. 16, 1,759 less; No. 18, 1,423 less; No. 10, 1,479 less. Or compare Cattaraugus county and No. 12, the district having the largest population is 10,756 less. No. 13 of New York has 16,127 less than district No. 50. No. 32 has a population of 17,704; No. 38, 18,917. And all this is stated to show that the committee was a terrible committee and meant to perpetuate the Republican party as against any proper distribution to the Democratic party. It seems to me there is a colored man in the woodpile, but you can't see him, you may strike at him.

Now, with reference to the increase of representatives. I would like to know how New York could be represented if we continued the number that we had had heretofore, and still the rural portion of the State be properly represented. They could not be, and especially when you come to the Assembly, it was necessary that the representation should be increased in order that the city of New York and Brooklyn and the large cities might get a proper representation. And why is all this quarrel, and all this fight, and all these words with reference to this apportionment? Why is so much said about it? I might compare my own district with Brooklyn. If I should compare it with Brooklyn, it stands in about the same predicament. In Brooklyn one district, No. 3, has 116,612. That is three or four thousand less than what we have in Genesee, Orleans and Niagara. No. 6 has 116,671; No. 8 has but 114,119; No. 9 has 117,350.

Now, you can see there is no injustice done to New York or Brooklyn that is not done to the counties where we have Republican majorities. I have listened to some speeches and I have found sometimes some speeches against this apportionment, in which it was a little difficult to understand what the point was. One man who made a speech here, not Mr. Bowers, had some point in his speech, but after he got through, I could not discover it. He arose

and spoke; and it reminded me of a passage in Shakespeare somewhere, "When I open my mouth let no dumb dog bark." He spoke in that kind of way, and when he got through, being unable to see the gist of his argument, I asked one of the intelligent Republican members, "What was the gist of that man's argument?" I noticed he had been listening to it as well as myself, and he could not for the life of him tell, and I could not myself.

Well, that is the kind of argument we have been listening to here. It reminds me of the Dutchman's Yankee trick. The Dutchman said he could perform a Yankee trick better than any other man. He said he did it at one time, and he did it as well as any Yankee. He said he watered his sap and he boiled it down and he sold it for sugar and they never knew the difference. (Laughter.) The situation here reminds me of the Yankee watering his sap and boiling him down, only the trouble is they don't boil him down at all. If they had boiled him down we might perhaps have found the sugar, but, unfortunately for us, they didn't boil him down, and consequently we had to take him as he was. (Applause.)

Mr. Blake — Mr. Chairman, up till within a day or two, sir, it had not been my purpose to participate in this discussion. Within that time I have given such thought and consideration to the subject as opportunity afforded me. The gentlemen who have preceded me have treated this committee to an admirable exposition of the principles involved in this question, and with much of elaboration they have entered into a discussion of the details, all of which was necessary to a correct understanding of the subject. I will, with your permission, depart somewhat from the independent rule that those gentlemen seem to have laid down for their guidance, and before I shall come to a consideration of the salient features of this plan, some of which are very objectionable, I would like to make some general reflections and observations which seem to me not to be inappropriate at this time.

Before entering this body to assume the great responsibility of membership, and to assist in formulating what, if the people shall approve of our work, is to be for an indefinite period the fundamental law of our State, and may be so long as this shall remain a sovereign State, I had indulged the hope that, regardless of all party lines, distinctions and views, the delegates to this Convention would each feel it to be a solemn duty to leave the party man outside the chamber; that at least he would pause sufficiently long at its threshold to divest himself of all party bias and predilection, and so be able to take the oath of office, and take his seat here in this parliament of the people, if I may so call it, not in any sense as a partisan,

but as a citizen of this great Empire State, as an American in the broadest meaning and significance of the term, that thereby the objects of this body might be effected; and I confess, sir, that the majority, in my judgment, was fairly and justly entitled to the honors and the offices here, and I have never held any other view upon that subject, however much other gentlemen, if there be any, may differ from me. But after the organization and the accomplishment of that purpose, I hold that party politics and its claims and its demands would have no weight or influence here to swerve any man from the strict line of exact justice. Such was my hope. In my simple faith, I believed that to be the condition of mind and the disposition with which every man should approach the performance of his duty, the discharge of a trust which I believed to be the most solemn and the most sacred that the people of this State could confide to one of its citizens. I was mistaken, sir. It was simply one of those Utopian dreams that come to all men at times through life, and which lull the fancy with the sweet delusion of hope, but are doomed never to be realized. Such fancies and dreams I imagine are for dreamland. They are not for this work-a-day and bustling world that we poor foolish mortals seem to have devoted and dedicated to the strifes and contentions of men and parties. Selfish were we born, and, I fear, very much selfish will we remain to the end; and as water will rise no higher than its source, so it seems parties, as a rule, are unable to rise higher than the parts, or the units, of which, in the main, they are composed. "True, 'tis pity, and pity 'tis, 'tis true." If there were one spot in all this world sacred to the highest and best thought, one atmosphere pure and free from the noxious and poisonous exhalations that arise from the infections of the heart, from partisan politics, it would seem to be here in this presence. Where else, unless it be in that temple where justice holds the scales on even balance, or in the church, where men, in silence and in prayer, commune with a loving and merciful Father, could you find an atmosphere so free from improper, distracting and disturbing influences as this? Sir, these are solemn days in our lives! I never look around upon this noble assemblage, gathered within the precincts of this chamber, but I somehow feel something of an inspiration stealing over me and rising within me. It is a sublime and inspiring spectacle. I never think of the great responsibility resting upon me but somehow I feel a strong sense of fear and awe pressing upon me. When I think of my trust, my duty and my oath, I am filled with apprehension that I may not rise to the full requirements of the hour; and it has been my prayer that I might be granted the light and the grace to see my duty, and be

vouchsafed the strength and the courage bravely and wisely to do it. It is well, sir, that this Convention is opened with prayer; that men of God come here each morning to implore a blessing upon our work; for prayerful, it seems to me, and with trust in Him, should we approach each day's task, that our work may seem perfect in the sight of God and just men. It is a proud distinction to be here. I do not know that all are fully conscious of that fact. I trust they are. I sincerely trust that every man here is actuated by an ardent desire and resolution to follow conscience as his guide and mentor; and if, through all the darkness and the storm that sometimes are here; if, through all the dangers and the difficulties that beset and surround us at times, he shall follow that beacon light, he shall not go far astray. He will in the main decide wisely and justly, and in the end come to the haven of peace and safety. Is it, sir, possible to remember that we are here neither as Democrats or as Republicans, that we are here as citizens of this great State? Shall we not strive to lift ourselves above the realm of mere party, to throw off the shackles and the trammels of party for a little time, to lift ourselves up, if possible, to that lofty plane where justice holds her eternal sway, and where wrong and injustice are unknown?

It is but a short remove, it is but a short step, but if we shall wisely take it, methinks we shall feel the touch and the impulse of a newer and better inspiration, that we shall see with clearer and cleaner vision, in all its fullness and grandeur, the great and patriotic duty that confronts us all here. I do not then mean to say that we would have the wisdom of a Solon or a Solomon, but at least we would have the wisdom of good citizenship and of patriotism that could not fail to guide our deliberations and direct us to a correct and just verdict on the questions that are presented to us for our judgment.

After all, sir, how pitiful are the strifes and contentions of men and parties to secure a cheap advantage, a little advantage over their political opponents at the expense of conscience. How much better and nobler are right and truth and justice. The man who strikes at these strikes also at the State and her liberties, although he may be unconscious that he deals the blow. This criticism is not intended for the majority here. It is true, sir, of all parties who seek to march to success and fame over the ruins of equity and justice, of equal rights and liberty, that lie at the very foundation of free and popular government.

Sir, we need to be reminded occasionally that we cannot afford to do injustice, neither as men nor as parties. We need to be reminded

that we are only here for a time, a brief time, and that still our hearts like muffled drums are beating funeral marches to the grave. But it is States that represent governments that are constructed upon the eternal principles of truth and justice. Equal rights and liberty will live on forever it may be, live on so long as the love of liberty shall live in the human breast. Darius, Mr. Chairman, we are told by ancient history, when he saw his grand army of four millions of men march past him for the invasion of Greece, the cradle of liberty, which he fondly hoped would crush with one fell blow the liberties of that brave people, prophetically remarked that in a few short years not a man of all that vast host would be alive. The lesson of mortality rushed over him, and he gave way to a flood of tears. How many of the gentlemen in this Convention will have paid the debt of nature, and it is a debt that all men must pay, whether honest or dishonest, it is a debt even the rogue must pay, though he may escape all other debts — how many will have paid it when our successors shall have assembled here perhaps twenty years hence? We know not, Mr. Chairman; but, sir, what a solemn lesson, what an incentive to the faithful and patriotic performance of duty. If the chart, the Constitution, of our State which declares and defines the powers and rights and duties of all the co-ordinate branches of our State government and in all its departments, and our officials and our people, if it be indeed as it is the foundation upon which we have erected this magnificent structure of statehood, whose parts are so nicely balanced, so happily blended together as into one symmetrical whole in perfect beauty and harmony, showing forth the grandest construction of the human mind in government, if that be so we are engaged in a grand work, one that challenges our best aspirations and thoughts.

It was Fletcher, an English writer and poet, who gave utterance to the famous apothegm: "Let me but make the ballads of the nation, and I care not who makes its laws." A beautiful sentiment, full of force and much truth, and what it lacks in truth we may charge to the lively imagination and the license of the poet. But, sir, I prefer to believe that they should make wise and just laws. They who found stable governments and States upon the eternal principles of justice and equal rights and liberty are amongst the foremost benefactors of human kind; they are the creators, the conservators, the saviors of society, without which even the calling and the name of minstrel and poet would never have been known amongst men, or if known, would soon have perished away from their memory. Well, sir, then I think we are all agreed that we are engaged in a grand work here, and one which if we shall wisely

build will endure when marble shall have crumbled away into dust, and when even we ourselves, in the body at least, shall have sunk back into that nothingness whence we sprang, leaving behind us not so much as a trace of the memory of us to tell the story of our existence amongst men.

I know, sir, we all know, that there have been contentions and strifes here, there have been criminations and recriminations, there have been unkind, uncharitable and ungracious utterances engendered in the heat of debate, begotten of party strife and spirit that somehow, in spite of our vigilance, has, like a thief in the night, stolen into our councils to stir up distrust and strife here amongst us, to mar the peace and harmony that should have abided with us to the end of our work. I, too, may be a sinner. I will not point to the mote in my brother's eye; rather would I pluck the beam from my own eye than I might see the mote in his eye. Possibly I, too, may have uttered the ill-advised, the hasty word that, like a poisoned dart, went straight to its mark, leaving the rankling wound behind to beget pain and sorrows and resentments. I know not. We are but human, sir. I know I have made some sweeping assertions; I know I have indulged in severe assertions, also, that perhaps were deserved by some, but undeserved by others, because, sir, I believe there are over there in the ranks of the majority honest, noble, patriotic men, who, whilst they love their party and its principles well, yet they also are disposed to be fair and just.

Since the eighth day of May, when we began our labors here, I have seen ample proof of their liberality of thought, of their freedom of action, of their courage and their loyalty to honest conviction. I know them. I am proud to call them friends. I trust I may be always privileged to call them so. I believe, sir, they have honest hearts, free from the poison of prejudice and bigotry, ready to give friendship for friendships and love for love, having behind no suspicion or distrust, but open, free and frank as the innocent heart and face of a child. I believe, sir, there are some such there. We have seen one instance here this morning — the noble, clear-headed, clean-minded gentleman, Mr. Dean. I believe there are many such amongst the majority there. My belief is based upon association, upon observation and reflection. We do not expect such gentlemen to abandon their party principles; we do not expect them to surrender their convictions; they are theirs, they are sacred. We would not so much as dare to intrude upon that domain to touch them. To attempt to reach them would be like, it seems to me, a desecration of holy things. But, sir, I sincerely trust that, making every allowance for the love of party and the desire to see its policy prevail

here, or anything proposed here by its leadership, making all allowance for human infirmity and its proneness to err, yet I trust there are some noble, patriotic men over there — I know there are — that would not do a wilful and deliberate injustice, no, not even for the sake of party, not even at the high behest of party leadership.

Sir, I would lay it down as a principle or as a truism that a party that attempts to foist upon the people a wrongful and unjust apportionment commits not only a political blunder — and I mean by that a party blunder — but commits a crime, a crime against the State, a crime against free people. I care not what party it be that commits that crime, it is called a crime. If the Democratic party in 1892 gave to the people of this State an unfair and unjust apportionment, that was a crime. I will not stop a moment to discuss the question whether it did or it did not; the exigencies of this discussion do not call for that decision. It is not that, except incidentally, but it is this apportionment that is proposed for our consideration and our decision. We are here, sir, for one purpose — to draw a true and just line of demarcation, and to vary to one side or to the other by so much as a hair's breadth without necessity is a crime, not against the Democratic party, sir, but against the people of this State. Because parties are constantly changing; they are constantly undergoing changes in their complexion and ranks. The Republican of to-day may be the Democrat of to-morrow and *vice versa*. The crime, therefore, if crime it be, is directed, not against the party, but against the whole people of the State, who are the depositories of all political power.

And, sir, there is another danger. It establishes a bad precedent, a precedent, sir, that is sure to beget resentment, beget, when the opportunity comes, retaliation. With the French there is an old saying: "*c'est le premier pas qui coute*," it is the first step that costs, and sometimes, sir, it costs very dearly. Let us not take that step. The youth that fired the Ephesian dome brought down to ruin in a few hours what had required years of patient toil and vast treasure to uplift. It is so much easier to tear down than to build up, easier to destroy than it is to create. We are told that a little child, seeing the water from the ocean gradually trickling through the great dyke of one of Holland's ancient cities, with childish instinct flew to the spot, and inserting her tiny finger in the breach, stopped the flow until the arrival of help, and so the city was saved from inevitable destruction. So shall we stand here, to guard against the slightest breach of law or justice or equal rights. Because if we do not, who can foretell how wide the breach may grow until it will pass beyond human power to close it, and then we, ourselves, in turn, because of

our folly, may perish, may be overwhelmed in the destruction, the ruin that shall follow. But, sir, if we cannot banish from this chamber the fell spirit of party, let our emulation, at least, be like unto that of the two great sons of Athens. Aristides, surnamed the Just, on one occasion said to Themistocles: "Let us be rivals still, but let our strife be who can serve his country best."

Now, sir, the committee have set forth in their report, to which I invite the Committee of the Whole — on page 1 of Document 65 it is found — certain declarations, but as to the truth of which I have seen no evidence adduced here by any gentleman thus far. It is stated upon that page:

"Rules governing all future apportionments which insure, in the opinion of the committee, equality and fairness, and guard against the inequalities and unfairness, which have heretofore obtained."

I have seen no evidence of any inequalities that have heretofore obtained. I have heard no gentleman bring forward any proof in support of that allegation of the committee's report. In the following clause we find this language. I will only read the last two lines, as to which I shall offer any strictures and criticism:

"And remedies of the gross inequalities and injustices of the Apportionment Act of 1892."

I have seen no evidence, sir, of the gross inequalities and injustices here of the Apportionment Act of 1892, and since I have inadvertently returned to that subject, upon which I did not care to dilate, I will say that the Apportionment Act of 1892 was so fair and just, sir, that the Republican party was enabled to elect a goodly majority in each branch of the Legislature, and I think the gentlemen, in their candor, ought to at least make the concession that the Democrats, having both branches of the Legislature, might have done a little better, at least, had they consulted party interests when they run their lines and created the political divisions of the State under that apportionment, and the majority — call it sweeping, if you please — of the Republican party in the State last year does not fully account for this fact, because that majority of itself in the State would not have sufficed to give them a legislative victory if the Apportionment Act of 1892 were not eminently fair and just.

But, sir, it is not my purpose to dwell, as I said before, upon this subject, because I do not believe it to be the issue here. Many gentlemen have discussed, as I have remarked, the details of this plan before us very largely and with very much of elaboration, and I certainly cannot afford to go over the same ground. It would be a tiresome repetition, sir, and a labor of supererogation. But I

desire to invite the attention of the Committee of the Whole to that language of the committee which presented this report, found on page 3 of Document 65, and I desire to read this. It is very interesting reading. It commences with the word "we," about the middle of the page:

"We have under our amendment proposed that New York shall have twelve Senators; Kings, seven Senators; Erie, three Senators, and Monroe, two Senators. These four counties have approximately one-half of all the Senators apportioned, and unless some such rule as that suggested by your committee is provided in the Constitution, it may easily happen that the rest of the State will on the average have a smaller representation in the Senate than those four counties. Inasmuch as every Senator from a county, in a broad sense, represents the entire county, our proposed rule can never work any real injustice. The rule regarding county lines makes inequality as between the counties of the State and the city counties of the State inevitable to a certain degree, and we think that this inequality should not be increased as against the rural counties, and in favor of the counties of the State embracing the great cities which are incorporated entities unified in interest, and with a small area of population."

Now, sir, Talleyrand, I believe it was, said that language was invented for the purpose of enabling men to conceal their thoughts. I suppose that the name of Talleyrand and this aphorism are perfectly familiar to most of the members of the committee, but they have chosen to disregard the rule of that astute and famous statesman, and they do not propose to conceal their thought, but they have expressed their thought with a candor and with a frankness which leaves nothing to be desired and for which we should all indeed be very grateful. The language is without equivocation, the meaning is plain and obvious to the most ordinary and intelligent mind.

It may happen that the rest of the State will on an average have smaller representation in the Senate than these four counties unless this rule is adopted. Well, why, pray, should they not have a smaller representation if they have a smaller population? Why should not the counties referred to, New York, Kings, Erie and Monroe, have a smaller representation than a larger representation, if the representation is based upon population? If they have a larger population than the rest of the State, why does the committee intend to depart from that good old-fashioned rule that representation is to be based upon population? And then, again, your committee proposes to cheat the cities of their

fair and just representation by the sophistical and dishonest plea that each Senator from one of these counties represents in a broad sense — in a broad sense, mark you the word, sir — in a broad sense the county, and, therefore, the rule works no injustice.

Now, what hypocrisy! Why, sir, why not carry the argument to its legitimate and logical sequence, and say that New York should have but one Senator, because, forsooth, in a broad sense he may represent the entire county of New York? And so the rule will not work injustice, that New York be limited in its number to one Senator. And, then, what think you of this?

"And we think that this inequality should not be increased as against the rule of the counties."

How careful of the rule of the counties. Why make these distinctions? Why make any invidious distinctions? The committee is frank enough to admit inequality, but why, pray, should the inequality increase as against the rural counties or of the city counties either? Is not the fault in your plan and your system, and were it not for that there would be no substantial inequality to explain away by sophistical and hypocritical reasoning.

Now, sir, the committee has been frank and honest enough to state the reason for this unjust apportionment. Indeed, no other explanation could be given, because the glaring inconsistency and the injustice were so patent to the whole world that there was no other resource left, there was no other horn of the dilemma which they could seize upon except to make a frank avowal and disclosure of their intention to cheat the cities out of a fair and just apportionment, and I can say to you, sir, and to the gentlemen, that from a political standpoint the Democratic party can ask for no better campaign literature than is contained in Document 65, that contains this report of the committee.

Our friend, Colonel Morton, in his speech last night, was good enough to interest us by quoting the lines of Burns, "The best laid schemes of mice and men gang aft a-gley," and returned to it again and again. It gave him infinite amusement, apparently, and self-satisfaction. Well, there is no plan that I know of before this committee for its present consideration except the plan of this committee. So, when he cites the line, "The best laid schemes of mice and men gang aft a-gley," I say let the plan gang aft, and that is where it should go if it is going anywhere. Most undoubtedly, sir, let it gang awa', and that is where it will go, if not here, it will gang aft before the people. That you can depend upon.

And, also, while I am upon this feature of the case responding to some little digressions that the gentleman was good enough to

amuse us with, I believe he also quoted from the Moor, Othello, "and you these unlucky deeds shall relate, speak of me as I am, nothing extenuate nor aught set down in malice." Why did not the gentleman go a little further? I fail to see the appositeness of the quotation, but why did he not go a step farther and say, "Then shall you speak of a man who loved not wisely but too well." And right here, in answer to the gentleman from Orange (Mr. Dickey), who, I fear, took the liberty of treading upon dangerous ground this morning in referring to representation in Connecticut, I happen to know something about Connecticut myself, and he said that although the Democrats sometimes carry the state of Connecticut, how is it the Republicans carry the Legislature? By town representation, he said. Yes, by town representation. I will tell you how they carry the State of Connecticut, year in and year out, sir. The present apportionment of that State was adopted nearly a hundred years ago, when probably it was approximately fair and honest, and the Democrats of the State of Connecticut have never yet been able to get another apportionment. They have never yet been able to hold a Constitutional Convention, because they never have had the Governor and both branches of the Legislature. Why? Because of the rotten borough system that prevails there. Why, sir, there are numbers of small towns in that State that have from two to three hundred voters each, and they are entitled to two members of the Legislature, whereas the great cities of New Haven, Middletown, Hartford, New Britain and others that I might name have but two representatives, though they are cities of fifty, sixty and seventy-five thousand inhabitants.

What think you of that sort of representation? Is that what the gentlemen here would propose in this great imperial State of ours? Why, it has been the growing evil and crime for the last thirty or forty years to my knowledge. It has even sometimes made the rallying cry of Democracy, "Let us have a Constitution," but because of the rotten borough system, they have never been able to capture both branches of the Legislature. But that is enough for that.

Mr. Chairman, gerrymandering a State has become long since an odious expression to the American people, and the party that resorts to a gerrymander now never fails to receive the just condemnation of the honest and patriotic citizens, and that is more true now in these days of ours when men love honest methods and fair play better than party success. The spirit of independence is abroad in our land, and men read more, men think more than they once did. They are no longer political slaves and chained to the wheels

of the party chariot, and it is well for honest government that it is so, well that this class has become so numerous in recent years that the party that fails or neglects to reckon with that class will after election have plenty of time to repent its folly. I say, sir, that the party that resorts to gerrymandering is already condemned. Well, some one may say here, "why not permit the party to commit this colossal blunder if you are sure to profit by it?" I will tell you, sir. If we, of the minority, were here for no other purpose than to secure some party advantage or gain, our course would be plain and easy. But there is something nobler and better than any consideration of party. If this law should be unhappily approved by this Convention, if by any mischance — but I have no fear of that — it should receive the approval of the people of this State, it will become a law unchanged and unchangeable until 1905 and possibly for twenty years, possibly still longer, indefinitely, and our obligations to the people that are sacred and binding upon us here of the minority summon us to resist this law here and now. If we were to remain silent and enter a mere formal and perfunctory protest against this injustice, why, sir, we should be false to our trust, to the people, we should justly deserve the condemnation of the people whose rights as representatives we have failed to guard and protect. That is why we have arisen here and exposed the injustice of this iniquity. That is why, sir, we stand here to withstand with all our force and power any attempt to imbed in the organic law a rule of apportionment, a rule of representation, the most unjust and the most iniquitous that has obtained any place amongst our laws since the establishment of our State government.

Now, sir, do the majority want, do they really and sincerely desire that any portion of our arduous and protracted labors shall stand and shall live? If they do, a word of admonition. Let them take care how they take this fatal step. Let them see to it that this is not the Jonah that must be cast out of the ship lest all perish. I appreciate the difficulties that confronted the committee, but, sir, if they approach their work with a sincere and earnest purpose to do equal and exact justice these difficulties might easily have been brushed aside and substantial justice have been done.

I confess, Mr. Chairman, that where representation is by counties it is difficult to obtain exact equality. There will be variations. But why is it, pray, that all the variations are favorable to the Republicans and unfavorable to the Democrats? Why? By what remarkable coincidence does this occur? Do you think to satisfy

the conscience and the minds of the people that this occurred by accident and not by design? When you undertook to group counties together that to a moral certainty were Republican and that ninety-nine out of one hundred times will give Republican representatives to the Legislature, did you so group them, let me ask you, that the variation in opposite directions from the ratio would substantially balance each other, that the sum total of the deficiencies would equal the sum total of the excesses? Plainly, no sir; no such attempt was made. In every case almost, in the case of Democratic counties, you have a plus; in the case of Republican counties, in the main, a minus. If there be any exception, it is unimportant and unworthy of consideration. In the counties of Kings, New York, Rensselaer and Albany, plusses; in District No. 3, Otsego and Herkimer, minus 20,000; Jefferson and Lewis, minus 20,000; Cayuga and Seneca, minus 29,000; Chemung, Tompkins and Schuyler, minus 20,000; Ontario and Wayne, minus 22,000; Monroe, minus 50,000; and so on. I won't take the time. And that is not the only obnoxious feature, sir, because in New York and Kings, with one or two unimportant exceptions — in Kings, the senatorial districts are uniformly in excess; there is not a single exception in the county of New York.

And another important fact completely ignored by the committee, Mr. Chairman. They have, in order to prevent New York and Kings from ever, in the immediate future, at least, obtaining a fraction of the rights of which they have been thus robbed, cunningly contrived that it shall require at least one-tenth of the ratio for each senatorial district before the excess must be recognized, and yet ten or eleven years must elapse before we can have another enumeration. And so, Mr. Chairman, the committee seeks to weigh down and thrust to the earth the great metropolis of New York and its twin sister, Brooklyn. They place a burden upon our necks that we can no more shake off than Sinbad could shake off the old man of the sea when he has fastened himself upon him, until the fumes and vapors of the wine and liquor which had benumbed his faculties and senses had shorn him of all power for evil.

Sir, another question, and I will not dwell upon it. They have so carved out the districts in New York as to infallibly give Republican districts where they have not a single one now. I have not verified the fact; I have not examined the lines closely enough, but I am so informed; if so, in clear violation of their own provision that the districts must be as compact and equal in population as near as may be.

Sir, another fact. The rural districts that invariably show, under

the committee's plan, a minus population instead of a plus, will constantly decrease in future. So that the inequality will go on, the evil will grow upon what it feeds. Whereas, in the county of New York, for instance, in all the great cities, the population has been given as a plus quantity in every case. And so, Mr. Chairman, this committee makes the cities start out with a plus population. If the committee were disposed to be fair and just, they should have reversed the rule, and given the rural districts a plus population and the great cities a minus population, to consist and to meet the changing conditions of the immediate future.

Another wrong, sir. I shall not detain you long now. Another wrong, but it will be perhaps a waste of words and time to enumerate all the wrongs that will be inflicted upon the people of this great State if this law shall take on life and being by becoming a part and parcel of the fundamental law of the State. Another wrong, sir. Every man in this Convention knows well that the voting population of the cities is proportionately greater than in the rural districts, and so the measure of representation that the committee has adoped, the ratio that, as they term it, upon which they have erected this entire structure of the apportionment, was inharmonious and unequal and irregular in all its parts. I say the ratio is radically and fundamentally false, a unit of measure contrived to mislead and to further partisan ends and purposes. Does not every man here know that there are not so many electors in 125,000 people in a rural county as there are in the same population in urban counties. Why, sir, the cities are the great centers of male population. From the country, from the farm, the homstead, flock the young men to our cities. They go forth to swell the tide of humanity that sweeps through our streets and thoroughfares. The cities have a charm and an attraction for them, possibly because they are full of animation with their tireless energies and ceaseless activities in every trade and branch of business in commerce. It opens up to these country lads every avenue to fame, to wealth, to honor, if they shall prove worthy of the prize.

But, sir, I am afraid that I have exceeded my time and I must bring my remarks to a conclusion. I would be glad to discuss the question of Assembly district apportionment, but I have not the time to do so, and it has been well done already, and will be done by those who follow me. I cannot trespass upon their time. I feel I have done so already. I simply desire to address one word to every gentleman who is here within the sound of my voice, who has a public duty to perform to the people as I have. He may disregard the promptings of conscience if he will. They call it a silent

monitor, but it never fails to ring the bell in the presence of danger and temptation. He may quiet his apprehensions and fears when he is tempted to depart from the path of political rectitude and honor by the wish for temporary party advantage. He may forget that the omniscient eye is upon him and that some day he must render account of his stewardship. He may blot from his mind, his heart and his soul all the lessons of the past and whatever the present may offer of peace and security. But there is one thing that he cannot forget, there is one thing that he must perforce remember, and that is this: that there is left here below a court, a tribunal that will pass upon his act, a tribunal whose judgment does seldom go wrong — the Supreme Court of the people.

When, sir, Frederick the Great desired to take an unsightly old mill that marred the prospect of his view from the palace, he approached the owner, an old man, and made him an offer of purchase. The old man declined it. "Then," he said, "I will take it, whether you will or no." "Well," fearlessly replied the brave old man, "if you do, I will see whether there is any law in Prussia," and so just was the answer that the wicked king was deterred from his purpose. I say to you, gentlemen of the opposition, pause now, turn away from any purpose of wrong and injustice. If you think in your conscience there be a wrong, an injustice, pause here. Do justice to the people of New York, remembering that after all they will pass upon your act. Forget not the old Latin maxim, *salus populi suprema lex*, the welfare of the people is the supreme law.

Mr. Mereness — I would like to inquire what the question is before the committee. I have been out some little time.

The Chairman — The question before the committee is upon the amendment offered by Mr. Mantanye. If the gentleman desires, it will be read.

Mr. Mereness — Is that the section Mr. Becker offered the amendment to?

The Chairman — It is not, I think.

Mr. Mereness — I would like to move an amendment to Mr. Becker's amendment.

The Clerk then read the amendment heretofore offered by Mr. Mantanye in the following language:

"The Legislature elected as provided in this Constitution shall meet at the Capitol in the city of Albany, on the first Wednesday after the first Monday of January, 1896, and biennially thereafter and at such other times as the Governor for good cause may call an extraordinary session, but the call for such extraordinary session

shall specify the matters to be considered, and the business of the session shall be limited to the matters so specified."

Mr. Mereness — Mr. Chairman, my amendment was germane to the amendment of Mr. Becker, and it is to strike out all of lines 2, 3 and 4, after the word "years," in section 2, on page 1 of the bill. The object of the amendment is to do away with the tautology which will appear, I think, in the article, on consultation with the members.

The Chairman — The Chair will state that there are already two amendments pending.

Mr. Mereness — It is an amendment to Mr. Becker's amendment, which I suppose is proper under the rules.

The Chairman — An amendment to an amendment is proper.

Mr. Mereness — I call the attention of the committee to the fact that in section 5 there is another statement, that the Assembly shall consist of one hundred and fifty members elected for two years. When that section is read I shall propose to amend by inserting the language in the present Constitution, to strike out in section two what there is about the term of the Assembly and put it in section 5, so that it shall read "the Assembly consisting of one hundred and fifty members who shall be annually elected," which is the language of the present Constitution.

But while I have the floor, Mr. Chairman, and before the hurry of the closing of the debate, I desire to offer some few suggestions that are very brief, which I think will be very pertinent to all the delegates here, but I think more to the gentlemen whose votes I believe will be necessary to submit this proposed apportionment to the people.

I do not, sir, propose to indulge in any feats of oratory or to bring in play Thucydides or Othello or Talleyrand or any of those famous historic personages, but I desire soberly to call the attention of the delegates to a few considerations which have occurred to me as I have been listening to this debate and as I have consulted the proposed apportionment.

As I understand it, sir, the proposed apportionment increases the number of Members of Assembly to one hundred and fifty. Of that increase I believe that nine are given to that section of the State below the Harlem river and thirteen to the section of the State above the Harlem river. That, sir, seems to be at the expense of this state of affairs, because in the county of Kings if I have the population correctly it is 868,983 and with the twenty-one Members of Assembly assigned to that county the average number of citizen

population in each district is 41,380. Subtracting from that the number given for the whole State which is stated by the committee to be at 38,606, it leaves a surplus in each district in counties of 2,774 which in the whole twenty-one districts of that county means but 38,254. Upon the basis of 38,606 to a district, Kings county, I think, would be entitled to two additional members. In the county of New York, as I have it, the whole population is 1,423,984, and upon the apportionment given by the committee of thirty-five for that county the average in each district is 40,385 and subtracting from that the average of 38,606 in the whole State makes a surplus in each district of 2,079, which in the thirty-five districts amounts to 72,765, which would entitle them if the ratio was adopted for the whole State to two additional Members of Assembly.

Now, sir, nobody claims I believe at this time that the apportionment of 1892 was fair. It is a well-known fact that the members from the county of Albany buncoed the Democratic party into giving them an additional Member of Assembly and taking it away from Monroe, and it is also a well-known fact that the Senator from the Steuben county district, as I remember it, insisted upon Steuben county having an additional Member of Assembly before he would vote for the apportionment in the Senate, and the additional wrong perpetrated of giving to Dutchess, with 71,000, two members, when the population of St. Lawrence was over 80,000 with only one member.

Now, sir, a fair apportionment would equalize those districts so that the rural portion of the State would make a clear gain of two Members of Assembly from the present apportionment. It seems to me, sir, that it is hardly worth while, for the sake that the country is to make this increase from one hundred and twenty-eight to one hundred and fifty in the Members of Assembly.

I think, sir, that we shall have to look a little further into the apportionment of Senators. If I have the figures correctly, the gain of Senators from the present apportionment of thirty-two is a gain of seven in that portion of the State below the Harlem river, and a gain of eleven in that portion of the State above the Harlem. It seems to me, upon consulting the figures, that has been done at the expense of this state of affairs. The counties of Suffolk and Richmond and Queens and Kings, which counties are assigned by this present proposed article nine Senators, have a population of 1,104,421, and the ten Senators in the city and county of New York are to represent in the new Senate 1,186,650 people of citizen population, while, if we take the country districts, to wit, the Otsego and Herkimer district of 95,631, the Jefferson and Lewis districts of

95,659, the Cayuga district of 86,507, the Chemung, Tompkins and Schuyler district of 95,330, the Ontario and Wayne district of 93,512, with the two Monroe districts of 181,230 and the three Erie districts of 304,713, we have ten Senators in those districts representing 952,582, which is one hundred and fifty odd thousand less than was represented by nine Senators in the counties of Suffolk and Richmond and Queens and Kings district and 234,000 less than the ten Senators in the city and county of New York.

Now, sir, it is said that it is necessary to increase the Senate to fifty, in order that a just and fair apportionment of the State may be made. It is said that there is less possibility of corruption in a Senate of fifty than in a Senate of thirty-two. That may be true; but I will simply call the attention of the delegates to the fact that in the United States Senate, which has now been increased to a membership of eighty-eight, the Democratic party coming into power in every branch of the government for the first time in thirty-two years, were compelled in that Senate, which should have been eighty-eight, to keep it down to eighty-five, because of the situation of three western States on the silver question in that matter. The Democratic party, as I said before, flushed with this great victory, were compelled to tack on to a proposed tariff reform measure an odious income tax, which had always been denounced by the Democratic party, during the whole history of this country. And, sir, I think that there never has been a time in this country when the United States Senate, with its eighty-eight members, has done anything more within the last year and a half to convince the people that it is a nuisance, when sugar stock has been the main stock of debate and investigation, and, sir, although it may be necessary to increase the Senate of the State of New York to do away with corruption I think that there are a great many suggestions that can be made upon the other side of that proposition even.

Now, sir, it is because I am a Republican and as strong a partisan as any man upon this side of the floor that I desire to have this proposed apportionment go to the people in as acceptable a form as it is possible to make it, and, sir, while the people in the cities who are professional men are said to have an income of from $25,000 to $100,000 a year it may seem picayunish to keep the expenses of the government at the present level, I say that in the true rural portions of this State where the percentage of taxpayers is much larger according to the number of votes than it is in any of the large cities, the question of the increase of the expenses of the government is a very serious question.

Sir, we are in the habit of hearing our city friends refer to us as

the hayseed element, the farming community, which embraces a very large percentage of the population of this State. I, sir, am a farmer myself. I am not a cultured farmer but I am of that class of farmers that get up at daylight and stay up until dark working during all of the spring, summer and fall portions of the year in order that we may gain a livelihood, and, sir, the question of taxation is with us a very serious and important question. It is because I do not expect that there will be any votes on the other side of this chamber for the apportionment and that if it is sent to the people it must be done by members of the party to which I belong that I desire to get it in such a form that we can adopt it. I think that the Democrats will be wise enough to try to make it as odious as possible to the people. They want a party issue, and in default of a better one they have seized upon the question of apportionment.

Now, sir, without going any further into the question of the propriety of this increase in the number of the members of the Legislature, I think that it is very important to this Convention that we so construct and fix up the apportionment article that there will be no increase in the expenses of the Legislature in this State.

Let me give a little history in reference to the way that the salaries happen to be fixed at $1,500 as it is at present. It is well known and can be verified by consulting the copy of the proposed Constitution, which was agreed upon by the Convention of 1867, that the salaries of the members of the Legislature fixed by that proposed Constitution was the sum of $1,000. We all know the fate that that Constitution met. I do not think, however, that it was because the salaries of the members of the Legislature were fixed at $1,000, although I have heard it intimated that if the salary was cut down from $1,500 to make the expenses the same as they are now, that the numerous citizens of the State of New York who are anxious to go to the Assembly will form a combination and sweep away our Constitution because they are not to have the salary as it is at the present time.

As I said before, the Constitution of 1867 was defeated, and the matter went along until the Legislature of 1873 took hold of the question again and a committee was appointed upon the question of submitting proposed constitutional amendments again to the people and among those propositions was the proposition in reference to the salaries of the members of the Legislature. It was reported by the committee to the Assembly that the salary should be $1,500. But when that matter came up for debate in the Assembly, a member from Ontario, a Mr. Lincoln, moved that it be made $1,000 and that was carried by a very large majority in 1873 in the

Assembly of this State. But the matter went along until the last day or the last day but one of the session of the Legislature of that year, and it appeared then that the Senate had refused to consent to the diminution to $1,000, and that in the hurry of the close of the session a conference committee was appointed and that conference committee reported back to both houses $1,500 and that was the final sum adopted in the concurrent resolution.

Now, sir, it is not a spirit of parsimony or anything of that sort that impels me to take this position. The purchasing power of $1,200 to-day is more than it was in 1874, when the people adopted $1,500 as a proper and suitable measure of compensation for their legislators. And I say further, that it is not so much a question as to whether a man receives full compensation for his services as a legislator, because, although the salary of $300 per annum was ridiculously low, the State of New York got as good service from its legislators when the salary was $300, as it ever has had at any time since, and, without going any further upon this train of argument, I simply desire to say that when the proper section is reached, or when the bill arrives at the proper stage, I shall propose to make the salaries of the members of the Legislature $1,200 a year, which, upon the basis of 200, will make the legislative expenses of the State the same as they have been since 1874. And I simply want to appeal again to my friends of the Republican party that must debate this apportionment, and because they say it is such a good apportionment, let us make it possible for the people of the Empire State north of the Harlem river, where we give from 60,000 to 80,000 Republican majority year in and year out — let us make it acceptable to that section of the State and do not let us accuse all this great body of voters of parsimony and niggardliness because they want to keep the expenses of the government down.

Mr. Schumaker — Mr. Chairman, our friends on the other side must have smelt the battle from afar, from the number of amendments which they have been proposing this morning. They must have heard the rumbling in the distance. They must have heard the advance guard of the light musketry that is advancing upon them from the people of this State in regard to this apportionment, or there would not have been so much herdling together and introducing of amendments as we have already heard.

The gentleman who preceded me cannot lug into this apportionment any sugar trust or any acts of Grover Cleveland or anything

like that, or the income tax. This is to be a battle of the citizens of the State of New York for their rights, and that is all. They can get no national question in here. They may talk it in the Convention, but the people won't have it. These little figures here are going to interest the people of this State a good deal, and it is interesting them now. From the great sheets published in all the great cities of this State a howl comes here and it is going to be a howl between those two old men, Mr. Vice-President Morton that was, and Mr. Governor Flower that is, for the position of Governor this fall and this thing here, this little map, with other things in this Constitution, is going to be the issue, and no sugar trust and no income tax and no hayseed arguments are going to have anything to do with it.

My old friend and associate in Congress (Mr. Baker), and myself are both hayseed men. We have farms and we are farmers and they cannot throw any hayseed argument at us, and I am proud of it, although I think my friend will agree with me that it doesn't pay. (Laughter.) But I have a little home and a little family, children and grandchildren in the city of Brooklyn, the city of churches, where almost on every corner of the streets a steeple goes up to the living God. In that little city, and I believe it is of some size now, but when I first went there it was a place where you knew every one who crossed the ferry with you, they propose that about 58,000 people should not be represented. Now that won't do with our people, Mr. Chairman. They won't have that for one minute, and the news has come here to that effect. It is not a case of politics; it is not a case of Tammany, whether it is the tiger in shape or whether it is the Jack in shape, as we have been told by gentlemen here, but it is the case of the people, the citizens of Brooklyn irrespective of party are not going to be unrepresented to the extent of 58,000 people. The citizen electors who go to the ballot-box and do not vote by machinery as they play on a piano, but stick an old-fashioned ballot in the box and vote it, and no one knows how exactly, but when it comes out it tells. It has been done on a number of occasions. Some one says it was done last fall. I admit it. But they will not allow any such outrage as that to be committed and call it a plus.

Ah, there is no algebraic proposition that can beat them out of a representation if they can see it before their eyes. They are a thinking people.

Then there is a green figure there on this map. Just look at this green figure. It may look green but it isn't green. There are 123,000 aliens that they won't let vote. Aliens when? Aliens in the

census of 1890 and 1892. They may not be aliens now. Probably most of those people are voters this fall. Will those people stand up at the polls, 123,253 of those men marked aliens, who have now perhaps got the right to vote this fall, and probably had it last fall, and say that this Convention is going to skip them, leave them unrepresented in the great State of New York and in the city of Brooklyn? If I know human nature, and I think I do, they will object. I used to think I knew what was the bearing point in the jury-box and in a political election, and I think I know yet. This measure is going in the city of Brooklyn to overwhelm any majority that was ever obtained there against the Democratic party, and will be in favor of any party that is against this apportionment.

I was on this committee. I listened with all the attention that was possible to the deep thought of gentlemen that were there. They did not seem to express it much, but they thought. Their faces grew pale and their eyes grew red and their frames fairly stooped and trembled under the immense pressure of this apportionment. One that I found about it was my friend, Charlie Morton, here. He was hopping all over the room in the committee, saying, "Why don't you go on? Why don't you do it? Why arn't you ready now? Why don't you do it?" They just shoved him to one side and said, "You keep still. You can keep Brooklyn as you please, but we ain't ready for this." And he has the fairness to say here that on the ninth of August last this whole thing was before us.

Not a thing of the kind was before us on the ninth of August. There was a skeleton here; I don't know where it was. It may have been in the closet somewheres around, but there was a skeleton here of an apportionment — blank Albany, blank Brooklyn, blank New York, and the blank New York was fun, that was real fun. You know those were very hot nights in Albany, and in that committee room, with its poor ventilation, and my friend, John Sabine Smith, who once ran for office in New York, and was most fearfully beaten, had a plan of the Republican club of the city of New York. Well, the Republican club of the city of New York do not vote generally, but he came up and went before the committee that hot night, when we were all perspiring at every pore, and he left out Cattaraugus county in the apportionment of the State, and didn't Mr. Lincoln jump at that like a trout to a fly. "Why," he said, "you have left out Cattaraugus; you must put it in." And Mr. Lauterbach and the Republican club of New York went all over it and all around it and all about it. That was fun

enough for me. I didn't go near it again for two or three weeks. (Great laughter and applause.)

Still, the wisdom of this committee cannot be underestimated. The chairman sat at the head of the table. He looked wiser than Solomon; nothing his majesty could overcome. All the rest around the table were as quiet and solemn as at a Shaker meeting. But Charlie Morton kept kicking; he was up in the air all the time. He was tiresome to the majority, but he was entertaining to me. I thought we would let him fix the Brooklyn business just as he pleased. I knew if he did not put in a good apportionment, and if he put in a bad one, the people of Brooklyn would kick it higher than Gilderoy's kite. So I said nothing, and Mr. Morton didn't get as good an apportionment as he could, owing to the facts and figures that were given to him by the gentlemen on the other side. They overruled him in relation to the green figures, and they cheated him some in relation to the red figures (laughter), and between the red, black and the green down goes the colonel and his party in Kings so deep that they won't hear the archangel trump this fall. Mark what I tell you. (Laughter.)

Well, this was fun for me. One gentleman would say to me: "Why don't you come to the committee meetings?" Another was very anxious I should come. "Oh," said I "you started off on a wild-goose chase and you won't catch the goose. Now, that is all there is to it. You cannot, under your ideas and suggestions, make any kind of apportionment according to those rules that the people will stand." Well, they searched history. They went way to South America; they went into all those naughty States out west, where foreigners vote, and the learned logician from Cattaraugus, and I must call him so, for he has logic, if he wishes to apply it, he hunted up and found that the unnaturalized foreigner voted in all those places for all kinds of offices, even in an election for President, and, oh, how patriotic they became. The other side of the house fairly boiled with rage. Why, they couldn't understand it; it was incomprehensible. It reminded me of the story that Judge Barney Osborne, a police magistrate in the city of New York, used to tell (applause) of an Irishman that whipped a Hebrew in Chatham street because he murdered our Savior. Osborne said, "Well that occurred two thousand years ago." "Yes," said he, "I didn't hear of it until last Sunday morning." (Laughter.)

Well, they brought in a constitutional resolution. My heavens, you can't imagine the incense and the indignation that it aroused on that side of the house, and just a little bit on this side. I cannot point it out now, but right in the face of the constitutional law of

the land that you must not interfere with the business of another State, you have no right to, right in the face of the decisions of the United States courts, and right in the face of the provision that the United States government can admit any State that it sees fit to admit and we have no business to interfere with its internal laws, provided they do not conflict with the Constitution of the United States.

Now, as to the logic of that, I will connect it. They found in all those States precedents for not cutting up county lines. My friend objected that those States should be organized and got forty-eight votes to sustain him, but they brought into this Convention the record of those States inhabited by unnaturalized foreigners, and he brought it into this Convention to show that county lines to make a senatorial district should not be disturbed by this unnaturalized element of the different States of this Union who had got in through Congress and who could not be got out, and who were foreigners and who even applied to their countries in time of war for the purpose of being relieved from soldier duty. But some of them did not. Some of them marched, like true soldiers, with General John A. Logan, and cut their way with their swords to the sea and opened the Mississippi river.

I am in favor of any man enjoying citizenship with me who in reality believes in a free government and a free people, whether he slumbered and read the laws of our land on the upper Danube, or whether he was further down in the land of the Turk. If he believes in our institutions and can come and will work, and if willing to be a good citizen, I say come; if it is for six months or a year and a half. But I would like to have some of the fellows that are here and have been here for fifty or a hundred years emigrate and go to the upper Danube and suffer what the poor men suffered that came here.

Now for the apportionment. (Laughter.) I always like to talk to Mr. Dickey, of Newburgh. How would you like to have Newburgh unrepresented? Would you like it? You would make more noise than you ever made here yet. How would my friend from Utica over there like to have the great city of Utica, the home of Horatio Seymour and the great Roscoe Conkling and Ward Hunt; how would he like to have Utica, with its 42,000 people, unrepresented? Well, now, twenty and forty make about sixty. We have in our city the two cities of Newburgh and Utica unrepresented by hocus-pocus, by logic, by the logic of the Committee on Apportionment. Just think of that, Brother Dickey. Oh, what a noise you would make here. Mr. Foote, of Rochester, would have a

dozen amendments up to stop that. Now there is my friend, Mr. Lou Marshall. Suppose we should take out Syracuse. Heavens and earth, and there would be more amendments written and "Old Salt" would get up from his sick bed and he would stand here, beg, and almost swear (laughter) that the city of Syracuse should be so badly treated. But those cities are all pretty well cared for.

The Chairman — The gentleman will suspend.

The Secretary announced meetings this afternoon of the Committees on Charities and on Legislative Powers and Duties.

The hour of one o'clock having arrived, the Convention took a recess until three o'clock P. M.

AFTERNOON SESSION.

Thursday Afternoon, September 6, 1894.

The Constitutional Convention met in the Capitol, in Albany, N. Y., September 6, 1894, at three o'clock P. M.

Second Vice-President Steele called the Convention to order.

Mr. Wellington asked leave of absence for Monday next. Granted.

Mr. Goodelle asked leave of absence for Saturday of this week. Granted.

Mr. McIntyre asked leave of absence for Monday next. Granted.

Mr. Roche asked leave of absence for Saturday and Monday morning next. Granted.

Mr. Giegerich asked leave of absence for Saturday next. Granted.

Mr. Nicoll asked leave of absence for Monday next. Granted.

Mr. Emmet asked leave of absence for Mr. Fields, on the ground of illness, until such time as he should be able to attend again. Granted.

Mr. Forbes asked leave of absence for Saturday afternoon. Granted.

Mr. Jacobs asked leave of absence, on the ground of political duties requiring his attention in Brooklyn, on Monday, Tuesday and Wednesday of next week, and possibly Thursday and Friday. Granted.

Mr. Herzberg asked leave of absence for Saturday and Monday. Granted.

Mr. Goeller asked leave of absence for Monday. Granted.

Mr. Barhite asked leave of absence for Mr. M. E. Lewis, on the ground of illness, for to-day. Granted.

Mr. Foote, from the Committee on Revision and Engrossment, to which was referred the proposed constitutional amendment, introduced by Mr. Roche (introductory No. 100), reported from the Committee on Suffrage, and by the Committee of the Whole, entitled "Proposed constitutional amendment to amend section 1 of article 2, describing the period of citizenship as the prerequisite to the right to vote," reported the same as examined and as correctly engrossed.

Mr. Foote, from the Committee on Revision and Engrossment, to which was referred the constitutional amendment introduced by Mr. Gilbert (introductory No. 385), in relation to the time of the assembling of the Legislature, reports the same as examined and correctly engrossed.

Mr. Foote, from the same committee, reported Mr. E. R. Brown's proposed constitutional amendment, No. 47, in relation to public officers riding on passes, as examined and correctly engrossed.

Mr. Foote, from the same committee, made a similar report in regard to the amendment introduced by Mr. McDonough, to amend article 3 of the Constitution, by adding a new section to provide for the employment and occupation of prisoners, in prisons, penitentiaries, jails and reformatories.

Mr. Foote, from the same committee, made a similar report in regard to Mr. Lauterbach's proposed constitutional amendment No. 258, to amend article 2 of the Constitution, relative to the suffrage.

Mr. Foote, from the same committee, made a similar report on the proposed constitutional amendment introduced by the Committee on Education (introductory No. 388), to amend article 9 of the Constitution, in relation to the schools.

The President *pro tempore* — These amendments will be reprinted and retain their places on the order of third reading.

The Convention will now resume in Committee of the Whole, and Mr. Durfee will take the chair.

The Convention resolved itself into Committee of the Whole, Mr. Durfee in the chair.

The Chairman — The Convention is now in Committee of the Whole for the further consideration of general order No. 74, and Mr. Schumaker has the floor.

Mr. Schumaker — Mr. Chairman, when I closed speaking this morning I was referring to the eleven States in the west and north-

west that did not amount to as much in population as the discarded population in green on this map presented by the Committee on Apportionment. Over four hundred thousand people, in 1892, who were called aliens, this committee has discarded entirely from consideration in apportioning the Assembly and Senate districts of the State. That is not fair; that is not just; that is not proper. Next year we should have a census, and according to that census everybody entitled to vote should be represented in that apportionment. How do we know but what these people who are put here in green will all of them come to the polls this fall, full-fledged naturalized citizens? Why, as I was about remarking when interrupted by the President, in the west eighteen Senators represent unnaturalized people; men who have been here only six months or a year or a year and a half. But here in the State of New York, the great Empire State, the leading State in culture, agriculture, and almost every art and science that you can mention, it is proposed to misrepresent, in its apportionment, nearly half a million of people. That is wrong, it is not fair and it is not proper. The learned gentleman from Cattaraugus went all over the western States to find precedents for not cutting up county lines. Well, here is a little book. It is a cyclopaedia, and an elegant one at that, giving a million and one figures and facts, and which says that if you will but open

"You will be unwilling,
For many a shilling,
To part with the profit.
Which you will have of it."

Now, let us look at the States out west, inhabited by men that this Convention objects to representing, and we will find that those States where their county lines are so sacred, contain four people to six miles in North Dakota, four people to six miles in South Dakota, thirty-four people in nine miles in Minnesota, thirty-two people to one mile in Iowa, sixteen people to two miles in Nebraska, eighteen people to five miles in Kansas, three people to three miles in Colorado, two people to four miles in Utah, and eight people to ten miles in Wyoming. Well, that is a goodly number of people to compare to blocks in the city of New York where there are five hundred and ten people on an average on a block; to say that the county lines there have remained separate and distinct, and there is a clause in the Constitution that they shall not be touched or troubled. Why, some of those counties are bigger than Rhode Island and Delaware and Maryland all put together; all three of those old States are not as large as some of these counties. But

the logical gentleman from Cattaraugus did not give us any reasons; he simply stated the facts. Those States have provided in their Constitutions that no senatorial district shall be taken from a part of a county. He did not give us any reason why. He had looked at the constitutional debates in different States, but he never gave us any reason why those States should object to dividing county lines in relation to electing Senators to the Senate in their different States. I was astonished to hear no reason, but he gave none. He gave no reason why we should not divide the county lines of our own States in order to let the people speak, in order to let the people be represented but the usual one that it would not do to interfere with old landmarks, and that it was against the provisions of some of the Constitutions. The reason why they will not allow the people of those distant States to interfere with the county lines making senatorial districts is, I am told, on good authority, that they never would settle those senatorial districts; that they would be constantly changing and altering them from year to year, and that the only way to do it would be in a Constitutional Convention. That may be the argument in this Convention. But, still, in those great States, in those large States, there is no trouble about county lines to interfere or in any way to supplant the rights and privileges and liberties of the people. They are there on an equality, the foreigner of six months' standing and the foreigner of a year's standing; and in the old State of Michigan, away back in the thirties, you could go to the polls and vote after declaring your intentions, without any time at all. So it was in Indiana and Illinois, and the person who advocated it in Michigan, in the territory, was the great Democratic leader, Lewis Cass, who has been in high places in the councils of the nation and of his party. I do not want to make any political speech. I do not want to say anything that is acrimonious, I do not want to say anything that is distasteful to the party that is opposed to me in politics, but I say this, in behalf of the people who are not represented, and who are misrepresented, and who are not enumerated in the State of New York, and I think they will respond to this question this fall with great alacrity.

Now, Mr. Chairman, when you take into consideration these green lines and compare them with the black lines and the red lines, you will see a monstrosity here in the shape of juggling that I do not think could be conceived by man, but has been conceived by two men, and it is popular with the majority of this Convention. They can have it, and roll it as a sweet morsel under their tongues, but we will meet them on the stump in Newburgh and in Pough-

keepsie, and in Syracuse, and in all the cities of the State, and say: "How do you like this plus taken from you?" They call it plus, but I call it surplus. It is a surplus of people who have been deprived of their rights and privileges as citizens of the State of New York. I know there never was a census that was agreeable to everybody. I know there never was a distribution or a redistribution of the State that was agreeable to everybody; but there is a system of give and take where the giver gives almost as much as the taker. In the old days on the farms in the country, when they divided apples, there was a terrible quarrel when a man divided his apples with his men in this way: here are two for you two, and two for me, too. Now, that is the principle of this division of the State into Senate and Assembly districts. They want the great majority of the people unrepresented to be of one political party. I do not wish to speak any longer on a subject which has been so thoroughly discussed than is absolutely necessary. I think that the majority of this Convention did come to a conclusion that this matter, which was cooked and not dried, was going through at lightning speed, and that it would become a constitutional amendment, to be presented to the people. I think differently now, and I predict that there will be some changes in this matter before this Convention adjourns, in favor of some of the surplus people that have been left out of the account.

In a great many counties we see but few aliens. They do not go there because they are men who work and labor in the different districts in cities throughout the State, and they appear more in those cities, because they are laborers and toilers and horny-handed sons of nature. They come here to work and expect to work, and they do work, and they are as much entitled to be represented in the State of New York as they are to be recognized and represented by the United States government at Washington.

And this Convention makes a mistake if it does not represent them, and it can follow no better example than is presented to them by the people of those different States, who, when they are admitted, become as good citizens as the citizens of the State.

Now, take 123,000 people. In a territory it would not be long before they were admitted as a State. It makes no difference whether they were aliens or not. It makes no difference where they come from. It is not necessary if the territorial laws give them the privilege of forming themselves into a territorial government; when they knock at the doors at Washington, 123,000 get in.

When I was on the Committee on Territories in the House of Representatives, I heard the argument on various territories. The

present bright light, Mr. Elkins, of the Republican party, appeared before the Committee on Territories in relation to New Mexico and its admission, and he strained hard and very hard to show that there were 50,000 people in New Mexico. New Mexico was not admitted; most of the people, Spaniards; most of them people who could not talk the English language; most of them as ignorant as could possibly be imagined. In another case, the Honorable Jerome B. Chaffee, of Colorado, knocked at the doors of Congress for two or three years with fifty and sixty and seventy thousand people at his back, of all sorts; Irish, Dutch, English, Canuckers, and everything that you could imagine in the shape of human beings; cut-throats, villians, and every sort of loafer in human form; and after a while, with seventy or eighty thousand, I think, it was less than a hundred thousand, Colorado was admitted. And so it has been in all the States, until at last poor old Utah has come in with a crutch and a cane, and been admitted into full union and full fellowship with the people of the United States. Finally we have received the descendants of Brigham Young in full fellowship, when there is in that territory the scum of the earth; when there are in that territory men and women that have been picked up in sewers — I will say this to the gentleman who called New York city and Brooklyn sewers — they have been picked up from the sewers of the world. Brigham Young once told me that the only people that he did not want in his community in Utah were the people from the Sandwich Islands, for he said they were the lowest of God's creation. They sent their proselyters and disciples all over the world. They have got them in there, they have given them their votes, and we have received them into the Union and they are part and parcel of us, with two men in the United States Senate. Yet, here, in the cities of New York and Brooklyn, four hundred thousand of better men cannot get an Assemblyman, cannot be considered as a senatorial district.

Mr. Baker — Mr. Chairman, will my old friend permit a question? Utah has only recently, under this present Congress, been admitted, has it?

Mr. Schumaker — I know that. It is one of the bad acts of the Democrats. I am not making a political speech; I am speaking for the people. Within four or five weeks, Brigham Young's gang have hopped into the Union. I do not like it —

Mr. Baker — Nor I.

Mr. Schumaker — I don't think you do. We saw enough of their trying to crowd in when we were in Congress, didn't we? But

they didn't get in. They are in now, however, and all those people are represented. I don't know whether they have passed any law in their Constitution against the division of county lines in electing State Senators. It is very important, it is very logical, and I would like to know whether there is any such division as that to be permitted in the election of Senators in Utah. But, anyway, this thing of county lines is a fiction as far as representation is concerned. A man is a man, whether he is born in Ireland, or Scotland, or Germany, or any other part of the world. If nature choses to adorn an intellect with the best of graces, she does not care where the man is born. We here in this country, are Americans by adoption. Our progenitors came across the water. When I see a man raise his hands to heaven and split the air and clap his hands together and jump and wrestle around and talk about Americans ruling America, and Americans for America, I think, great heavens, are you an Indian? (Laughter.) Because the only natives of America are Indians, the copper-colored people of this country. No man ought to object to a representation of the people who are honestly and intelligently coming to this country for the purpose of enjoying our institutions. I know something about it from my own experience. I have lived alongside of men, Germans particularly, that knew more about the institutions of our country; knew more about the institutions of every State in the country, than I did. They had studied them in the long nights in Europe when they were under the heel of a tyrant. They studied the institutions of every State in this Union as assiduously as the Committee on Apportionment studied the Constitutions here within the last three or four years. And they could tell me things that I did not know. They could give me constitutional arguments that I did not dream of. And for me to turn around and say to them, "You shall not go to the polls and vote with me"—how silly that would be to anybody of intelligence. There might come some swashbuckler, some loafer around the corner and knock him down and say, "That devilish Dutchman shall not vote, because he has only been here three years;" but it is not the argument of an intelligent man or woman that these persons who come here for the purpose of enjoying our institutions and making themselves accessory to the country, that they should be treated in the way this committee has treated those people. And I long for the day to come when this Convention adjourns, when I can sound the gong over the State, as I have done on various occasions in reference to this matter, and show the people of the State who are the true friends of the man who dreams of this country and comes here and works here,

and tries to be a good citizen; who they are that are helping him, and lifting him up to citizenship. I agree with the President that the Constitution of 1846 was good enough for me with a little alteration, and I don't know as I needed to ask for that. But the amendments that were put in here were something fearful. They came by the hundreds. I never put in one, and I think there were but few from our side, but they were piled up here so high that they reminded me of the Convention of 1867, in which there was a nice old gentleman from another part of the State who introduced a resolution at every session of the Convention, and after a while they called him the "Resolution Delegate." He was a nice old gentleman, a lame man, and couldn't talk much, but there was a resolution or an amendment every day; and I have said to some gentlemen here that it seems as if the resolution delegate is here with us now in spirit, if he is not here in person. I expected amendments that were proper and necessary in relation to this apportionment. There was but one that I remember, it slipped in — fifty and one hundred and fifty. It was juggled about here in committee and sub-committee, and at last it became the approved measure of the committee. I have no objection to proper amendments, and probably I have said too much in relation to proper amendments, but the amendments we have had here would warrant a person in saying that the most of this Convention believe in binding up the Revised Statutes, the two big volumes which we have at present, and calling them the Constitution of the State of New York, the laws just as they were and just as they appeared; that there was to be no more legislation here, except in relation to laws which could be found and which could be added to and made into two big volumes, legislative instead of organic law.

Mr. Chairman, it is useless to say much more about the subject, but when Miss Anthony was here and we sat together on the back seats there (laughter), she looked over and heard a gentleman speaking — I wish he was in his seat now — he was telling how he loved women, how fond he was of women and children. She said to me, "That is one of the molasses candy speeches that I heard here twenty-seven years ago." And so it is now. Twenty-seven years ago they all loved New York, and it was a beautiful city. It is nicer now, with its variegated lights in the harbor, and Brooklyn Bridge. It is more handsome and lovable. But when I heard my friend from Cattaraugus say what a beautiful city it was, how fond he was of it, and how proud he was that he lived in the State, and then when I looked at this apportionment, I said to myself, "I doubt your sincerity very

much." It reminded me very much of an old gentleman on Long Island by the name of Scudder who served two terms in the Legislature. A man crossed his line and cut down three trees for saw logs. He wanted to pay for them, but Mr. Scudder wanted fifty dollars for the three logs; and this gentleman, Mr. Scudder, who wanted fifty dollars for the three logs, rubbed the man all over. "Mr. Foster," he says, "I love you. I admire you, your wife, your children, and everything. You are the nicest farmer in the neighborhood. You pay your debts and you are just, and we belong to the same church," and then, says Mr. Foster, "Mr. Scudder, you have those feelings, and still want me to pay fifty dollars for three saw logs?" "Yes, sir." "Well," he says, "I doubt your Christianity." Now, when men stand up in this hall and say they love New York, they love Brooklyn, and they love the cities of the State, and that they are proud of them, I think they do not exactly represent themselves. I remember, a year or two ago, when we wanted the World's Fair in New York, that some of the gentlemen of the country heaped all sorts of abuse upon it, and took it away to a distant city. It was a political movement. I remember very well, Mr. Chairman, that in those cities thousands and tens of thousands of charities are distributed world wide. I know that the foreigner who has landed here, the poor man who is put up in green here — not citizens, although they are in eleven other States of the Union — has come forward with his mite, all he had, to help the suffering humanity of the world. And, although Tammany Hall has plenty of representatives upon this floor, I wish to say this, that the charitable side of Tammany — the sons of the Columbian Order — was always ready to send its charities around the world in every direction. I remember well, speaking of Tammany Hall, which has been so much abused here and so much sneered at — as my friend from Brooklyn says, there have been so many "sneers shed" at Tammany — I remember when State and nation refused to bury the unknown dead who died by hundreds and hundreds in prison ships; I think it was fifteen hundred of them who died in the sugar houses and in the prison ships of New York, that old society of the Columbian Order, not the political side of it, but the charitable side of it, took the bones and gathered them up and raised a monument in Brooklyn in honor of the poor unknown dead. I defy any man in this Convention to get up here to-day and state a single place in the world, whether it be in the land of the Russ or Ireland, or whether it be in Chicago or Charleston, where Tammany could be called upon to do a charitable deed, that she has not nobly responded. I say this because I have tasted

the water from her springs, and walked to her music hundreds and hundreds of times, long before any of her representatives upon this floor were born, and that is the reason I say what I do. There has been a great deal said about the iniquity of Tammany in relation to this apportionment and in relation to the other apportionment. But now, let me talk of that a moment or two. The chairman said they had been cheated out of a Senator. It may be so. Others have said the Lexow committee had found very bad people on the police. Twenty-five or thirty years ago the same thing was discovered when General James W. Nye was at the head of the police force, and the Republicans had charge of it in the city of New York; only it was worse. We turn the rascals out; they keep the rascals in. Nye, as head of the board of metropolitan police, made the whole police force contribute toward getting him a house, which he afterward sold for money, and went off and became a United States Senator in Nevada. Now, is there anything as bad as that? There is evidence of it, and it can be found in the library adjoining.

Now, Mr. President, there are others to follow me, but as a matter of political history — and I do not bring it up with any malice, and I feel so about it that I would not even ask the friend of Governor Seward, the Secretary of this Convention, to read it, and I will read it myself. It is from the reminiscences of Thurlow Weed, the old editor of the Evening Journal, whose descendants, I believe, own it now. I would not ask our Secretary, Mr. Fitch, to read it, for the reason that it might hurt his feelings:

"Secret political history," taken from the reminiscences of Thurlow Weed, an incident in Mr. Thurlow's career, published in the "New York Commercial Advertiser." How the complexion of the State Senate was changed. Now, this is in answer to the learned gentleman, the head of our committee (Mr. Becker), who pointed out the different Senators that the Republican party had been robbed of. Mr. Weed says in his reminiscences: "Unusual interest was given to the political campaign of 1839" — Governor Seward was Governor — "by the great solicitude of the banking interests of the city of New York, to elect a Senate which, while sitting as a court for the correction of errors, would maintain the constitutionality of the general banking law. It was known that the political complexion of the Senate would be determined by the result in the Third (Albany) District, where three Senators were to be chosen. The district had theretofore been Democratic, but we had for two or three years been diminishing the majority against us, and on this occasion had determined to make a very spirited canvass. A

week before the election I became satisfied that the chances of success were against us, and so reported to my political friends in New York. This stimulated them to renewed efforts. On the Saturday morning previous to the election, some merchants and bankers met hastily and appointed a committee to visit Albany. On Sunday morning early, while dressing early in the morning, I was summoned to the Eagle Hotel, where I found in the parlor, Messrs. Robert D. Minturn, Moses H. Grinnell — who was General Grant's collector of customs — Simeon Draper — that is Sim. Draper, who was Millard Fillmore's collector of the port of New York; he was in the party too — R. M. Blatchford — he was a distinguished lawyer — and James Bowen." James Bowen was the police commissioner of the metropolitan police when they robbed New York of its power to regulate its own police. "They had arrived about daylight in the steamboat Columbia — specially chartered by them. They took a large bandanna handkerchief from a trunk which they opened and spread upon a center table. It contained packages of bank notes of various denominations, amounting to $8,000. My friends remarked that no possible effort must be spared to carry the district, and desired me to take as much of this fund as could be advantageously disbursed, adding that if more were needed, they would draw checks for it. The election was to commence on Monday morning and terminate on Wednesday evening. I informed them that it would be quite impossible in so short a time to use any such amount of money, and after explaining what I thought might be accomplished in the brief interval before the election, took $3,000; $1,500 of which was immediately dispatched by messengers to Columbia, Greene, Delaware and Rensselaer counties; fifteen hundred dollars was reserved for Albany. He divided it as the old farmer did the apples: two four you, two, and two for me, too, you know. A question of much embarrassment occurred to us, namely, how the unusual circumstances of the arrival of a strange steamer could be explained without exciting suspicions as to the real object of its visit. Governor Seward was sent for and joined in the consultation. It was decided that all the New York gentlemen named, with one exception, should remain incognito at the hotel. Mr. Minturn, whose father-in-law, Judge Wendell, resided in Albany, went to his relative's house and from thence to church. Meantime, the steamer dropped down to Van Wie's Point. At sundown the New York gentlemen were driven to the place in closed carriages"— my heavens, I hope on the golden shore they do not hear this, for they are all dead. (Laughter.) I hope out of charities for their

souls, that they do not hear this in the State Constitutional Convention — "taken on board, and returned to New York in safety." It would have been a terrible thing if that boat had gone down. (Laughter.) This beats the Dean contest and every other contest that was ever known to get the Senate of the State of New York. Now, here is more fun: "The election" — Mr. Weed says, "occupied three days of extraordinary interest and excitement, each party doing its utmost. A great deal of bitter feeling was necessarily provoked on the other side by our boldness and confidence. The result was a signal triumph, our three Senators — E. Root, Friend Humphrey and Mitchell Sanford — being chosen by an average majority of one hundred and thirty-three. General Root, however, had a narrow escape, obnoxious as he was to the extreme abolitionists. He was elected by a majority of only two. This victory changed, as was anticipated, the political character of the Senate, giving effect to the nomination of Governor Seward, sustaining the general banking law, and upholding the canal policy of the Whig party. Thus, a memorable *coup d'etat*, completely revolutionizing the State, was effected on the very verge of the election by the thoughtfulness and liberality of a few zealous politicians in the city of New York. The secret was well kept, for until now no whisper of it has been heard."

Now, Mr. Chairman, if anything more disgraceful has happened in New York politics, will somebody get up where he is on the floor and announce it? The Governor of the State, the editor of the Albany paper, the deacons of churches in New York, our old friend, Grinnell, Grant's collector, and R. M. Blatchford, they came up on a boat that they chartered for the purpose, they sneaked off and got aboard at Van Wie's Point. Now, if anybody can tell me anything as bad as this that has happened, and can give the authority as I am doing, I would like to hear it. I have no doubt somebody might say that New York is a sewer and Brooklyn is the worst spot in the world, but I want the evidence. I want them to read it from the book.

Now, gentlemen, I have not much more to say about this subject, only about the campaign this fall, on the apportionment question, with other things. We have got a number of very handsome things in this Constitution, and it is supposed that the people are going to take these things like hot cakes, but they won't have them. They be like hot ding-bats if they carry them around for a while. I do not want amendments to this Constitution at all. I have lived under it all my life. I do not expect to live a great many

years longer in the ordinary course of nature, and I do not want any tinkering with the Constitution. But the amendments came in so thick and fast that I expected to see an amendment that no Irishman or Dutchman or any other foreigner would be permitted to ride on the cars, and have it stuck into the Constitution of the State. But you have made the issue and we will meet it; and I would like, when the nominations are made on the eighteenth and twenty-fifth of this month to see those two gentlemen, Mr. Flower and ex-Vice-President Morton have a debate. Just think! In the early part of the session when we first met here the faces of the opposition were bright, and for my part I could not see but what we were going to be overthrown and beaten by about two hundred thousand by the way it looked; Grover Cleveland, in the President's chair, doing all sorts of funny things with the Sandwich Islands and everything else that he ought not to have touched, and I thought the national issue would knock us under; but here you have raised a State issue, and the worst I could imagine a sensible man could do. I do not pretend to have the wisdom of the world, but I know something about the common people. I know what they like. They do not like pluses and minuses, because they don't understand anything about them. They don't like that sort of thing, and I told my friend, Steele, they do not know what you mean by "overture." They think you are having sort of an opera bouffe. One fellow said to me — he was a Republican, "Heavens and earth, do you have dances and singing up there?" (Laughter.) "Overtures," he said. "Who under the sun ever heard of an overture in a Constitutional Convention?" I said, "you are a Republican, and I will tell you just what my friend Steele told me, that it is used all over the country." "Pshaw," he said, "I don't believe it." I said, "Then you will have to read Constitutional Convention debates." He said, "No, no, no; I will take your word about it." Now, Mr. Chairman, a little digression. I would like a joint debate between Governor Flower and ex-Vice-President Morton. I do not think you are in it (to Mr. Choate). I would not propose a joint debate if you were; I think our man would refuse. We think you are too young, too much of a boy, to meet our old, veteran Governor.

In talking of a joint debate, I am reminded of how near I came getting into one at Oswego in 1862. Mr. Baker may remember. John Van Buren and I had been through the State, and we met at Oswego Mr. H. J. Raymond, of the New York Times, who also was on the stump. We went to tea at Judge Brewster's, and who should come shambling in there but Mr. Mattoon, since a State Senator, wanting a joint debate. That struck John Van Buren unexpectedly.

He did not toe the mark as I thought he would. Mr. Van Buren said, "I am just preparing to meet my political friends." Mattoon says, "Are you going to back down?" "No," Van Buren says, "I am not going to back down; I will meet Mr. Raymond to-morrow at Watertown." I knew Mr. Raymond in the newspaper business (I had been in his employ as a boy), and I said to Mattoon, "You tell Raymond I will appear there and have a joint debate with him." He says, "Not by a damned sight." But I went over to see Raymond and said, "Did you send Mattoon?" He said, "No; it was a suggestion of somebody else." I said, "I will go and debate with you." "No," he says, "that wouldn't do for a boy to debate against an old man." And that is the way I feel in this matter. If Governor Flower was nominated by our folks, and our President should be nominated by his folks, I do not think it would be right for a boy (referring to Mr. Choate) to debate against Governor Flower.

But in this matter with the ex-Vice-President of the United States and the Governor of the State of New York, I think it would be very interesting. They compare Mr. Morton to Samuel J. Tilden. The only comparison is in the barrel; he hasn't got it in the head. He looks a little like Tilden when he does not smile, but when he smiles he gives himself away; then he looks the sharp banker. That is my recollection of him when he was in the House of Representatives. But just think of these two rich old men running this fall for Governor. It will be a great time, and there will be plenty of money. Heaps of it; Indiana, with its blocks of five and two dollars a vote, will be a farce compared to it. There would be a wonderful canvass, but the "Barefooted farmer boy of Watertown" will win, and he will win by virtue of these little red and black and green figures upon this map before me. If the Constitutional Convention sends out crude, ridiculous propositions that they have passed here to be voted on, you will be beaten out of sight. You had a tidal wave last fall, and there is another one coming. It will come mountain high, and if you nominate the ex-Vice-President of the United States on account of his barrel, at the dictation of friend Thomas C. Platt, the tidal wave will overwhelm you. If you put up that image, that skeleton, the representative of bags of money (as General Grant used to call men who were rich; although he was very fond of them, he called them money bags), you will be skunked, as boys say in the game of seven-up. A great tidal wave that has started from Niagara is coming, and will meet you and you will not have enough of the wave to meet it, so that in comparison it can be called a bubble. There will be nothing

left of you. There is nothing in the world will save you from absolute defeat.

Now, I have no political feeling about this matter. I do not envy the head and the heart of any man who will stand up here and abuse a whole people because there are a few bad ones in the community. I know we have mean people in every part of the globe, and in every country. There are good men and bad men in all kinds of business; good lawyers and bad lawyers, good doctors and bad doctors; and I do not mean to say anything that would touch or injure the feeling of any one here to-day. It is far from my nature, and no one knows it better than my friend, the President. I thank you, gentlemen, for your attention. (Applause.)

Mr. Goeller — Mr. Chairman, in attempting to follow the last speaker with any remarks on this subject, is like casting a cloud on a lot of pyrotechnics. I cannot expect in any way to parallel his speech so brilliant and able and happy. A conservative paper lately had this among its columns:

"The revising of the Constitution is a matter of very great importance to the people of the State, it will cost them a good deal of money, and they do not wish to have it done for the benefit or the injury of any political party."

I take for my text: "Cattaraugus county with 59,700 population; New York county with 1,423,984 population.

By this bill citizens, 29,850 for an Assemblyman in Cattaraugus county and 40,685 for an Assemblyman in New York city.

This is a bill that ought to be entitled "An effort by the Republican party to experiment as to how many representatives the Democratic party can be deprived of."

It ought truthfully to have a preamble: "The necessity existing of getting Republican representatives out of Democratic constituencies or districts and make everything tell to swell Republican rural districts."

According to figures furnished to me by Mr. Bush, there are 1,500,000 voters in the State of New York and of that there are about 770,000 Democratic voters and 730,000 Republican voters. The Democratic vote of our State is above the Republican, and still you carve out thirty Republican Senators and give but twenty Democratic Senators.

A man is derided here for making an outcry against an injustice perpetrated against the Democratic party. It has been sneeringly said by those who approve of giving Cattaraugus county two Members of Assembly (a fairness that never was fair), it is better to have the Republicans from the country rule the State than to have the

Republican country districts ruled by two Democrats of New York whose names were mentioned here. You ought to have a few Democrats from our town to build your country roads. You have attempted to build them for a hundred years and your failures have been monumental. We walk upon good asphalt roads in New York city. Elaborate vituperative and condemnatory declamation is made about the Democratic apportionment of 1892. Now, Mr. Chairman, that was ending a great wrong. To Democrats was given what belonged to them before 1892. Before that year, although New York was always Democratic, the Republicans always controlled the Legislature. You had not the population or votes in rural districts to justify the domination of the Republican party in the Legislature before 1892.

I will not plead an apology by making a preface or statement that this is or is not a eulogy upon the Democratic party to the principles of which I am devoted.

I am told that the Democrats pay more taxes than the Republicans. This Capitol building cost $20,000,000, and of that amount New York city and Brooklyn paid $13,000,000. New York city and Brooklyn (and I don't say this for buncombe) buy more American flags and float them than any other part of the State. Republicans alone are not the only thinking citizens of this great commonwealth of New York. The first spontaneous meeting in the North to encourage the North and to urge Abraham Lincoln to quell secession, was held at the Cooper Institute in New York city, and was grand and invincibly enthusiastic.

I do not see why Republicans so vehemently clamor here for this apportionment to benefit the Republican party. If they carry it, it will last a long while. They may regret it. I would advise you to leave yourselves a loop-hole, as many of you will no doubt hereafter join the Democratic party. You must indulge this protest as this proposed apportionment has its roots in the hereafter. Look at the phalanx of counties of our State outside of New York and Brooklyn so politically perfected and apportioned that an unbroken line of Republican Assemblymen and Senators is secured and not a Democrat comes in. And here, Mr. Chairman, I state is more fairness of your committee. The peerless Democratic city of New York by the cider mill press of this bill, gerrymander system, is made to do involuntary contribution to the line of Republican partisan Assemblymen and Senators. Hence our protest. Hence the ease with which the injustice is made apparent. The Republican party ought not to have an Assemblyman or Senator from New York city. By the justice of the rule that only the majority shall

rule, and yet New York city districts have been apportioned and carved out so that there is secured an assured number of Republican representatives from a city that votes the other way. The forty-five delegates here from New York city tell the story. They are all Democrats.

I will not go into statistics; others have done so. Give Democratic citizens their fair vote and representation. I represent a district in which exists a great Democratic constituency, ever a Democratic majority, a peerless class in integrity and manly honor, and in the exemplification of the virtues of manhood, the zeal and performance of the duties of taxpayers, the diligence of mechanics, artisans, tradesmen, workingmen, merchants, the acts of goodness of pure, public-spirited citizens, the ungrumbling contributors of labor and treasure to promote public welfare. How will they view this apportionment? Why, the Democrats will come up to smash and blast it.

"Come as the winds come, when forests are rended.
Come as the waves come when navies are stranded."

Look at this bill. There is one result that it achieves and that is singularly plain and clear; that while New York is ever a Democratic State, the Republican party have ever a majority of Assemblymen and Senators, and by this bill you give the political anomaly — atrocity I may call it — irrevocable, constitutional, perpetual life. You have given a Republican partisan majority in the Legislature. It is a wrong scheme to be perpetrated by the Constitution.

The Chairman — The question is on the amendment offered by Mr. Mantanye. The Secretary will read the amendment.

The Secretary read the amendment as follows.

At the end of line 4, section 2, page 1, add the following words: "The Legislature elected as provided in this Constitution shall meet at the Capitol, in the city of Albany, on the first Wednesday after the first Monday of January, 1896, and biennially thereafter and at such other times as the Governor for good cause may call an extraordinary session, but the call for such extraordinary session shall specify the matters to be considered and the business of the session shall be limited to the matters so specified."

The Chairman put the question on Mr. Mantanye's amendment, and it was determined in the negative.

The Chairman — The question now is on the amendment offered by Mr. Mereness and the Secretary will read it.

The Secretary read the amendment as follows:

Section 2, page 1, strike out all of line 2 after the word "years" and lines 3 and 4.

Mr. Bowers — Mr. Chairman, before that is put, I desire to rise to a question of privilege. I suppose the vote is to be taken substantially as upon the entire article and it certainly is fair and proper at this time that further debate shall be continued by the majority side or those favoring the amendment. If they do not intend to speak any further why I have no doubt but that the minority will close the debate rapidly. I think it is a fair question to ask whether the majority intend to debate this question further?

The Chairman — In the absence of any arrangement the Chair will recognize any gentleman that desires to be heard.

Mr. Bowers — We think it is the duty of the gentlemen who favor the bill to proceed now. If they propose to give it up, why I suppose those opposing the bill can go on now.

Mr. Mereness — Mr. Chairman, if the debate is over on this measure, I move that the committee rise, report progress and ask leave to sit again, so that something else can be taken up. Time is getting very precious.

Mr. Osborn — Mr. Chairman, I understood that this bill was, by rule of this House, to be taken up and debated continuously until action was taken thereon. If the motion is put to report progress, the time should be taken out of debate. As maintained by Mr. Bowers, it is proper that the gentlemen who favor this bill should continue with the debate.

The Chairman — The Chair understands that the rule made was that the question on the passage of the amendment could not be taken until Friday at noon unless the discussion was sooner concluded. The pending motion is predicated upon the condition which is supposed to exist, that the discussion has been concluded. If that be true, I see no reason why the motion is not in order.

Mr. Mereness — Mr. Chairman, at the suggestion of friends I withdraw the motion.

Mr. Root — Mr. Chairman, I have a few words to say upon this bill, and I am just as ready now as at any time to say them, and certainly to gratify my friend from New York, Mr. Bowers, I shall be pleased to proceed.

I doubt, Mr. Chairman, if the gentlemen who have been attacking this proposed amendment fully realize the attitude in which they have stood, or the attitude in which their minds have been as they

have examined, considered and formed their conclusions upon the proposed measure. They seem to me, and I think they must to any candid observer, to have proceeded upon a foregone conclusion. They have apparently assumed beforehand that any apportionment measure which might be introduced into this body would be so prejudicial to their party interests that it would be necessary for them to denounce it as unfair and denounce every one who had anything to do with its preparation, and denounce every step of its progress from its origin, in order that they may create capital upon which to seek its destruction, if it should be adopted by the Convention and presented to the people at the polls. The loud cries of unfairness and partisanship with which this Convention has rung for days has proceeded not upon convictions, upon consideration, upon judgment, but has proceeded like the mouthings and declamations of the mimic stage upon the cue of the prompter, and the cue was "apportionment bill." We have been informed of it in advance. For days and weeks and months our friends have been talking about the terrible uproar that was to come when the apportionment bill came in. Rules of order, rules for limiting debate, and all the machinery of the Convention have time and again and day after day been sought to be modified in order that this sovereign opportunity might be availed of, of parading their objections to the then unknown apportionment. Well, it has come. We have had our exhibition of oratory, of spite, of humor, of delightful entertainment of every variety throughout the whole gamut, and I hope our friends are satisfied. I hope they are satisfied with it themselves. But, Mr. Chairman, have they in any degree whatever infringed upon either the form or the substance of this bill? Have they shown that this bill is not one that should be adopted by this Convention or the people? Have they approached it except by empty declaration or asseverations which prove nothing. I assert, sir, they have not. I undertake to say with whatever effect one man's asseveration can stand against another man's asseveration, that this measure is a fair, just and honest measure to lay before the people of the State.

Now, sir, what questions should be considered in deciding whether the assertions of the other side or the assertion I have just made be well founded. Of course there is the first question whether we should have an apportionment at all. Many gentlemen differ upon that. Many gentlemen for whom I have the highest respect wish that we might not make an apportionment of the State, and that we would content ourselves in laying down a set of rules for making future apportionments, leaving to the Legislature or boards

of supervisors or some other body the actual division of the State into Senate and Assembly districts. That is a serious question. I have not heard it argued very much on the other side; when we consider it, however, we are met face to face by the fact that the State of New York at this moment rests under an apportionment of Senate and Assembly districts which is practically conceded to be the product of fraud and wrong, to be outrageous and utterly indefensible. So those gentlemen who think it to be the duty of this Convention, following in the footsteps of its predecessors, not changing the immemorial custom of the State, but bowing to it and shaping its course in accordance with that custom, to put an end to this outrage upon the people of the State, called the apportionment of 1892. Those gentlemen who hold to that opinion cannot certainly be very far wrong or without reason in their action. That it what it is proposed to do. Fnding an unjust and indefensible apportionment, it is proposed, following in the footsteps of the Convention of 1846, to make an honest and fair one.

The next question is as to the particular scheme of apportionment that is to be presented to this Convention. Is that fair? At the basis of that, sir, lies the question which must be determined before we can agree upon any apportionment. The question has been raised somewhat in the attacks upon this bill, but not debated fully or broadly, whether, in dividing the State into Senate and Assembly districts, we are to have regard to county lines. Having determined that, we are to have an apportionment; you must next determine that question, whether you will regard county lines or will throw them aside. It does not seem to me that it is necessary or profitable to debate that very long. I do not consider that the gentlemen who have attacked this bill seriously propose that county lines should be thrown away. It certainly would require long and serious consideration before any convention would undertake to attack so time-honored an institution, and one with which all the habits, associations and traditions of the people are so closely associated. I should hesitate very long, sir, before I would vote to destroy the boundaries or existence of my old county of Oneida. I believe that every gentleman upon the floor of this Convention, whether he lives in the great cities or still remains under the roof-tree of his fathers in the rural counties, that any gentleman who has ever passed his childhood in one of the rural counties of the State, would be exceedingly unwilling to destroy its existence and blot it out. The habits of our people, their traditions, their best and noblest sentiments are embodied in the pride which they feel in the counties of their birth and of their life. These counties origi-

nally meant something. They still mean something. Destroy them and, in order that there shall be political divisions at all, in order that the State may be districted for Senators and Assemblymen, and you create new lines, new divisions, in which people are to create new friendships, which any future Convention may destroy. You destroy an institution of immense and immemorable value and create another which, in the future, can be destroyed by some future Convention. No, sir; I am satisfied, and I believe all the people on this side of the Convention are satisfied that the people of the State do not wish to destroy their county lines in the distribution of Senators and Assemblymen.

Well, sir, if you wish to preserve county lines, how are you to distribute the Senators and Assemblymen among these counties? And the next question you meet is, what shall be the number of Senators and Assemblymen? Shall we keep the thirty-two and 128 that we now have, or shall we go to another number? Now, as I understand the proposition which underlies the establishment of the numbers of fifty and 150 in place of thirty-two and 128, it is in its main feature this: the Convention of 1846 divided the State into Senate districts with express and special reference to the convenience of the people, the relation of the counties in the district, the ability of the representative in the Senate to become familiar and remain familiar with the varied interests and wants of the people and with the people themselves. If a district be too large, if it be of a shoestring character, stretching over a long, extensive territory, if it be divided by natural obstacles, if it be like the present apportionment where one district comes down into the middle of another, so that you have to go around Robin Hood's barn to get into it, the representative that comes from the divided district will be familiar with the needs and wants of the people in only his part of the district. The Constitution of 1846 divided the State into Senate districts and fixed the number of the Senate at thirty-two, so that each Senator could readily represent his district. Since that time increase in population has occurred in the great cities and the effect of reapportionment, with the number remaining at thirty-two and giving new Senators to the great cities, is to take away Senators from the country so that the country districts have beenu continually enlarging until they have reached a point where a Senator cannot properly represent the whole people of his district. The main object of fixing fifty as the number of Senators is to bring the senatorial districts, widely extending as they are in the country, back substantially where they were with thirty-two under the apportionment of 1846. So that the evil arising from the continual

enlargement of the districts, because of the continual sending of new Senators to the cities, will be removed by the increase of number.

Mr. Chairman, when we are considering what number a legislative body should contain, what is the proper process of reaching a fair conclusion? Is it to start, as some of my friends, under the influence of their prepossession and prejudgment have done, looking first at what the political effects will be? Is that the proper way to consider matters in this body, to see how it is going to affect this party or that party, this candidate or that candidate? I think not, sir. There are two questions which should, by a fair and honest consideration, be determined, and one is that to which I have just referred; the question as to what extent of district can properly be represented by a single representative, and the other is what is an effective working size for the body which is to be constituted.

Now, I am free to say, for the reason that I have just mentioned as to representation of individual districts, and upon the teaching of common experience, the number of fifty which is fixed in this bill as the number for the Senate, meets both of these requirements. It puts the senatorial districts in such a position that they can be well represented each one by a Senator, and it puts the Senate at such a point that it can properly perform the peculiar functions imposed upon it by our system of government, functions calling for great consideration and requiring in their deliberations a small body of men.

In the Assembly the question arises to some extent: if you regard counties and are not to destroy them, each county must have its representative, and with 128 as the number of the Assembly, the giving of a representative to each of the small counties produced a very great advantage on the part of those counties, and a comparative disadvantage on the part of the large counties and of the great cities. The increase of number from 128 to 150 is a concession. Now, Mr. Chairman, I don't want any misunderstanding about this, and I put it to the gentlemen who have attacked this bill whether it is not true that an increase of the number of the Assembly from 128 to 150 is a concession by the small counties to the large counties in the city; whether Putnam county, with its 13,000 population, is not getting less advantage over the rest of the State with one Assemblyman out of 150, than she now has with one out of 128; whether every one of the small counties that has a single member is not surrendering an advantage which each now has with 128? That surrender on the part of the small counties, which are, perhaps, securing advantage by the redistricting of the State for Senate

districts, securing closer contact with their member of the Senate — that surrender is pushed just so far in order to maintain a representative body which is small enough to do effective work in the Legislature of the State. I think no gentleman will say that the Legislature should be increased to a greater number without retarding the already slow progress through the Legislature and making more difficult the work which it is so difficult for it to perform now with only 128.

Now, Mr. Chairman, somebody, in order to successfully dispute this bill, is bound to give us some reasons why these numbers ought not to be adopted; some reason why different numbers will make a better working Senate and Assembly and secure better representation in the Senate and Assembly districts. You cannot overthrow this bill by merely crying politics. You must do it, if at all, by arguments going to the reason of the bill, and that my friends who have attacked it hardly attempt to do. So much for the number.

Now, as to the actual distribution of counties, the actual formation of the Senate and Assembly districts outside of the city of New York, I will say nothing because I am not familiar with the subject. Those who have spoken and others who are to speak, I presume, are much more competent than I am, or ever hope to be, on that subject. As to the division of the senatorial districts in the city of New York, I shall say but very little, because it has been attacked very little. It has been suggested that there was a number, 753, left out of one district where it ought to have been. It has been suggested that one election district has been cut in two. Mr. Bowers has described the difficulty with which the apportionment of 1892 was made up. It is a matter of history. He has told the Convention that there were no maps extant from which this apportionment could be made up. For some reason the police board in New York city saw fit, in 1890 or 1891, to go through the city of New York and renumber all the election districts in it. The election districts at that time stood upon a map made in 1878, the election districts being laid out at that time, and the maps were published and the election districts were numbered upon that map. In 1890 or 1891 the police authorities in New York city, as I have said, proceeded to renumber the election districts in New York city. They published no new map. There is not obtainable, so far as I have been able to ascertain, or anybody else, any map containing these election district numbers. The only possible conceivable object of that renumbering was to prevent comparisons by

which fraudulent registration and fraudulent voting could be detected.

Mr. Holcomb — Mr. Chairman, may I ask the gentleman a question?

The Chairman — Does Mr. Root give way for a question?

Mr. Root — I prefer not to be interrupted. That renumbering of the election districts, without the publication of any map which showed their location, left us in a position so that when the State census was taken in 1892, taken by those renumbered districts, there was no way for anybody to identify population and location, except to make a map for himself, and that is what Mr. Lauterbach and I had to do in making this reapportionment in the city of New York, with infinite labor, with more than a thousand districts, with no way but to go to the city records and spell it out by oral description. In that way the committee made up the apportionment for New York city, and it is now before you for adoption or rejection. I will say this, that there is not any substantial change to be made, as will be seen by a careful examination of the figures which were first stated as the population of these districts. There is not a change anywhere which is of the slightest consequence, or changes the substantial relations of numbers. The principal change is the change of one thousand, which arises from the fact that there was a misfooting or misprint in the footing of one of the Assembly districts as contained in our Public Document No. 30. We took the footing from the public document, and, upon examination, found that that was erroneous to the extent of one thousand.

I shall say further about it that that apportionment in New York is made upon what I suppose to be the true, indisputable and fundamental principles of apportionment, and that is following the lines of homogeneous population and the lines of easy communication. The city of New York, as every one in this Convention knows, is one in which communication is up and down, north and south. The people do their business and travel along the avenues which run north and south — avenues A and B, First avenue, Second avenue, Third avenue, Fourth avenue, Fifth avenue, Sixth, Seventh and Eighth avenues. Communication across from river to river is slight. People will live a whole lifetime upon Manhattan Island without ever getting across from river to river. Lines of business run north and south; the people who know each other, the people who are engaged in business with each other, the people whose public sentiments are the same, they are arranged up and down the

island; and we have endeavored, and, I think, successfully, to lay out the senatorial districts in such a way that the people from every part will connect with every other part most readily, and that each district will contain, to the greatest possible extent, the most perfectly homogeneous population, so that these twelve districts will come as near being real districts as possible, just as twelve different counties are real districts. Now, gentlemen, say that the result of that is, that there are two Republican districts in the city. That results, Mr. Chairman, from the fact that where more than one-third of the voters are Republican you cannot lay out the land in twelve senatorial districts without having at least two that are Republican, unless you violate every proper rule of apportionment. If you follow right rules in a city where one-third of the voters are Republicans, at least one-sixth of the Assemblymen will be Republican, and nothing but deprivation of right will prevent it. That intentional deprivation of right the people of New York city now suffer under, and one reason why we ought now and here to adopt a new apportionment as a part of this Constitution is to overthrow a wrong and set up the right for those people. (Applause.) Talk about lack of representation. Mr. Chairman, there are a hundred thousand voters with their families in that city; more than one hundred thousand men who voted for Harrison in the last election, with their families, call them five to one; there are a half million of people without one representative in the Senate of this State, and, with the districts of that island so cut up by intention that they never can have a single representative in the Senate of the State; and yet the gentlemen say to us it is partisan for you to make any apportionment at all.

Mr. Chairman, I have something to say also about some of the rules that are laid down in this amendment. The objections which are made seem to be chiefly to the rules relating to ratio. That is the rule which imposes upon the large cities a somewhat larger ratio than that which is applied to the large counties, and the rule that provides that no large city, no county having a specified number of Senators shall have an additional Senator, except upon a full ratio. I am trying to state fairly the two things which I find the gentlemen have attacked in that respect. Now, these two provisions are attacked upon the theory that population, and population only, is the basis upon which an apportionment should be made and that any provision which departs to any extent from the rule of population is wrong in principle and some sinister motive could be found for it. I take issue with that, sir; I assert first that population is not the only rule; that the object to be obtained is true representa-

tion. There is to be combined with population as the basis of representation also the question of territory and the question of separate and individual interests. I say, in the second place, that the comparison is not between a single ratio of population in a small county and a single ratio of population in a large city; the question is not whether 38,606 men in the country should have greater effect given to their votes than 38,606 men in the city. The question is whether thirty separate centers of 38,606 each scattered over the country are to be compared upon the basis of absolute numerical equality with one center of thirty times 38,606 in one city, with all the multiplications of power that comes from representing a single interest, standing together on all measures against a scattered and disunited representation from the thirty widely separated single centers of 38,606. Thirty men from one place owing their allegiance to one political organization, representing the interest of one community, voting together, acting together solidly; why, they are worth double the scattered elements of power coming from hundreds of miles apart.

If the hour for adjournment has arrived, Mr. Chairman, I will suspend.

Second Vice-President Steele resumed the chair.

Mr. Barhite, from the Committee on Legislative Powers and Duties, to which was recommitted the proposed amendment (introductory No. 390), entitled "Proposed constitutional amendment, relative to the diversion of the waters of the Niagara river," reported in favor of the passage of the same, with some amendment.

The President *pro tempore* — This amendment will take its place on general orders.

The hour of five o'clock having arrived, the Convention was declared in recess until 8 P. M.

EVENING SESSION.

Thursday Evening, September 6, 1894.

The Constitutional Convention met in the Assembly Chamber, in the Capitol, at Albany, September 6, 1894, at eight o'clock P. M.

Second Vice-President Steele called the Convention to order.

Mr. Carter — Mr. President, I wish to be excused from attendance on Saturday afternoon.

Mr. Choate — Before that application of Mr. Carter's is passed upon I would like to have the Convention informed as to how many excuses have already been granted for Saturday.

The President *pro tempore* — The Secretary will inform the gentleman.

Mr. Choate — It seems to me, sir, that in these last eight days of the session it ought to be possible for gentlemen to give up their other calls and other engagements and attend to the business of the Convention.

The President *pro tempore* — The Secretary informs the Chair that there are eight or ten excused for Saturday. Gentlemen, are there any objections to Mr. Carter being excused for Saturday of this week?

Mr. Choate — I do most seriously object to it. It does seem to me that it is the duty of every member of the Convention to give up all else and attend every session from now until the fifteenth.

The President *pro tempore* — Objections being made, the question must be put to a vote.

The President *pro tempore* then put the question on Mr. Carter's request to be excused for Saturday afternoon, and it was determined in the affirmative.

The President *pro tempore* — The Secretary informs the Chair that this makes twenty-six members who are excused for Saturday.

Mr. Root — Mr. President, I move that all excuses to members of this Convention be revoked from and after Saturday of this week.

Mr. Veeder — Mr. President, I rise to a point of order. It is the personal right of an individual to ask to be excused, and the Convention having granted him leave of absence, the power of the Convention is spent. The individual cannot answer; he is not represented.

The President *pro tempore* — The Chair is of opinion that the point of order is well taken.

Mr. Root — Mr. President, it surely cannot be that this Convention has not the power to revoke its own excuses?

The President *pro tempore* — I think the Convention might have the power to reconsider the excuses.

Mr. Veeder — Does the Chair hold that that is a matter which the Convention can now consider in the absence of the gentlemen who have been excused by this Convention?

The President *pro tempore* — The gentlemen who were excused by this Convention would, I think, have to be informed of any action that the Convention may now take.

Mr. Veeder — And does the Chair hold that the Convention can

act upon that subject in the absence of the gentlemen who have already been excused?

The President *pro tempore* — The Chair holds that the Convention can reconsider excuses granted at any time. The Chair must so hold. The Convention has absolute power over its members. It has power to excuse members, and it has power to revoke such excuses, upon giving the members sufficient time to know of the action of the Convention.

Mr. Root — Mr. President, the attendance at this moment is so small that I think it is, perhaps, not proper to pass upon the question of the revocation of the excuses that have already been granted at this time. I, therefore, move to lay the motion, which I have just made to revoke all excuses from and after Saturday, upon the table, with the intention of calling it up later when there is a larger attendance.

The President *pro tempore* — The Chair held that Mr. Veeder's point of order was well taken, but upon further consideration the Chair stated that it was, perhaps, a proper matter to be brought before the Convention; that, where excuses were granted, there were times when it was within the power of the Convention to reconsider and revoke those excuses and recall the members, upon giving them notice of the action of the Convention.

Mr. Veeder — And is that the motion before the Convention?

The President *pro tempore* — The motion now before the Convention is to lay this motion upon the table.

Mr. Veeder — Who makes that motion?

The President *pro tempore* — The motion is made by Mr. Root to lay upon the table his motion to revoke all excuses from and after Saturday.

Mr. Forbes — Mr. President, in order to save any difficulty in regard to my excuse, and, perhaps, to set a good example, I will state to the Convention that I withdraw my excuse, and will attend on Saturday afternoon.

The President *pro tempore* — Mr. Forbes announces that he withdraws his request to be excused from attendance on Saturday afternoon.

Mr. Veeder — Mr. President, a motion to lay on the table cannot be interrupted by debate.

The President *pro tempore* — The remarks of Mr. Forbes stating that he withdraws his request to be excused are not considered by

the Chair as anything in the nature of debate on the motion to lay on the table. The motion before the Convention is that made by Mr. Root, to lay upon the table his previous motion to revoke all excuses granted on and after Saturday of this week.

The President *pro tempore* then put the motion, as stated, and it was determined in the affirmative.

Mr. I. S. Johnson — Mr. President, I now move that no leaves of absence be granted after Saturday next, unless by reason of the sickness of a member or members of his family.

Mr. Platzek — Mr. President, I give notice now that I will be sick on Wednesday.

Mr. Choate — Mr. Chairman, I hope that motion will be sustained.

Mr. Maybee — I would like to understand the meaning of the motion. I was excused for Monday afternoon, and I would like to know whether, if this motion prevails, it will operate to revoke that excuse?

The President *pro tempore* — By no means. It will simply operate to prevent the granting of any further excuses, except for illness.

Mr. Choate — I do trust that the motion made by Mr. Johnson will be sustained ——

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

The President *pro tempore* — The gentleman will state his point of order.

Mr. Veeder — That motion is out of order, unless it is a proposition to amend the rules, and, if it is a proposition to amend the rules, it should be referred to the Committee on Rules.

The President *pro tempore* — The point of order is not well taken. The Convention always has a right to take a matter into its own hands, if it chooses to do so.

Mr. Choate — I hope the motion of the gentleman from Wyoming will be sustained. We have but six days more before the time prescribed by law for the termination of our deliberations will be reached, and I hold that it is the duty of every member to abandon every other interest and every other call and attend here and devote himself to the business of this Convention. Gentlemen get up here, on the mere pretense of desiring to go home to their families, and ask to be excused, as though their families could not take care of themselves for four or five days more; and on the pretense of business, which, we know perfectly well at this season

of the year, may be postponed for a week without any detriment to any interest whatever, and ask to be excused. I trust we shall lay down now, for the residue of our sessions, a rigid and iron rule that nobody shall be excused, except for the serious illness of the member or of some member of his family.

Mr. Jacobs — Mr. President, do I understand that it is proposed to revoke the leaves of absence that have already been granted to-day?

The President *pro tempore* — That is not the motion.

Mr. Jacobs — I was going to make one explanation. I have asked leave to be excused during the greater part of next week, not from any personal considerations, but I hold in my hand a notice which requires me to be at home because of our primaries which are to be held next week. And, as I am the chairman of the ward committee there, and I am informed that there will probably be two or three contests, it is necessary that I should be present, as I am the only one who can call the boards to order and hear the contests.

Mr. Veeder — Does that primary relate to the election of delegates to the State convention?

Mr. Jacobs — Yes, sir; and I must be there.

The President *pro tempore* — The question before the House does not interfere with the gentleman's leave of absence already granted.

Mr. Jacobs — Thank you, sir.

Mr. Platzek — Mr. President, I have been in attendance upon this Convention, with the exception of half a day, when I was excused for the whole day, since this Convention assembled, and it is my purpose to remain here, notwithstanding my private business, until its conclusion; but I believe it would be unfair to make a limit now that no member of this Convention shall be excused, except by reason of illness of himself or in his family. It merely invites, to put it mildly, a false suggestion, and I am quite certain that no one is further from intimating anything of the kind than the genial, fair and good-natured President of this Convention. Besides, it reflects upon the honor and the integrity of every man in this body; likewise upon his patriotism and a sense of his duty. I have been here for four months, and I have learned to respect and admire the truth and the honor of every man who is a member of this body, and now, at this late day, within ten or twelve days of the time that we are to separate, I do not want to put upon the record of this Convention any statement or proposition which, by

implication, would infer that any one has been excused during the last four months, whether in the majority or in the minority, upon any misstatement or improper suggestion. I believe and I hope that every man who took his oath here on the first day is alive to the responsibility of his oath, and will not and is incapable of asking to be excused, except for an absolute necessity. Therefore, I insist that it would be cumbering our record with the suggestion that there are those among us who, for the sake of a paltry ten dollars a day which they will receive, would care to absent themselves from our sessions, giving as an excuse, business. I do not believe, sir, whether he be a Democrat or a Republican, that there is one among us who would wantonly ask to be relieved of service at this late hour, except by reason of the direst necessity, and I ask, and I believe it is right, too, that we should not limit the excuses to the sickness of a delegate or of a member of his family. I am content to believe that no man who serves here now, and who has been here for four months, would stand upon this floor and ask to be excused, except upon the most extreme necessity, and I do not care to have the minutes of this Convention show, at this eleventh hour that we suspect those with whom we have sat so long of doing anything so improper. Therefore, I oppose this proposition.

Mr. Bush — Mr. President, it seems to me that this proposition is somewhat absurd, for the simple reason that, if you adopt it to-night, any member may come in here and ask leave of absence to-morrow and a majority of this Convention may grant it. Therefore, I do not see what good it will do to adopt this proposition, unless to show that a majority of the Convention may feel that way to-night. It does not prohibit any man from asking an excuse any day he may see fit, or from having it granted. It is no invariable rule that you cannot change to-morrow. If you will adopt some such rule as that and provide that it shall not be reversed, except by a two-thirds vote, as is the custom in all parliamentary bodies, it might amount to something; but this proposed rule can be upset at any time.

Mr. Nicoll — Mr. President, I think this proposition does not have much application to that portion of this Convention with which I am associated, for we are almost always here. We do not require any such resolution as this to keep us to the strict performance of our duty as delegates. But, sir, it is an exceedingly wholesome and useful measure, I think, for the majority of this Convention, who have so often reminded us, on the other side, that they are responsible for its work. They are responsible for its

work, since this has become a political Convention, and they ought to stay here and transact this business until the last moment of the session expires. I hope on that account that the proposition will prevail; I shall vote for it, and I move the previous question on the debate.

The President *pro tempore* — The question before the Convention is upon the motion of Mr. Johnson, of Wyoming, that after Saturday of this week, no leave of absence shall be granted to any member of this Convention, except in the case of sickness of himself or his family.

The Chair will further state, as the holding of the Chair, that all of these excuses, so-called, are actual leaves of absence, and may be revoked by the Convention at any time; giving the parties who hold them due notice of such revocation. The same rule has been held by the Congress of the United States. Otherwise, the Convention might be without a quorum at any time. As many as are in favor of the motion will say aye; those opposed, no — the Chair is in doubt. As many as are in favor of the motion will rise; those opposed will now rise.

The motion prevailed by 43 in favor and 24 against.

The President *pro tempore* — The motion is carried by 43 ayes against 24 noes.

Mr. Veeder — What was the vote, Mr. President?

The President *pro tempore* — Forty-three and twenty-four.

Mr. Veeder — Is that a quorum?

The President *pro tempore* — All of the members present, obviously, did not rise and vote on the motion.

Mr. Veeder — Does the Chair see a quorum?

The President *pro tempore* — Yes, sir.

Mr. Forbes — Mr. President, if I am in order, I would like to call for a report from the Committee on Legislative Powers and Duties, in regard to the waters of the State, in answer to the resolution which was adopted day before yesterday. The reason that I ask to have this matter considered at the present time is because it will save one legislative day and will hasten the work of the Convention. The committee have held a meeting to-day and it should be ready to report.

Mr. Vedder — I am chairman of that committee, and I will state that I referred the resolution of which the gentleman speaks, to the sub-committee, which has in charge the Niagara Falls water busi-

ness. I think Mr. Barhite is present. I was not at the committee's meeting to-day, and do not know what was done. I would like to hear from Mr. Barhite.

Mr. Barhite — Mr. President, this resolution was introduced into the Convention on the fourth of September, which was the day before yesterday. It directed the committee to report on or before the sixth of September, to-day. The committee had a meeting this afternoon to consider the matter, but they did not arrive at a definite conclusion as to what shall be done, as it is a very large and important matter. In order to explain the matter more fully to the Convention I will read the resolution:

" Resolved, That the question of the disposition of all the waters of the State for industrial purposes be referred to the Committee on Legislative Powers and Duties, with directions to report on or before September sixth."

If it is desired that this committee shall continue in consideration of this question and make a report to this Convention, it will certainly be necessary for it to have more time, as it is impossible for that or any other committee, in the time that has been granted, to finally decide the question.

Mr. Forbes — I offered the resolution that a special committee be appointed, under the belief that a special committee would act more promptly than one of the standing committees which had not agreed among themselves, as it appeared by the report. This committee did not get together yesterday, but simply laid the matter over until to-day. Therefore, without making any motion on the subject of the report of that committee, I offer the following resolution, and I suppose that it will go over until to-morrow, if anybody wishes to discuss it:

Substitute for R. 197.— Resolved, That a special committee of five be appointed by the President to consider what the State should do with its natural property, exclusive of the waters of the Niagara river, and report thereon, with any proposed amendments to the Constitution they may deem proper.

The President *pro tempore* — Does any member of the Convention desire to debate this resolution?

Mr. Becker — I desire to debate it.

The President *pro tempore* — As it is desired to debate this resolution, it will go over until to-morrow. The Convention will now resume in Committee of the Whole on general order No. 74, and I will ask Mr. Durfee to take the chair.

Mr. Barhite — Mr. President, I would ask, as our time expires upon this resolution to-night, and as we do not know what will be done with the resolution that has just been offered, that our time be extended until to-morrow or until after the other resolution has been considered by this Convention.

The President *pro tempore* — If there is no objection, the time of the committee will be so extended. There being none, the time is extended.

At this point Mr. Durfee took the chair and the Convention resumed in Committee of the Whole on general order No. 74.

The Chairman — Before proceeding to the consideration of the general order before us, the Chair desires to state that there has been furnished him a memorandum of the speakers who desire to be heard on the part of the opponents of the pending measure, and of the time allotted to each one, with the request that upon the expiration of the time allotted him the Chair shall indicate that the time of that speaker has expired. Not desiring to arrogate to myself any such authority, I make this announcement, with the further statement that if there is no objection, that course will be pursued.

Mr. Becker — Will the Chair please state what the time allotted is? How much time altogether is allotted?

The Chairman — The time remaining to the minority is one hour and twenty-five minutes.

Mr. Becker — And how much is left of the majority's time?

The Chairman — The Chair is not able at this moment to state, but it is only a matter of computation. The further consideration of general order No. 74 will now be resumed, and Mr. Root has the floor.

Mr. Root — Mr. Chairman, when we adjourned this afternoon I was discussing the question of ratios and of the two provisions which discriminate in favor of the country and against the cities, by fixing a smaller ratio for the country counties than is fixed for the large counties and the cities, and by providing that no city having more than a specified number of Senators shall have another Senator, except upon a full ratio. I had stated that there were two reasons for not applying a strict rule of representation according to absolute population to the whole State, and that those two reasons were, first, that territorial extension, variety and separation of interests, upon the one hand, required a representation which was not necessary upon the other, when there was a con-

densation in the great centers of population; and, in the second place, that the great increase of effective force which came from the election of a large number of representatives from one city — representatives who represent not, in fact, their separate districts, but the whole city — representatives who were responsible to the same political organization, the same public opinion, and, in fact, represented but one combined interest of the citizens of that city — the great accumulation of power created by that combination so far overweighed the effective power of a great number of scattered representatives of widely-divided centers of population, small centers of population, that a difference in the ratio, such as is proposed in this amendment, goes but a small ways toward equalization.

Now, Mr. Chairman, let me say a word upon this last proposition. In the city of New York there are thirty Assembly districts. Under this proposed measure there are to be thirty-five. I will venture to say that a majority of the people of the city of New York cannot tell the boundaries of ten per cent of the Assembly districts in that city. I will venture to say more, that not more than a third of the people of that city can tell what Assembly district they live in. I will undertake to say that not ten per cent of the people of the city of New York can tell what election district they live in. These boundary lines are so far statutory and matters of words; the distinctions between the artificial divisions of Assembly districts and of senatorial districts, and aldemanic districts, and civil justice districts, and election districts, are so shadowy, in fact, they are so largely a matter of statute and so little a matter resting in real distinctions of population that people do not know anything about them, until they come to study their tickets just before they go to the polls or look into the newspaper to see where they are to vote. A resident in one of our great cities — it is so in New York and it is getting to be so in Brooklyn, and it will soon be so in Buffalo — has not for his neighbor the man who lives next door; the chances are he does not know who he is or what his name is, and wouldn't recognize him, if he met him in the street. His neighbor is somebody who lives four or five miles off, whom he meets at church, at a club, at a directors' meeting, or, perhaps, in a labor organization, or in any one of the various associations which make up the busy and complicated life of a great city. Locality counts for nothing in association. Every man who is sent to the Legislature from a great city represents not this artificial territory, this territory artificially defined; that is but a means of determining what voters shall pass upon the question of whether he or another man goes to the Legislature. But he represents the whole city; every repre-

sentative of every part of the city represents the whole city, and no special part of it. The interest of all the thirty members from New York — of all the thirty-five members, as they will be, if this proposed provision becomes a part of the Constitution — will be one interest. There is no interest of the Fifteenth District as distinguished from the Sixteenth, or the Seventeenth, or the Eighteenth, or the Nineteenth, as distinguished from the Twentieth, or the Twenty-first, or Twenty-second. Each is for all; all are for one. Each is responsible to one political organization in that city. Each is charged with the duty of representing, and discharges the duty of representing, or, too often, misrepresenting, the whole interests of the people of the city. Now, sir, we are to compare this compact body of men, each one of them representing precisely what the others represent. Thirty men, as it is now; thirty-five, as it is proposed to be, extending in one solid phalanx, to represent one interest. We are to compare that with the representation of Putnam county, St. Lawrence county, Oneida county, Cattaraugus county, Monroe county — gentlemen representing entirely different interests and responsible to entirely different constituencies, with no cohesion, no common bond, except as they may happen to have spoken upon a subject which comes before the representative body. And I submit that upon sound principles the comparison between these separate bodies and their representation and this one great consolidated body is not, and cannot, be a mere numerical comparison. Carry this to its logical conclusions, if you please. Take the view taken by our friends upon the other side. See the city of New York growing from year to year, adding Brooklyn, perhaps, to a Greater New York, and within the allotted space of life of the majority of the members of this Convention, holding within its limits a majority of the people of the State. She sent to your Legislature a majority of all its members responsible to one political organization in that one municipality — responsible, if the present system of political domination which now obtains in that city is continued, to one man for their votes and their actions — and tell me whether, for the government of this State, it is right and just that the comparison between all the other representations of this State, all the other cities and all the other counties, extending over half a thousand miles from east to west, and from the ocean to the St. Lawrence river, with their varied interests, with their widely-scattered centers of population, whether the comparison between their representation and this one controlling power should be solely on the basis of population? If that principle be pushed to its logical conclusion, every county, every city, every town, every village,

every man in the State of New York becomes subject to the absolute domination and control of the delegation from New York. I, for one, sir, New Yorker as I am, beholden for almost thirty years of kind treatment to the people of that city, love too dearly the State of my birth and my life to contemplate such a result with equanimity. And I insist, sir, upon the principle which has been adopted in a large number of the States of this Union, in almost every State which has had to deal with the problem of a great city within its borders, and the relations of that city to an agricultural community, that the problem which they have had to deal with shall be dealt with by us upon the same principle; that the small and widely-scattered communities, with their feeble power comparatively, because of their division, shall, by the distribution of representation, be put upon an even footing, so far as may be, with the concentrated power of the great cities. Otherwise we never can have a truly representative and a truly republican government.

Now, Mr. Chairman, let me call the attention of the Convention to a specific test of this question as to ratios. Great complaint has been made, as I have said, of the proposition that a county which has more than three Senators shall not have another Senator, except upon a full ratio. It is said that that is unfair to the great cities. Is it so? The population of New York city, according to the State census of 1892, was 1,423,965. New York city is to have, according to this proposed measure twelve senatorial districts. I have to-day, while sitting here, added together the population of the next twelve senatorial districts and they amount to 1,458,772. I will observe in passing that these districts happen to be the next twelve in numerical order to New York, and they appear to have 34,806 more inhabitants than New York city. They are country districts, and, according to this much-denounced apportionment, they require 38,808 more people to elect the same number of Senators than the much-abused city of New York. So that each citizen of New York has just so much more effective force to his vote in the election of a Senator. But that is in passing. Now, as the twelve senatorial districts of New York are in one county, the provision as to a county having more than three Senators operates so that the county of New York cannot have another Senator without a full ratio; that is to say, without having 115,817 more people. This is a matter of figures, gentlemen, and what I say is not worth anything, unless I make it clear. The provision which is attacked is that no county having more than three Senators shall have another without a full ratio, while counties having less than three Senators may have another Senator when they exceed

half a ratio. It is said that that is an unjust discrimination against the great cities and in favor of the country districts. The ratio for Senators under the measure is 115,817, so that under it and under this provision the county of New York will have another Senator when it has 115,817 more people. Now, how is it in these other twelve senatorial districts? Gentlemen, none of these twelve senatorial districts can have another Senator until it itself exceeds half a ratio. So that the population of those twelve districts may increase until they have twelve half ratios without another Senator being given to any one of them; that is to say, they may proceed until they have twelve times half of 115,817. Nearly 700,000 may be added to the population of those twelve districts without their getting another Senator. Take the proportion for the districts in New York and the addition of 9,651 to each of the twelve senatorial districts in that city will give the city another Senator. Take the twelve which stand next on the list. Each one will have to have over 57,000 before a single Senator gets into that district, and every one of them may come up to 57,000 before a single Senator goes to any one. The fact is that the grouping of these Senate districts and the grouping together of the surplus gives them an enormous advantage from being districts which are within the limits of a single county.

The surpluses of the Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth, Seventeenth, Eighteenth, Nineteenth, Twentieth and Twenty-first Senatorial Districts are all to be added together in order to secure another Senator under this amendment. One may have a large surplus, another a small one, another a moderate surplus, but just so soon as all together they make up 115,817 another Senator comes. But the surpluses of the Twenty-second District — Westchester and Putnam — of the Twenty-third District, of the Twenty-fourth, of the Twenty-fifth, of the Twenty-sixth, of the Twenty-seventh, and so on up through the rural districts, they are not to be added together. Oh, no. Their surpluses are of no avail to get a Senator, and they do not count toward getting one until some one district has a surplus which exceeds half the ratio of 115,817. Does it not occur to you, gentlemen, that, instead of being a discrimination against the great cities, this proposition, as it stands, is unjust to the country districts? We have not done justice to them. We are leaving twelve senatorial districts in the city of New York, which can get another Senator by combining their surpluses, and we do not let any two in the country combine to get another Senator; we make each one stand on its own bottom and earn its representation by its own unaided population. I think

in my own private judgment, that this committee, of which I was a member, is censurable for permitting it. I think I am censurable for permitting this amendment to come into this chamber with a provision so unjust to the country, and giving so great an advantage to the cities; and, if any change ought to be made, it ought to be not merely to confine the cities to a full ratio of their combined senatorial population, but it ought to be to give to the country districts the opportunity to get additional Senators by combining their surpluses in their senatorial districts.

Let me now look at it in another light, Mr. Chairman. We are talking about surpluses. Of course, when you fix the number of a representative body the only way to determine how the representatives are to be distributed is by dividing the total population and getting a ratio, and distributing according to that. Of course, however you fix it, there will be some division of the State which is just above and some that is just below the line. It does not make any difference what number you take; you may take twenty, or thirty, or fifty, or one hundred, or one hundred and fifty, or two hundred, somewhere or other you will find a county or a district that is just above the line and another that is just below, and, if you narrow your vision and look through your hands at just those two districts, and see nothing else, you will say: "This is unfair; here is a district which has such a population, and it has three Senators, and here is a district which has almost as great a population, and it has only two Senators." A very fetching argument for people who have not thought about the subject. Taken by itself alone, it is difficult to answer, but the answer for anybody who thinks about the subject is that in the nature of things you have got to draw a line somewhere, and wherever you draw it you will necessarily find instances, one on one side and another on the other side. An amendment has been introduced into this Convention to reduce the limit of age upon which voting is based to twenty years, and upon the perfectly well-founded ground that a particular boy of twenty is just as well qualified to vote as any man of twenty-one. But you have got to draw the line somewhere. If you draw it at twenty, you will find a boy of nineteen who is just as well fitted to vote as the man of twenty. It is so in all these questions of apportionment. So you have got to have these fractions, and you have got to dispose of them as best you can. But what is the true principle on which they should be disposed of? If you had a great number of districts, each having but a single representative, the question would be perfectly simple. If you had sixty counties in the State, each county having one Sena-

tor, and there were ten more Senators to be distributed, you could give them to the counties having the largest ten surpluses. There would be no trouble about that at all. But does that hold good when you have some counties, with one Senator, when you have some counties, three or four of which have to be grouped together to have one Senator, and when you have some counties which have seven Senators and some which have twelve? I think not. Why not? Because this surplus is the product of all the districts in the county. Let me illustrate that by the county of New York. Under this bill there will be 34,000 surplus in the city of New York. That 34,000 is a surplus of the whole county of New York. It is the surplus of twelve senatorial districts. You go to a county up in the State, a single county, which has a population large enough to have one Senator and 10,000 over. Take the county of Oneida for example. It has enough for one Senator and about 8,000 over. Is that 8,000 surplus in Oneida county to rank with numerical equality as against the 34,000 in the county of New York? Why, certainly not. To complete the illustration, let me go on to Onondaga county, with a surplus representation of 27,000, Onondaga and Oneida counties having together just about the surplus of New York. Are they to be matched equally as against the 34,000 of New York? See what the result would be, if they are. If you give, in distributing surplus representatives to fractions, a Representative, Assemblyman or Senator to the 34,000 of New York, you are giving an additional Senator to just such proportion of the people of New York as thirty-four is to 1,423,000, a little over two per cent. But when you come to Onondaga and Oneida counties, if you deprive them of that additional representative, you have deprived them of nearly fifteen per cent of representation! The true rule, the logical rule, the fair rule of distributing representatives upon these fractional surpluses is to give the representatives to the surpluses which constitute the largest percentage of the population of the district, and that is the only right way to do. That is the way to secure fair, equal and just representation. And let me call your attention to one, to me, very interesting fact. I have taken this apportionment, very much troubled by statements made so strongly by gentlemen upon the other side of this question whom I greatly respect, who said it was unfair, and I have worked out the distribution of the people of this State in the senatorial and Assembly districts upon a number of other bases, for the purpose of seeing whether, testing this bill upon this and upon that and then upon another theory, it did work injustice, and I find this to be the case: that taking the population of the State as it is given in the

census, and the population of the different counties; in the first place, this bill produces almost exactly the same result which is reached by giving one Assemblyman to each of the smaller counties of the State, the twenty-one which are below the ratio, and then dividing all the remaining Assemblymen throughout the rest of the State in exact proportion to population. Now, that is a simple proposition, isn't it? Gentlemen, do I make that clear? This bill is a little complicated in its expressions. I say that taking the twenty-one counties of this State which are below their proportion, their one hundred and fiftieth of the population of the State, and giving to each one an Assemblyman, and, then assuming that for all the rest of the State we divide equally the remainder of the Assemblymen, Jefferson and Onondaga, and Erie and Kings, and New York, all sharing alike, Democrats and Republicans, without any regard to political consideration, country and city alike, every one in the State sharing with absolute numerical equality the representatives left after we have given to these twenty-one little counties the single representative necessary to preserve their autonomy and look after their feeble interests, the result comes out substantially the same as the result of this bill, and there is absolutely no political difference — not one more Democrat or one less; not one more Republican or one less. Are you not going to give these little counties an Assemblyman? Does anybody question that? I have not heard any one on the other side question that. After you have given them, is it not fair that the rest of the State should divide up the other Assemblymen equally? Has New York city or has Brooklyn any right to say that the burden which comes from giving these small counties an Assemblyman for each county shall be borne entirely by the other rural counties? If they claim any such right, what is the warrant for it? Now, I repeat, for I want no misunderstanding, that this bill, as it stands, gives, so far as its political results go, precisely the same result which would come from giving to these twenty-one counties that are below the ratio their Assemblymen and then dividing all the other Assemblymen throughout all the other counties of the State in exact proportion to population. And, again, Mr. Chairman, I say that this bill is unjust, not in discriminating against the great centers of population, but in not discriminating enough against them. It does not do justice to the widely-scattered population of the country districts; and it does not do justice because the gentlemen in charge of the bill know that they have a constituency behind them who would rather suffer themselves than rest under the unjust imputation of unfairness.

The precise difference between the working out of a distribution upon the plan which I have just been speaking of and the working out of the distribution according to this bill, would be to take away one Assemblyman from one Democratic county and give it to a Republican, and from one Republican county and give it to a Democrat.

I have also worked out this same problem distributing the surplus members who are left after the distribution to the counties upon their full ratios in accordance with the percentage of population. For instance, the surplus of Albany county, after giving to that county three Assemblymen, is 36,211; that is to say, Albany county has three times the ratio, and on each ratio it gets an Assemblyman, and then it has left 36,311 people. That is twenty-three per cent of its population. The surplus of Broome county, after giving it one Assemblyman upon the full ratio, is 21,412. That is thirty-four per cent of Broome county's population. The surplus of Cayuga county is thirty-two per cent of its population; of Chautauqua county, forty-four per cent; of Dutchess county, forty-five per cent; of Jefferson county, thirty-nine per cent; of Niagara county, thirty-two per cent; of Oneida county, thirty-one per cent; of Oswego county, forty-one per cent.

Now, gentlemen, I beg you to consider the full force of this. It is that distributing these Assemblymen to these counties forty-one per cent of the people of the county of Oswego are left unrepresented so long as Oswego county has an Assemblyman only for a full ratio. Thirty-nine per cent of the people of Jefferson county are unrepresented. While, as to New York, with her surplus, a little over one per cent is unrepresented. As to Kings county, only eight per cent is unrepresented. Now, what is there fair about this? You have distributed all the Assemblymen to which these different counties are entitled upon full ratio. How are you to distribute the surplus? To absolutely the largest fractions? No; to those counties which have the greatest percentage of their population unrepresented without this additional distribution. If you take any other course, you will leave a small percentage with additional representation and a large percentage unrepresented. And, distributing these Assemblymen upon that basis, you come again to precisely the same political result. Not one more Democrat or one less; not one more Republican or one less, the only difference being to take one man from one Republican county and give him to another Republican county.

Testing this measure by these various methods, finding that it works out exact fairness, even upon the numerical basis which has

been suggested and urged so constantly upon the other side, I repeat that in its general provisions and in the general scheme which it embodies in the comparative treatment of city districts and rural districts, it is unjust, not to the cities, but to the country; and, if any just criticism is to be passed upon it, it is not by the gentlemen from New York and Brooklyn, not by the gentlemen whose party has for the moment ascendancy in the great centers of population, but by those who live in the country, and pin their political prospects and hopes upon the political majority in the more thinly-settled parts of the State.

And, Mr. Chairman, we are falling below that standard of justice to the thinly-settled parts of the State which has obtained in a very large part of this Union. There is hardly a State which has to deal with the question as between the country and the large cities which has not made discriminations as to the ratios required for representation in the small counties and in the thickly-populated cities much greater than is made in this proposition. I am astonished at the moderation of this committee. I am more astonished than I can be commendatory.

There are a number of minor objections which have been preferred which I will take very little time considering. The gentleman from Ulster (Mr. Bush) made a statement that one of the districts in the city of New York was found to have only 110,000 inhabitants. That is an illustration of that most perfect mathematical accuracy which guided him in the introduction of the apportionment of 1892. The statement is as correct in fact as that apportionment was just. There is no such district in that city. There is no district which comes within 6,000 of it. I do not know what aides to the calculation he called into his assistance, but, judging from the results, I suspect they are the same he had in 1892.

Mr. Bowers — Will the gentleman permit a question?

Mr. Root — I hope not to be interrupted, Mr. Chairman. The statement has been made that this increases the expense. Now, I have two things to say about that. The first is, that by doing away with the State enumeration in 1895 (next year, when we had one year before last), we save the people of the State from $200,000 to $250,000, while, if the present Constitution continues in force, there will perforce be another enumeration wholly useless in 1895; and I am sure my friends on the other side of this question will not say that the enumeration taken in 1892 was such a just and fair one; that it was so unjust that it is necessary within three years to take another. I do not say it was just and fair. I think that in two or three years it may be that the population of the cities,

the design and object of that enumeration being to swell the same beyond their real numbers, will, perhaps, have grown up to the census, so that it is, perhaps, about fair, with a little margin for either side, that we should make this enumeration of 1892 to go into effect in 1895. But, be that as it may, the theory of our having a separate State enumeration is that as the federal government takes the census in decennial years, we will take a census between each federal census. So that in 1890 there was a federal census; in 1895 there should be a State census; in 1900 another federal census, and in 1905 another State census. The gentleman from New York (Mr. Bowers) remarked in his very able and eloquent address that by the grace of the Republican party we had a census taken seven years after the time fixed by the Constitution. If I remember correctly, Mr. Chairman, the Legislature of this State, when the party to which the gentleman alludes had a majority in both branches passed a law, at the time fixed by the Constitution, for the taking of that census, and that law was vetoed by the gentleman who is said to control the deliberations and direct the acts of the opponents of this amendment, in order that he might defer it until the patronage which it involved and the result which it might bring would ensue to his party. So far as the party which is responsible for the conduct of this Convention (and which accepts and is discharging that responsibility) is concerned, the act for the taking of that census was passed at the time the census should have been taken according to the Constitution, but, by the acts of the gentleman's party and of the Governor whom he follows, it was postponed until within three years of the time when another census was to be taken under the Constitution. To take another census within three years is throwing away the people's money, and we do not propose to do it; but we propose to take their census, faulty and defective as it was, characterized by partisan spirit and intended to subserve partisan purposes, as it was, we will take their own basis of figures, and on it we will apportion this State fairly and justly, and then go to the time, when, in accordance with the Constitution, another enumeration should be taken. Taking their own figures, giving every advantage to the Democratic centers as against the great Republican rural population of the State, making an apportionment on their own figures as fair as an apportionment can be made, we still find ourselves confronted by the apprehension, the certainty, in their minds, that they are, under a new apportionment, to meet a defeat against which it is necessary for them now to prepare and record excuses; and in all their declamation and denunciation there is

nothing else but that. Mr. Chairman, I hope this committee will report this bill, and that this Convention will adopt it; and I am sure, if we do, the people of this State, who cannot be fooled, as a gentleman has said to-day, all the time, or fooled very badly any of the time, will put it into the Constitution and elect good legislators under it to govern this State well and fairly for many a year to come.

Mr. Bush — Mr. Chairman, I have listened with a great deal of pleasure to all the debates in this Convention. I have heard men discuss this provision who have no doubt given it a great deal of time and attention, but, sir, I say here boldly — and I am not in habit of making rash assertions — that I have not heard a single individual upon this floor discuss this subject who knew less about it, or who more wilfully misrepresented the real facts, than the gentleman who has just taken his seat. He has made statements that are absolutely false from top to bottom, and he has put them forth as a reason why this provision should be adopted. I have no objection to the Republicans adopting it on any such basis, but I will not permit this Convention to listen to remarks of that character and then allow them to go unanswered. As an example of the man's lucidity and exactness in statement, and of his logic and his reason for wanting to pass this bill, I will cite to you one thing that he has just stated. He told you that Oneida county had a population for a district and 8,000 over, when, if you will look at the census, you will find that it has just 1,388 over. The gentleman's entire remarks are full of just such statements. He tells this Convention that New York is over-represented; that the Democratic districts in the State are over-represented; that in the twelve Senate districts in the country they have a greater surplus than New York, and that he is surprised at the moderation of this Committee on Legislative Apportionment to take from the country and give it to the city. His remark is true, to a certain extent, but yet it is quite ingenious. Take these twelve districts that he speaks of. Every one of them, with a single exception, are Democratic districts, not Republican districts. His remarks would lead one to infer that some Republican districts had a greater surplus in them than New York. Let me read to you the districts to which he refers. The first district is Suffolk and Richmond, population 105,464. That is 10,000 short, and this is the only Democratic district in the State, under this proposed apportionment, that is short. The next is Queens, population 123,974, and a surplus of 8,157. Is that a Republican district? No. The next is Kings, with seven Senators, and a surplus over of 58,264. Is that a Republican county? No. But it is one of the twelve

immediately surrounding New York. The next is Westchester, population 129,224, and a surplus of 13,407. That is a Democratic district. Then comes Orange, with a surplus of 8,779. Now, there are the twelve districts, and all but one of them Democratic. The gentleman would attempt to lead you to imagine that these Democratic districts average only 3,000 surplus, and leaving the inference that they are Republican, and, therefore, he, a Republican, was surprised at the committee's moderation.

The gentleman made another statement, Mr. Chairman, which is absolutely contrary to the fact, and which is so apparent that it seems to me that any man of ordinary common sense would hesitate to make it; that is this, that if you divide the population of the State of New York by 150, which gives a ratio of 38,605, and you give to each county having less than that one Member of Assembly, and divide the rest of the population by the balance, it would make no political difference whatever. I contend, sir, that that is absolutely false. Here are the figures all made out: the county of New York has a population of 1,423,984; under the ratio of 38,606, that county would be entitled to thirty-seven Members of Assembly, lacking only 4,000 population; yet under this bill it has thirty-five allotted to it. There is a difference of two Democrats. The county of Kings has a population of 868,983, and divided by this ratio, it would have twenty-two Members of Assembly and 18,651 population over. There is another Democratic member. That makes three. Now, what would become of those three Democratic members? Why, they are given first to Cattaraugus county, which is not entitled to it under that ratio, and that makes two Republicans. Another is given to Broome county, and another is given to Cayuga county, each of which are Republican. So that you take three Democrats away from the Democratic counties to which they are entitled, and you give three Members of Assembly to Republican counties, to which they are not entitled; and that makes a difference of six between the two parties. How wide, then, is the gentleman's statement from the truth?

Now, with reference to the surplus of these senatorial districts which the gentleman has attempted to befog. There is just one district which is Democratic under this apportionment which is minus, and that is Suffolk and Richmond. On the contrary, we find such minus quantities in senatorial districts as these: Clinton, Essex and Warren, minus 11,050 of its population; that is a Republican district. St. Lawrence and Franklin, plus 1,887; that is Republican. Otsego and Herkimer, minus 20,186. Oneida, surplus 1,388,

Jefferson and Lewis, minus 20,158; Republican. Onondaga has the largest, and the only large, Republican surplus, of 26,241. Oswego and Madison have a minus of 5,120; Republican. Cayuga and Seneca, Republican, minus 29,310. Chemung, Tompkins and Schuyler, Republican, minus 20,487. Steuben and Yates, Republican, minus 14,101. Ontario and Wayne, Republican, minus 22,305. Monroe, two districts, Republican, minus 50,305. Allegany, Livingston and Wyoming, minus 7,472. Erie, with two Republican Senators, minus 42,700.

Now, Mr. Chairman, let any man look at or read the effects of this apportionment, and then listen to the remarks of the gentleman from New York (Mr. Root), that he is surprised at the moderation of this committee. Pray, what did he expect? That New York would get no Senators?

I will just allude to one more statement made by the gentleman. He said I alleged that in the Thirteenth District of New York there was a population of only 113,000. He very adroitly refused to permit a question from Mr. Bowers at that point, and he said that that statement of mine was just as true as the apportionment of 1892 was just. Well, the apportionment of 1892 may not have been exactly just — I wonder if the gentlemen who are laughing and applauded imagined that I ever thought it was, or that any apportionment ever made in the State of New York was just exactly just? Why, sir, all that any human being can do in this world is to approximate justice; but there is a vast difference between nearly just and absolute iniquities, such as this is. We find that the Thirteenth District of New York, which we have gone over with the utmost care, taking the figures and the districts that the gentleman does, and the very map from which he made his figures, contains 113,635 inhabitants. He said there was not a district in New York that came within 6,000 of what I stated. Mr. Chairman, I state again that the figures that he gave are absolutely wrong; that they changed the boundaries of those districts after the figures are made, and he nor no other man can deny it.

That is all I care to say on that subject, with the exception of this further fact. There is not one district in the whole State of New York in this apportionment that is correct. The whole purpose of this apportionment is political, and every other consideration has been brushed aside. You find here, speaking of surplus and minus in Republican senatorial districts, that they are minus 246,843 votes; that there is a surplus of 96,008, or a minus of 150,000 taking over surplus in the Republican senatorial districts under this bill.

Whereas, on the contrary, there is a surplus of 161,137 in the Democratic districts, and a minus of 10,000 in only one district. The difference, then, between the Democrats and the Republicans under this bill is 300,000 advantage, which the Republicans have. That requires 60,000 Democratic majority in the State in order to get a majority of one in the Legislature. That is what the gentleman calls justice, and that is what he compares with the apportionment of 1892, which gave, under Republican majority in the State of 24,000, a majority of six in the Senate and twenty in the Assembly. I am willing to let the people of the State judge between the two apportionments.

Mr. Cookinham — Mr. Chairman and gentlemen of the committee, very much has been said upon this question, I think, upon a very erroneous idea of the manner in which this proposition comes before the Convention. It has been charged that there was some charm about the number fifty in fixing upon the number of Senators. I desire to say that I propose to take the entire responsibility of proposing to fix the number of Senators at fifty. If the gentleman who criticised this bill so severely and charged — I think it was Mr. Bowers — that not until they saw this bill introduced by Mr. Brown, printed and upon the desks of the members, did they know anything about fixing the number of Senators of this State at fifty. If he had examined the file he would have found that upon the twenty-eighth day of May and the twenty-ninth day of May two proposed constitutional amendments were introduced by me. They were printed; they were immediately placed upon the files, and they are there now. In one of them the Senate of the State is fixed at fifty. More than that, very many of the details in the present bill are in these two proposed constitutional amendments and have been since those dates. Therefore, I hardly think the criticism that this committee has been unjust to the other side in laying before them a bill that they could not understand, because the time since it was introduced is so short, is very well taken.

Before I proceed to discuss this bill I desire to call attention to certain events which have occurred in the State of New York within the last two years. The gentleman who opened this debate, Mr. Bush, stated that he was responsible in a very large measure for the apportionment of 1892. He did not tell us that the Legislature of 1892 passed a bill providing for an enumeration of the inhabitants of the State under the Constitution, and providing that such enumeration should be taken in the month of February, 1892. He forgot to mention, what Colonel Morton so forcibly brought before this

Convention, that the regular session terminated upon a certain day, and that upon the evening of the same day, at half-past eight oclock, a special session assembled. He forgot to mention that he then and there produced an apportionment, made out and submitted to no man except to himself and those that were in the ring. He forgot to mention that between eleven and twelve o'clock on the night of the twenty-fifth day of April that bill was presented in this House to the Legislature of the State of New York. And when I heard Colonel Morton calling attention to that fact, and reciting that it was Mr. Bush that made the motions from beginning to end of the remarkable procedure, I thought that it was the time of night which Shakespeare described when he said: "Now is the witching time of night when churchyards yawn and hell itself breathes forth contagion." Certainly, that would be a just characterization of the apportionment of 1892. But the Democratic party had the power, Mr. Chairman, to perpetrate that iniquity upon the State of New York, and they did it. The statute provided that the supervisors in the different counties having more than one Assemblyman should divide the counties into Assembly districts. They met in the several counties; in my own, for instance, and the board of supervisors refused to act under that law, on the ground that, as they claimed, it was unconstitutional. A proceeding was taken to compel them to perform their duty. And, Mr. Chairman, lest it should be charged that there was partisanship in that movement to test the constitutionality of that act, there was a division of the labor between the respective parties, and there were Democratic lawyers and Republican lawyers upon either side. It was my lot, for once, to take the side of the Democratic party. As to how well I performed that service, I leave it to my Democratic friends to judge, after examining the case as it appears in the reports of the decisions of the Court of Appeals. On partisan lines that court decided that the apportionment was constitutional, and I will say that, for once, my confidence in that great court, which ought to command, under all circumstances, the respect of every lawyer in this State, was sadly shaken. When the court decided that the county of Albany, with 156,748 inhabitants, was entitled to four Members of Assembly, and the county of Monroe, with 181,230 inhabitants, was only entitled to three, it countenanced a wrong.

Let us go on one step. It has been said by gentlemen who have addressed this committee on the other side that, as an evidence of the fairness of the apportionment of 1892, the State at the very next election elected a majority of both Houses of the Legislature adverse

to the Democratic party. Is that true? No, Mr. Chairman; it was because the good sense, the sound judgment, the absolute love of justice in the hearts of the citizens of this State repudiated the fraud, as it did in Buffalo and Rochester when the same party undertook to control those cities by means of a new charter made in the interests of the Democratic party. The reason, my Democratic friends, that the Republican party controlled the Legislature was — and you know it better than I do — that you had perpetrated an outrage upon the State, and the people intended to rebuke you, and they did.

Now, sir, as to the present apportionment, I desire to be understood as saying that it is fair, and I challenge any gentleman who follows me to put his finger upon one district as laid out by the committee, and show where an improvement can be made. The gentleman who last addressed the Convention upon this side, Mr. Root, has challenged you to show wherein this apportionment was detrimental to the interests of the great city of New York. And, my Democratic friends, do not understand me as saying a word against that great city. Do you think it is your city? Do you believe that I have not the same pride in that city that you have? Do you believe that the great Republican party would perpetrate an outrage upon the city of New York, and deprive you of the representation in the Legislature which you are entitled to? Why, look at this bill. If you divide the entire number of citizen inhabitants of the State of New York by fifty, it gives to the city of New York twelve Senators. Do you want more? The bill gives you that number. There is a fraction of 34,160 over. Do you want a Senator for 34,160, when the ratio is 115,817? But that is not all. Do you appreciate that by losing this fraction you have contributed not one per cent to the discrepancy that must necessarily arise from the division of the State by county lines? I say to you that the only logical gentlemen, in my opinion, that have addressed the committee upon that side, were those who contended that county lines should be ignored and representation should be fixed entirely upon population. I challenge any gentleman who follows me to justify the position taken by the other side, except he obliterates county lines. I understand our Democratic friends to virtually concede that if county lines are preserved, this is the best apportionment that ever has been made. It is the best that can be made by any arithmetician in the State of New York. And again, I challenge the gentlemen who follow me to show where it can be improved.

We have listened now for three full days to arguments upon this question, and the major part of the time has been taken up by the

other side, and yet not one single district has been criticised. Nor has it been shown how a fairer apportionment can be made. No man has pointed out where a ward could be put into one district, or taken from another, nor where a line could be drawn that would change one single district from that reported by the committee and thereby render the apportionment non-equitable. The gentleman who opened this discussion on the other side frankly admitted that there would be no amendments offered by his side. Why, sir, are we here as politicians, or as statesmen? Do you intend to sit for four days and have in your pockets an amendment that would so change a district that it would make it fair, as you say, toward the Democracy, and not present it? Is there a gentleman on the other side that will stand up and denounce this bill upon this floor, and yet not offer a suggestion as to how it may be bettered? If it is true, as is charged, that the other side is now laboring under the party lash of the gentleman under whom the apportionment of 1892 was made — if they are here not to make a Constitution, and not to suggest a change in the fundamental law for the benefit of the State — if it is true that they are here simply for the purpose of making a party issue, then, indeed, have they played their part well. If, however, there is any honesty in their protestations of a desire to do that which would be for the benefit of the State, then I fail to understand how they can sit in their seats and see what they have characterized as an outrage perpetrated upon the people, and not in good faith seek to have it averted.

Several gentlemen on the other side have addressed the Convention, among them Mr. Peck. I was very much struck by his speech, and the very adroit suggestions of Mr. Gilbert, when Mr. Peck had concluded; for we all saw in the manner of Mr. Peck when he was addressing the Convention that he knew this was the best apportionment that was ever presented to the people of the State of New York, otherwise he — the honorable and able gentleman that he is — would have suggested some amendment. But he, and the very cultured and able gentleman, Mr. Bowers, and the very eloquent gentleman, Mr. Blake, and many others have addressed this Convention at great length upon this subject, and not one of them has suggested a single change in the proposed amendment; Mr. Bowers, however, as rapidly as he could read it, read an entire apportionment for the State of New York, though he did not offer it as an amendment, and, therefore, we have not been permitted to see it. I suppose it is to be printed in his speech and circulated

among his constituents, either as an attempt to show how unjust this apportionment is, or what a great man Mr. Bowers is.

I had intended, if time had permitted, to discuss this question in the line that Mr. Lincoln discussed it; but the hour is so late, and the discussion is so near a close, that I shall make no presentation of that kind. But, sir, it is well for us before we complete this discussion, to bear in mind a few salient points. It is difficult to remember all the figures that have been given by the different speakers, but there are a few things we can remember. This apportionment is either fair, or it is unfair; it is either just to the Democratic party, or it is unjust. It is either fair to the cities of New York and Brooklyn, or it is unfair. If New York gets its share of Senators, it is fair. If New York obtains its proportion of Assemblymen, it is fair. It is only necessary for me to say in this connection that New York city obtains under this apportionment twelve Senators, which is the exact mathematical calculation, without the omission of one citizen inhabitant, and it has a fraction of 34,160. Is that fair or unfair? If the number of citizen population of the State is divided by 150 it will give to New York thirty-seven Assemblymen, lacking 4,000, as Mr. Bush says. Under this apportionment they get thirty-five, and he asks, where are the other two? Why, here is the great city of New York, with 1,423,984 citizen inhabitants, and it proposes to say to the county which I represent, with 117,205 citizen inhabitants, and other rural counties, that it will not bear any of the burdens that are imposed upon my county and others because there is given an Assemblyman to the county so ably represented here by Mr. Osborn (Putnam), which has 13,325 citizen inhabitants. But, Mr. Bush proposes to compel the county of Oneida or some other rural county to lose an Assemblyman which it should have, and give two to New York city, and not allow the county of Oneida or some others to have the one to which they are entitled. Can it be possible that our Democratic friends believe that the city of New York should not contribute in the slightest degree, in giving to the counties that have not a population sufficient to entitle them to an Assemblyman?

Mr. Bowers — What do you mean by paying tribute? We are not anxious to pay tribute.

Mr. Cookinham — Then do I understand Mr. Bowers to say that he is not willing that New York city shall share this burden with the counties of Oneida, Monroe and Onondaga?

Mr. Bowers — We will share anything, but we do not like to pay tribute.

Mr. Cookinham — Then if you are willing to share the burden, it is proper and right that the two Assemblymen should be taken from New York city and distributed to the other counties in the State, which have contributed to give an Assemblyman to counties not entitled to one.

The Convention here adjourned to Friday morning, September 7, 1894, at ten o'clock.

DATE DUE

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